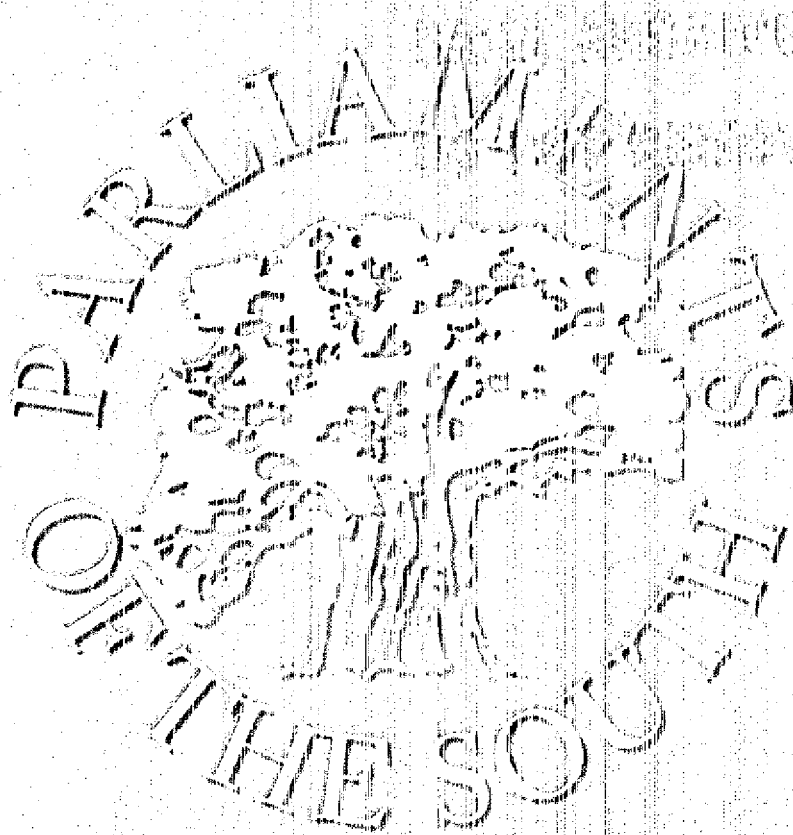


**The South African Institute of International Affairs**



**Strengthening parliamentary  
democracy in SADC countries**

**Malawi country report**

**Mustafa Hussein**

**Series editor: Tim Hughes**

THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

**Strengthening parliamentary  
democracy in SADC countries**

**Malawi country report**

Mustafa Hussein

SERIES EDITOR: TIM HUGHES

The South African Institute of International Affairs' Strengthening parliamentary democracy in SADC countries project is made possible through the generous financial support of the Royal Danish Embassy, Pretoria.

Copyright © SAIIA, 2004

All rights reserved

THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

ISBN: 1-919969-08-X

*Strengthening parliamentary democracy in SADC countries*  
*Malawi country report*

Please note that all amounts are in US\$, unless otherwise indicated.

SAIIA National Office Bearers

Fred Phaswana  
Elisabeth Bradley • Moeletsi Mbeki  
Brian Hawksworth • Alec Pienaar  
Dr Greg Mills

# Acknowledgements

I would like to express gratitude to the South African Institute of International Affairs (SAIIA) which commissioned this study. I am also indebted to SAIIA Parliamentary Research Fellow Tim Hughes who provided technical and administrative guidance for both this research study and during the Lilongwe seminar on Strengthening Parliamentary Democracy in Malawi. This study has benefited from the support of a number of individuals and institutions in their various capacities, too numerous to acknowledge individually: to all, I say thank you. The role of parliamentary staff, MPs and CSOs was crucial – the inclusion of those institutions in Appendix 2 is acknowledgement for all the assistance rendered during the research study. I would like to express special thanks for the insights and input provided by H Chingaipe (parliamentary research officer), HH Njolomole (chief clerk assistant), SN Chisano (deputy clerk of parliament), A Mussa (programme manager, Democracy Consolidation Programme), MK Phiri (programme planner and administrator, Democracy Consolidation Programme), M Mkandawire (Church and Society Programme, Livingstonia Synod), H Musukwa (*The Daily Times*); Dr N Patel (senior lecturer, University of Malawi), R Hajat (executive director, Institute of Policy Interaction) and B Maulidi (journalist).

## About the author

**Mustafa Kennedy Hussein** is head of Political and Administrative Studies at the University of Malawi, Chancellor College. He holds an MA (Public Administration) degree from Rand Afrikaans University (RAU), a B.Comm-Administration degree, a post-graduate diploma in Management, and a diploma in Public Administration from the University of Malawi, and is currently a PhD candidate at RAU in the field of Public Governance. Mustafa joined the University of Malawi, Chancellor College as an academic after working in the public service as a professional officer in the Ministry of Local Government and Rural Development and later as the

Deputy Clerk of Council in Mulanje District. Mustafa's research and teaching interests are in the areas of governance, public administration, local government, decentralisation and strategic management. He has undertaken various research and consultancy projects in these areas of specialisation and has been published in journals and book chapters. Mustafa has vast experience in implementing and coordinating research and capacity-building initiatives undertaken by the department jointly with other local and international institutions and has also successfully conducted a number of workshops, seminars and training programmes utilising participatory, output-oriented and adult learning approaches and methods.

## Preface

The roots of parliamentary democracy in Southern Africa are spreading and deepening despite operating in sometimes infertile soil. All countries in the Southern African Development Community (SADC) region now operate some form of parliamentary democracy. While a majority of countries exhibit text book constitutional, electoral and parliamentary architecture, the operation of these institutions is highly disparate. Some labour under the threat of civil war, constitutional flux, and monarchical fiat; others have operated consistently and constitutionally for decades. While there is little fundamental region-wide disagreement on the mechanisms for achieving a democratic polity, there is far less agreement on the appropriate powers, role and composition of legislatures; and still less discussion, let alone agreement, on the appropriate relationship between parliaments and 'the people'. Indeed the longevity of some parliaments in Southern Africa is no indicator of their constitutional strength, nor the strength of public engagement with them. Established parliaments can operate in an exclusive and exclusory manner. Established parliaments can also become susceptible to (un)democratic reversals, particularly with respect to a strong executive and single party dominance. Conversely, newly elected parliaments can forge innovative and healthy public participation programmes, thereby strengthening and deepening democracy.

This series of reports forms part of the South African Institute of International Affairs' (SAIIA) three-year research, conference and publications programme examining parliamentary democracy in SADC countries. Its normative objective is to contribute to strengthening parliamentary democracy throughout the region. Specialists in all 13 SADC countries were contracted to conduct primary and secondary research into the state of parliamentary democracy and to make recommendations on how parliamentary democracy might be improved, strengthened and sustained.

Specialists were tasked with researching a number of key themes. The first was to provide a country-specific overview of recent and current constitutional, electoral and parliamentary practice. This included 'nuts and bolts' issues such as the electoral system, constitutional provisions for the executive, legislative and judiciary and party political configurations. The organisational structure of parliament, including assembly rules, the roles and powers of committees, the status of the speaker, whips, members, as well as the functioning of parliament as

an oversight actor, were examined. These questions go, *inter alia*, to the status and credibility of parliament with the electorate.

The second theme was to conduct primary research into provisions for public engagement with parliament. There are two dimensions to this relationship. The first is the mechanisms and modalities parliaments use to convey and publicise their activities to the electorate and civil society in general. These may range from the publication of Hansard to the parliamentary web site. The former serves as a recordal of fact (after the fact), but the latter may also serve to publicise future parliamentary activity and is thus a potentially powerful tool. The more textured research centred on the degree to which parliaments encourage and facilitate the participation of the public in their activities. This may range from the public affairs offices, to the holding of public committee hearings in distant and rural areas.

The other side of the public engagement equation is the channels and practices used by civil society to interact with and lobby parliaments ranging from advocacy, petitions and protests, to oral and written submissions.

Public parliamentary access is often characterised by an 'insider-group' and 'outsider-group' dichotomy. The insider group is typically well-organised and funded, usually with a clearly identified constituency base and infrastructure. Insider groups may be issue specific, or cohere around markers such as class, race, religion and ethnicity. Such groups often develop effective methods and modalities of political mobilisation, support, lobbying, access and influence. Outsider groups, however, are often the mirror images of their more powerful counterparts. They may share common interests, or suffer from a common affliction or practice, but lack the resources and capacity to either mobilise effectively, or lobby for their interests. Outsider groups may be extensive in number and may even represent a numeric majority or plurality of the population, yet still operate on the margins of political and parliamentary engagement.

An important, or potentially important, linkage in this relationship is the media, and thus researchers were tasked with examining and evaluating their role. There may be an operational and political distinction between the parliamentary coverage of state-owned media, a national broadcaster and a commercial operator. Researchers were asked to evaluate briefly the effectiveness of these channels of communication and dissemination.

Finally, after workshopping their findings, researchers were asked to write a set of tightly formulated recommendations for strengthening parliamentary democracy in their respective countries.

We at SAIIA thank Mustafa Hussein for his research and for the application and industry with which he has tackled his work in sometimes difficult

circumstances. This country report will appear in abridged form in a compendium of all 13 SADC country case studies. Its findings and recommendations will be incorporated into a SADC-wide best practice handbook.

Lastly, we should like to express our deep gratitude to Ambassador Torben Brille of the Royal Danish Embassy in Pretoria for his constant support and that of the Danish government in generously funding this project.

*Tim Hughes*

*SAILA Parliamentary Research Fellow*



# Table of contents

<b>Executive summary</b>	<b>1</b>
<b>1. Background and introduction</b>	<b>5</b>
<b>2. Parliamentary democracy in Malawi</b>	<b>7</b>
Introduction	7
Parliamentary democracy in Malawi since 1994	9
Election results and composition of parliament	9
Election campaigns	15
The electoral system	16
Governmental systems	17
Summary	18
<b>3. Parliamentary structures and channels for disseminating information</b>	<b>21</b>
Introduction	21
National Assembly plenary meetings	21
<i>Representation</i>	21
<i>Legislation</i>	22
<i>Parliamentary committees</i>	24
Public hearings	26
Local assemblies	27
Public petitions	27
Publications	28
The media	28
<b>4. Civil society's engagement with parliament</b>	<b>31</b>
Advocacy and lobbying	31
Civic education	31
Networking	32

<b>5. The role of parliamentary opposition</b>	<b>35</b>
<b>6. Conclusion and recommendations</b>	<b>39</b>
<b>Notes</b>	<b>45</b>
<b>Appendix 1: Summary of parliamentary results 1994–2004</b>	<b>49</b>
<b>Appendix 2: Organisations visited/interviewed for this study</b>	<b>50</b>
<b>References</b>	<b>53</b>
<b>List of acronyms</b>	<b>54</b>

## **Executive summary**

The democratisation process in Malawi has led to major political, institutional and structural changes across the country and, in particular, a shift from once autocratic rule to liberal democracy. The new constitution, which was first passed in May 1994 for provisional use, incorporates democratic principles such as separation of powers among the branches of government, checks and balances, rule of law, a bill of rights and regular renewal of government mandate through periodic free and fair elections.

Since the advent of a multiparty dispensation, three presidential and parliamentary elections have been conducted in 1994, 1999 and 2004. While the 1994 election was relatively free and fair, the subsequent elections were highly contested due to irregularities in the electoral process.<sup>1</sup> The first-past-the-post (FPTP) electoral system adopted in Malawi does not adequately provide for a representative elected by 'the majority' in constituencies, particularly where votes are split among candidates. There is need for members of parliament (MPs) and civil society to explore alternative electoral systems, such as proportional representation (PR). In addition, capacity-building measures should be undertaken to ensure effectiveness in the electoral process and administration.

Some of the major challenges facing election campaigns are the monopoly of the state media by the ruling party, the lack of pragmatic policy and ideological differences among political parties, and political violence. It is recommended that the state-run media, which tend to enjoy wider coverage, should adequately include the views of opposition parties.

The Malawi parliament incorporates opposition political parties and tends to uphold the principle of separation of powers. The existing structures and channels for disseminating information about parliamentary business include National Assembly plenary meetings, parliamentary committees, public hearings, public petitions, publications and the media.

The mere establishment of such structures, however, does not necessarily promote parliamentary democracy: of greater significance is the effective and efficient operation of these structures and channels. The image of parliament and the conduct of MPs has been dented due to, among others, perceptions that MPs lack seriousness in discussing issues of national importance,<sup>2</sup> that they focus on trivial matters,<sup>3</sup> and that they tend to be selfish and greedy.<sup>4</sup> Additionally, MPs are perceived to be losing integrity due to cases of corruption and inter- and intra-

party bickering.<sup>5</sup> The key challenges facing parliament include:

- lack of central coordination of donor assistance and support for capacity building;
- absence of a clearly articulated vision and mission statement to provide direction and to guide the practice and culture of the National Assembly;
- limited public access to parliament by other stakeholders in society due to geographical distance<sup>6</sup> and strenuous procedures for admission into the public gallery;
- irregular training for staff;
- lack of infrastructure;
- gender imbalance;
- use of English as the medium of communication; and
- inter- and intra-party conflicts.<sup>7</sup>

In order to address these challenges parliament should devise strategies to improve its infrastructure and should institute proactive capacity-building measures, promote gender equality and public participation, and establish constituency offices to enable regular contact and information exchange with stakeholders.

Over the past decade various civil society organisations (CSOs) have emerged. The operations of CSOs are negatively affected by, among others:

- mistrust and poor relationships between civil society and MPs;
- lack of coordination and clarity of CSO's roles;
- lack of formal mechanisms for sustained engagement;
- ad hoc and irregular contacts with MPs;
- inadequate capacity in terms of human resources, skills and competences; and
- the tendency to depend on donor funding for activities.<sup>8</sup>

It is recommended that CSOs should:

- establish strong linkages and promote good relations with MPs;
- conduct training programmes to acquaint CSO workers with parliamentary procedures and methods of advocacy and lobbying;
- make their missions and objectives known;
- manifest credibility; and
- generate funds locally.

Malawi has developed into a plural democracy, as evidenced by the emergence of a number of political parties represented in parliament.<sup>9</sup> Opposition political parties are represented not only in parliament but in government as well. However, ineffective performance of the opposition in parliament is due to, among others:

- lack of a meaningful tradition of democratic practice;
- fragmentation of the opposition due to allegiance shifts;
- lack of ideological differences and policy alternatives;
- intra-party conflicts and leadership crises;
- lack of resources; and
- inadequate training regarding the role of the opposition.

It is recommended that all MPs be adequately trained and oriented regarding their roles in parliament to enable effective scrutiny and oversight of government policy.

The major challenges facing Malawi's parliament are those that are common to parliaments in other Southern African Development Community (SADC) countries. These include absence of an entrenched democratic culture, elite-driven politics, low levels of literacy and poor infrastructure, patterns of opportunism and party patronage politics. There is need for parliament to cultivate the principles of democratic governance and to mobilise physical, financial and human resources to ensure effective performance. In addition, parliament should reinvigorate interaction and information sharing between MPs and other stakeholders.

# 1. Background and introduction

This study is part of a regional project commissioned by the South African Institute of International Affairs (SAIIA) to examine parliamentary democracy in SADC countries. The overall objective is to identify and analyse structures and channels for engagement between parliament and various stakeholders, in particular civil society and the public. The study seeks to highlight strengths and weaknesses in the existing parliamentary process and to recommend alternative strategies to promote effective functioning of Malawi's parliament.

Malawi's democratisation process has led to major political, institutional and structural changes across the country. A more pronounced change has been a shift from autocratic rule to liberal democracy, as evidenced by the passing of a provisional constitution in May 1994. This constitution is founded, among others, on the principles of good governance and provides for separation of powers among the branches of government, checks and balances, rule of law, a bill of rights and regular renewal of the government's mandate through periodic, free and fair elections.

During Malawi's single-party rule, separation of powers was blurred and parliament was essentially a 'rubber-stamp' of executive decisions. Under the multiparty dispensation parliament is therefore expected to play an effective role in ensuring checks and balances, scrutinising government policy and providing alternatives in order to consolidate democracy. In addition, there is need for recognition of the important role that constitutional bodies, opposition political parties and CSOs, including the media, play in the parliamentary process.

In this regard, the study focuses on the main features of parliamentary democracy that have emerged in Malawi since the advent of multiparty democracy in June 1994. The aim is to contribute to much-needed information on the operation of parliament in Malawi, to promote effective performance and to improve the quality of decision making. The study findings seek to raise awareness about the significance of civil society input as well as public access to parliamentarians in promoting the effective conduct of parliamentary business.

The report begins by providing a brief background of Malawi's political history and the main features of parliamentary democracy that have emerged since 1994. In addition, election results, composition of parliament and the electoral and government systems are presented. The next section provides an overview of existing structures and channels for disseminating information about

parliamentary activities to constituents. The developments undertaken to improve engagement between parliament and its stakeholders are examined. This is followed by an analysis of the mechanisms that CSOs use to engage parliament, highlighting their strengths and weaknesses. An overview of the role, strengths and weaknesses relating to parliamentary opposition is then presented. Finally, and by way of conclusion, a summary is provided of the key issues analysed, as well as tentative recommendations for strengthening engagement between parliament and stakeholders.

## **2. Parliamentary democracy in Malawi**

### **Introduction**

This section presents an analysis of the main features of parliamentary democracy that have emerged in Malawi since the advent of multiparty democracy in 1994. The concept of parliamentary democracy encapsulates the idea of a representative democracy and an elected assembly which reflects diverse opinions in the political system. Effective parliamentary democracy therefore entails the operation of an inclusive and accommodative representative assembly. The analysis in this section starts with a brief political background in order to provide the context and backdrop against which the main features of parliamentary democracy are emerging.

The first multiparty general elections of 1961 saw the Malawi Congress Party (MCP) win political leadership of the country, with the late Hastings Banda as prime minister.<sup>10</sup> From 1964 (especially after the Cabinet Crisis) to 1993 (before the referendum), Malawi was characterised by highly oppressive and centralised rule. The declaration of a one-party state in 1966 and life presidency for Banda in 1971 led to the emergence of 'one-man rule'<sup>11</sup> and a governance system accountable to Banda only. Thus, separation of powers among the various branches of government was blurred.

Banda dissolved parliament at will and appointed any person to become a member of the National Assembly. The electoral process was illusory as the results of elections were vetted and potential candidates were not allowed to conduct political campaigns. During single-party rule, all MPs belonged to the MCP and dissent was not tolerated. Further, while plebiscite parliamentary elections were held at regular intervals of five years, Banda handpicked some members who did not have constituencies. For instance, in 1981, out of 125 MPs, 38 were nominated and had no specific electorate or geographical area to represent.<sup>12</sup> Parliament therefore divested itself of the task of being representative of the popular will and became a rubber-stamp for the executive arm of government. The characteristics of democratic governance – such as free and fair elections, freedom of association and political participation by the local citizens – were absent.

The global 'third wave' of democratisation that swept through Southern Africa and the internal pro-democracy forces in Malawi had a profound impact in



propelling Malawi away from autocracy and towards democracy. The unrest which started in May 1992 by textile workers in Blantyre contributed to the breakdown of the regime. The wave of industrial strikes and anti-government demonstrations provided popular support for political liberalisation. The workers went on strike and openly protested against poor working conditions and low wages. They were joined by several thousands of workers from adjacent townships and students to protest against the Banda regime. Riot police were dispatched and this resulted in a showdown that left over 100 dead, more than 140 injured and hundreds arrested. This incident pressured the one-party state for change as international donors cut the flow of the country's non-humanitarian aid.<sup>13</sup>

The first open demand for change of the political system was made in the Catholic Bishops' Pastoral Letter of 8 March 1992.<sup>14</sup> For the first time, the political, social and economic ills of one-party rule were publicly attacked. The letter was widely distributed and read in all parishes throughout the country. The views and demands highlighted in the letter were supported by other institutions and Christian denominations in Malawi.

The international conference held on 20–22 March 1992 in Lusaka was another important event that demanded change of the one-party system of government. The conference brought together for the first time Malawian academics in exile and other members of 'internal' and exiled opposition. It supported the Pastoral Letter and further called for a multiparty system of government, a repeal of all laws inconsistent with the new dispensation, a general amnesty with regard to exiles, and the establishment of a government of national unity as an interim measure to holding multiparty general elections. The arrest of Chakufwa Chihana in April 1992 upon his return from the Lusaka conference on charges of importation and possession of seditious material encouraged Malawians further to fight for change.

Consequences of the anti-government movements of 1992 included the formation of pro-democracy pressure groups that called for change of the political system, such as the United Democratic Front (UDF) and the Alliance for Democracy (AFORD). In addition, a Presidential Committee on Dialogue, which was later replaced by the National Consultative Committee and the Public Affairs Committee were also established. Pressure against the Banda regime culminated in a referendum on 14 June 1993 to determine people's preference between single-party rule and a multiparty system of government: Malawians voted for the latter, with about 63% in favour of change.

Malawi switched to a multiparty system of government in May 1994 and has since held three democratic elections in 1994, 1999 and 2004 (see *Appendix 1*

for summary of results). Since 1994, important features of parliamentary democracy have emerged, and Malawians have begun to assert their rights and to demand to know more about the governance process and how they can actively participate in it.

### **Parliamentary democracy in Malawi since 1994**

The constitution that was drafted during the National Constitutional Conference and which came into effect on 18 May 1995 was a major development in the multiparty dispensation. The new constitution incorporates principles of liberal democracy, such as a representative government and parliament, separation of powers, and checks and balances among the three branches of government – the legislative, executive and judicial – to ensure they perform their functions independently.<sup>15</sup> It also provides for the establishment of constitutional bodies such as the Office of the Ombudsman, the Anti-Corruption Bureau (ACB) and the Malawi Human Rights Commission (MHRC),

Of greater significance is the provision in the constitution for democratic elections and citizen participation in the political process. For instance, sections 67 and 77 of the constitution provide for the regular holding of elections and a National Assembly that lasts for five years from the date of swearing in. The National Assembly is dissolved on the 20th of March of the fifth year after its election, and polling day for general elections for the next National Assembly is the Tuesday in the third week of May of that year.<sup>16</sup>

The elections of the president and MPs are to be held concurrently on the basis of direct, universal and equal suffrage.<sup>17</sup> All eligible persons are required to vote in any general election, by-election, presidential election, local government election or referendum.<sup>18</sup>

In this regard, the major achievements of the UDF government since 1994 include the establishment of governance institutions and mechanisms to safeguard democratic principles, such as the rule of law and free and fair elections. However, the mere establishment of institutions does not guarantee effective democratic governance – of greater significance is the extent to which these institutions perform their functions efficiently and effectively.

### **Election results and composition of parliament**

Among the eight parties that contested the June 1994 elections, three major political parties – namely, the UDF, MCP and AFORD – won seats in parliament (see Table 1).

**Table 1: The 1994 parliamentary election results**

Region	MCP	UDF	AFORD	Independent	Total
North	0	0	33	0	33
Centre	51	14	3	0	68
South	5	71	0	0	76
Totals	56	85	36	0	177

Source: Malawi Electoral Commission Report, 1994.

Although there were cases of voter intimidation and confiscation of voter registration certificates<sup>19</sup> in some areas, the conduct of the 1994 elections was generally free and democratic. The UDF obtained more seats than either of the other two parties; however, the combined seats of the opposition political parties (MCP and AFORD) were more than those of the UDF, giving the opposition numerical strength in parliament. Due to the lack of outright majority seats, the UDF entered into an alliance with AFORD, but this alliance was short-lived, collapsing after two years.<sup>20</sup>

It is important to note that the 1994 parliamentary election results revealed a regional voting pattern.

As shown in Table 1, the UDF, whose leader was from the South, won more seats in that region; the MCP under leadership from the central areas also amassed most of the votes from that region. Similarly, AFORD, whose leader is from the North, won all the seats from the Northern region. In the presidential race of 1994, the UDF's Bakili Muluzi ousted Dr Banda, ending 33 years of autocratic rule in Malawi (see Table 2).

**Table 2: The 1994 presidential election results**

Political party	Candidates	Total number	Percentage of votes
UDF	Bakili Muluzi	1,404,754	47.16%
MCP	Hastings Kamuzu Banda	996,353	33.45%
AFORD	Chakufwa Chihana	562,862	18.90%

Source: Malawi Electoral Commission Report, 1994.

The second multiparty elections took place in 1999 and were contested by 11 parties. The UDF again won more parliamentary seats than either the MCP or AFORD (see Table 3).

**Table 3: The 1999 parliamentary election results**

Region	MCP	UDF	AFORD	Independent	Total
North	4	1	28	0	33
Centre	54	16	1	1	72
South	8	77	0	3	87
Total	66	94	29	4	193

*Source: Malawi Electoral Commission Report, 1999.*

The creation of more electoral constituencies for the 1999 election (from 177 to 193), however, enabled the UDF to gain a slender majority for the first time.<sup>21</sup> It must be noted though that nine of the additional constituencies were allocated to the Southern region, which is the UDF's regional power base.

Four independent members won seats in parliament during the 1999 elections, but most of these MPs 'defected' to the ruling party and parliament was eventually left with the same three parties (UDF, MCP and AFORD) as before. In order to restrict defections, however, MPs gave powers to the Speaker of parliament to declare vacant those seats belonging to party-supported MPs who defected.<sup>22</sup> This section of the constitution was, however, selectively applied in favour of the ruling party and it contradicted democratic principles incorporated in the constitution (such as freedom of association) and has therefore since been reviewed.

The conduct of the 1999 election was, however, characterised by various irregularities including the:

- buying of registration certificates;
- registration of under-aged people, including school children;
- registration of foreigners in the border districts;
- inclusion of some 'ghost' ballot papers;
- complacency of the police; and
- use of the National Intelligence Bureau to cause violence and intimidate the opposition.<sup>23</sup>

The ruling party was left unchecked in its use of government resources during election campaigning, leading to the view that the Malawi Electoral Commission (MEC) was partisan since it failed to level the political playing field. The fairness of the electoral process was strongly contested by the opposition and the discontent among opposition party supporters resulted in violent protests, destruction of some mosques and damage to houses of UDF supporters.

**Table 4: The 1999 presidential election results**

Political party	Candidates	Total number	Percentage of votes
UDF	Bakili Muluzi	2,426,885	51.37%
MCP/AFORD Alliance	Gwanda Chakuamba	2,106,790	44.30%

Source: Malawi Electoral Commission Report, 1999.

A regional voting pattern was also seen in the 1999 election, although the MCP and AFORD formed an electoral alliance and fielded Gwanda Chakuamba as their presidential candidate. Table 4 shows the results of the 1999 presidential contest.

The third multiparty presidential and parliamentary elections were held on 20 May 2004, marking a decade of democracy in Malawi. These elections were contested by 15 political parties and an increased number of independents (see Table 5).

**Table 5: The 2004 parliamentary election results**

Region	MCP	UDF	AFORD	CONU	PETRA	PPM	MGOODE	NDA	RP	Ind.
North		3	6		1	5	3	1	6	6
Centre	56	7								6
South		39		1		1		7	9	27
Totals	56	49	6	1	1	6	3	8	15	39

Source: Malawi Electoral Commission Report, 2004.

Voter turnout, however, was a mere 52% and voting in eight districts was postponed<sup>24</sup> due to, among others, errors on the ballot papers and the death of some contestants.<sup>25</sup>

As indicated earlier, the distribution of parliamentary seats followed clear-cut regional voting patterns in both the 1994 and 1999 elections, with the UDF dominating in the South, MCP in the Centre and AFORD in the North. However, in the 2004 elections, and contrary to all expectations, the UDF lost its parliamentary majority, winning just 49 of the National Assembly's 193 seats, while its coalition partner, AFORD, won only six seats. The MCP won 56 seats, the seven-member Mgwirizano<sup>26</sup> Coalition won 26 and independent candidates won 39 seats. Nonetheless, the election results still reinforced regional voting patterns.

People in the South mostly voted for political parties whose leadership is based in the South, namely, the UDF, Republican Party (RP) and National Democratic Alliance (NDA). The MCP, whose leader is from the Central region, won all the parliamentary seats in that region, but did not get any seats from the South or North. Similarly, people from the North largely voted for political parties whose leadership is based in the North, namely, the Movement for Genuine Democracy (MGODE), the People's Progressive Movement (PPM) and the People's Transformation Party (PETRA).

Unlike the 1994 and 1999 parliamentary elections where only three political parties won seats, the 2004 elections saw six new political parties enter parliament, as well as a total of 39 independents. The emergence of a large number of independent candidates is partly due to the disappointment by contestants with the imposition of political party favourites during party primary elections. Some individuals therefore chose to compete on their own without political party sponsorship or backing. The representation of more political parties and independents in parliament promotes pluralism and accommodation of diverse views and opinions.

However, the 2004 elections results (like the 1999 results) were contested by the opposition and other stakeholders who cited electoral irregularities. A representative of a non-governmental organisation (NGO) accredited by the MEC highlighted the following electoral flaws: "Registration and subsequent voting of under aged; canvassing on polling day; insufficient materials during both registration and polling period; failure to level the ground in the use of the public media; and intimidation from traditional leaders in strongholds of the ruling party."<sup>27</sup> The 2004 elections were therefore considered 'controversial' by most election observers in Malawi.

The Mgwirizano Coalition protested against the presidential results and maintained that its leader, Gwanda Chakuamba, was the rightful winner. Chakuamba actually issued a press release in which he declared himself the winner of the 2004 elections before the MEC had released the official results. Despite claims by the opposition and other stakeholders of vote rigging, UDF candidate Bingu wa Mutharika was declared winner of the presidential elections (see Table 6, over page).

The announcement of the results was followed by violent protest and rioting in which at least four people died in the cities of Blantyre and Mzuzu. The main opposition parties have since challenged the outcome of the poll in the High Court.

Tension in the political environment was aggravated by the MEC's failure to release the election results within the required time period: the commission did

**Table 6: The 2004 presidential election results**

<i>Political party</i>	<i>Candidates</i>	<i>Total number</i>	<i>Percentage of votes</i>
UDF	Bingu wa Mutharika	1,119,738	35%
MCP	John Tembo	846,457	27%
Mgwirizano	Gwanda Chakuwamba	802,386	26%

*Source: Malawi Electoral Commission Report 2004*

not timeously publish the results in a Gazette, by radio broadcast and in at least one issue of a newspaper within eight days from the last polling day, as required by section 99 of the Parliamentary and Presidential Act. In addition, the total number of registered voters, those who actually voted, the total number of spoilt votes and the total number of valid votes cast for each category were not presented during the release of the official results.

Problems relating to the electoral process were manifest much earlier when the Mgwirizano Coalition took the MEC to court, demanding postponement of the original election date (18 May) to allow for proper scrutiny of the voters' roll. In support of the case, Mgwirizano contrasted the number of registered voters (agreed by all parties to be 5.7 million) with the number of ballot papers printed by the MEC (over 7 million). The opposition parties saw this discrepancy as providing an ideal opportunity for electoral fraud, expressing a concern that was positively viewed by the High Court. An extension of two extra days was granted, and the new election date set for 20 May 2004.<sup>28</sup> The High Court later granted custody of the more than one million excess papers to the courts rather than to the MEC. The Supreme Court of Appeal, however, subsequently overturned that decision, leading to even more confusion.

The attempt by the ruling party to change section 83(3) of the constitution – which provides for only two consecutive presidential terms – to allow an open-term presidency so that the incumbent could contest for a third term, contributed to the controversy surrounding the 2004 elections. The proposal to amend the constitution was preceded by the ruling party's efforts to reduce the majority required to amend the constitution from two-thirds to a simple majority, so as to ensure the UDF would have sufficient representation in parliament to approve the change. Parliament eventually met on 4 July 2002 to debate the proposed amendment. While 128 votes were needed for the constitutional amendment, 29 opposition MPs and one independent voted for the amendment, with 59 opposition votes cast against – consequently defeating the attempt.<sup>29</sup> The UDF's attempts to manipulate the constitution were challenged by church groups and

CSOs and the defeat of the amendment was a positive sign of a strengthening of democracy in Malawi.

In short, the opposition had numerical strength in parliament after the 2004 elections and the MCP, in particular, obtained more parliamentary seats than any other political party. However, the UDF presidential candidate won the presidential race. His party has since absorbed some independent members and negotiated a merger with the NDA and a coalition with AFORD, the RP and the MCODE, with the apparent intention of ensuring adequate support for UDF policies in parliament.

### **Election campaigns**

All registered political parties in Malawi are allowed to conduct election campaigns and hold political party meetings, rallies and gatherings without any obstruction. The official election campaign period is two months before the opening of the poll, closing 48 hours before polling day.<sup>30</sup> Owing to the numerous political parties that have been established in Malawi, election campaigns have been quite robust. For example, the 2004 election campaign saw 15 political parties contest for parliamentary seats.

However, election campaigns in Malawi have been largely based on personalities rather than pragmatic ideological and policy differences, with the 2004 election campaign dominated by mudslinging and name calling<sup>31</sup> instead of focusing on policy issues. Consequently, there were incidents of campaign violence, intimidation of voters, disruptions of campaign meetings and physical threats to candidates.

The major challenge during the 1999 and 2004 election campaigns was, however, the monopoly of the state media by the ruling party, and in particular Television Malawi (TVM) and the Malawi Broadcasting Corporation (MBC) which have relatively wider coverage. For instance, during the 1999 and 2004 election campaigns TVM and MBC covered live and re-broadcast UDF political campaigns. The conduct of the MBC was worse in the 2004 elections when it closed the airwaves to opposition political parties, even during the official campaigning period. In one incident, former first Vice-President Justin Malewezi – who was contesting as an independent presidential candidate – was whisked out of an MBC studio while on air following orders ‘from above’.<sup>32</sup>

Overall, the ruling party has utilised state resources, including vehicles, to promote its interests. The perception that the state media favours the ruling party by providing full coverage of presidential and UDF party functions while opposition parties are not given the same access to public media<sup>33</sup> leads to unfair



competitive politics, and a weakening of the opposition and, ultimately, democratic practice.

Since political competition is not conducted on a level playing field the fairness of electoral campaigning and the electoral process is controversial; opposition political parties do not have realistic prospects to assume power. Apparently, the political landscape carried over from one-party rule tends to constrain the prospect of fair political competition: the new democratic regime blends democratic practice with legacies of the authoritarian past.

The Minister of Information and Tourism has, however, recently advised the state media to allow dissenting views in their coverage to enable Malawians to make informed decisions. The Minister clearly stated that: "I do not see why TVM and MBC cannot interview the opposition. As a public broadcaster, we should interview everyone. You have a duty to make them heard on the radio too." The call to accommodate views from opposition political parties would promote democracy as it would lead to wider publicity of alternative views and opinions.

### **The electoral system**

During the National Constitutional Conference held in 1993 by the National Consultative Committee (NCC) and the National Executive Council, it was resolved that first-past-the-post (FPTP) should be adopted as the electoral system for presidential and parliamentary elections in Malawi.<sup>34</sup>

An FPTP electoral system involves dividing the country into constituencies, and the electorate in a particular constituency vote with the aim of choosing one candidate for a seat in the National Assembly. Thus, parliamentary candidates compete over and canvass for a territorially defined constituency either independently or on a political party ticket. Representativeness is attained as long as constituencies have their own elected members who represent people in the constituencies.

The merit of this system is its simplicity in voting and vote counting. Election results can be easily ascertained, and in view of the high illiteracy levels in Malawi estimated at between 58% and 65%, as well as limited financial resources for elections (the election budget is largely donor funded), FPTP tends to be appropriate. However, FPTP does not always produce a representative elected by 'the majority', particularly where votes are split among political parties or candidates. In order to win, a candidate requires only one more vote than his/her closest competitor, which may mean that a candidate is elected to assume office by a minority.

The electoral system used in Malawi has therefore failed to produce leaders

who represent the majority of the electorate. The FPTP electoral system overemphasises the number of votes a contestant amasses during an election. The contestants often share the votes and the winner usually squeezes through even with a smaller margin of votes. In the May 1994 elections, for example, the president assumed office after winning only 47.16% of the vote against 52.84%, which was split between the other two contestants. Similarly, in May 2004, the president assumed office with only 35% of the votes, against 53% split between the other two contestants.<sup>35</sup>

The FPTP electoral system has proven to be unfit for Malawi since Malawians are known to vote along regional lines. Furthermore, owing to an increase in the number of competitors and the consequent splitting of votes, FPTP denies representation of some voters whose combined votes represent a majority. This electoral system tends to be an ineffective tool for democratisation and multiparty consolidation: it is inadequate insofar as representation and accommodation of the available array of voter views is concerned.

It is therefore recommended that the electoral system be reviewed in order that all voters are, as far as practicable, equally represented and that the system leads to more credible and realistic election results. Wide consultation is needed to decide which electoral system – for example, PR or mixed-member proportional (MMP) – would be more suitable for Malawi. Under the PR system a country is assumed to be one large constituency and political parties are allocated National Assembly seats based on the percentage of the total votes they receive. The MMP model, which blends aspects of FPTP and PR, is another way to neutralise the divisive impact of ethno-regional voting patterns in Malawi.

## **Governmental systems**

Malawi's multiparty system of government adopted in June 1994 borrows some principles from both presidential and parliamentary systems. In terms of the former system, the president, who acts as Head of State and Government, is directly elected every five years and can serve a maximum of 10 years, or two consecutive terms. Cabinet ministers, as with a parliamentary system, are chosen from among the elected MPs, although a few are chosen from outside parliament.<sup>36</sup> Separation of powers and checks and balances between the executive and legislative branches of government are provided for in section 73(1) of the constitution, which accords the president powers to assent to bills adopted by the National Assembly as part of the checks and balances.

The executive, which includes the cabinet and the president, is the key organ in policy formulation. Section 89 of the constitution provides enormous powers

to the president including presiding over cabinet meetings, conferring honours and appointing commissions of inquiry. In addition, the president, among others, provides direction to the public service, acts as commander of both the police and the army, removes any incompetent judge, and approves appointments of traditional leaders and senior civil servants.

The enormous powers of the executive, however, tend to undermine the principles of separation of powers and checks and balances. For example, most cabinet ministers double as MPs, and until recently the Attorney General served simultaneously as Justice Minister and as an MP. These powers also encourage personal autocracy, as exemplified by attempts to amend section 83(3) of the constitution to allow the former president to contest for a third term tenure, contrary to the two-term maximum stipulated in the constitution. Therefore, although the constitution provides for the separation of power among the three branches of government, some individuals have taken on more roles.

As regards the judiciary, the constitution provides for an independent and impartial judiciary to safeguard political and civil rights, as well as to interpret, protect and enforce the constitution in an independent and impartial manner.<sup>37</sup> The courts, and all people presiding over the courts, are required to exercise their functions, powers and duties independent of the influence and direction of any other person or authority.<sup>38</sup> A number of High Court rulings against the government seem to confirm the independence of the judiciary,<sup>39</sup> however, several incidents have signified interference and attempts to undermine this independence as well as the principle of separation of powers. For instance, a petition was passed by more than 113 MPs to remove three judges on the basis of misconduct and incompetence; but a number of CSOs condemned the petition viewing it as an attempt to undercut the independence of the judiciary and the rule of law.

## Summary

Although three presidential and parliamentary elections have been conducted under Malawi's multiparty dispensation, election results and the fairness of the electoral process have been controversial and marred by electoral irregularities. There is therefore need to review the structure, functions and composition (membership) of the MEC. While a multipartisan approach has been used to date to ensure representation of the various political parties in the commission, there is need to consult widely on the merits of other approaches, such as the judicial, executive or professional approaches.

Since the FPTP electoral system does not adequately provide for a

representative elected by 'the majority', particularly where there are more political parties or candidates, it is recommended that MPs and civil society together discuss and explore alternative electoral systems.

A number of challenges impact on election campaigning including the ruling party's monopoly of the state media, the lack of pragmatic policy and ideological differences among political parties, and political violence. Political competition is therefore not conducted on a level playing field, casting doubt on the fairness of the electoral process as a whole. To rectify this, the state-run media should adequately open up to the views of opposition parties. There is also need for behavioural change; political leaders should desist from castigating each other and should adopt a democratic ethos, which would include enhancing citizen participation in political party decision-making.

### **3. Parliamentary structures and channels for disseminating information**

#### ***Introduction***

The National Assembly and the elected president, in his/her capacity as Head of State, constitute the Malawi parliament.<sup>40</sup> The National Assembly stands dissolved automatically on the 20th of March in the fifth year after general elections.<sup>41</sup> The structures for conducting parliamentary business include the plenary meetings or sessions of the National Assembly and parliamentary committees. The channels for disseminating information about parliamentary activities include public hearings, publications, the media, political rallies, party committees and district assemblies.<sup>42</sup> The analysis that follows focuses on the major structures of parliament and its channels for disseminating information.

#### **National Assembly plenary meetings**

The National Assembly comprises 193 members who are elected for a five-year term through direct universal suffrage, and each member represents a constituency in the country. The key responsibilities of the National Assembly can be broadly categorised into representation, legislation and oversight of governmental functions.

#### ***Representation***

The articulation of the will, needs and aspirations of the constituents is an important function of the National Assembly. MPs are primarily required to represent the views, interests and needs of their constituents in parliament. MPs acting on behalf of their constituents make their views known by introducing motions and bills, asking questions, contributing to debates, presenting petitions and raising matters of urgent public importance. MPs are required to ascertain the real needs and justified expectations of their constituents and must perform most of their work in constituencies so as to keep in contact with constituents, solicit public views, listen to their concerns and integrate their needs and expectations. Public engagement with MPs is therefore crucial to ensure representation of the genuine needs and interests of constituents.

Attempts to ensure wider representation in parliament were, however,

undermined by Bill No. 4 of 2000 and Bill No. 25 of 2000. The amendments revoked the provision for a Senate as part of parliament. The abolition of the Senate denied wider local representation of Malawians' interests since the Senate was to include traditional leaders, professionals and representatives of special interest groups.

The engagement between parliament and stakeholders, and in particular the public and CSOs, is constrained by the lack of effective mechanisms for interaction and for providing information to constituents. This is exemplified by the absence of permanent contact points such as constituency offices. Most MPs commute to their constituencies, especially those who double as ministers since they reside in cities or semi-urban areas where accessibility to local opinion leaders is limited. However, some MPs interact directly with traditional leaders and solicit views from constituents through political party structures at district, area and branch levels.<sup>43</sup>

A social audit report<sup>44</sup> that covers the role and performance of parliament clearly states that the National Assembly has failed to address people's aspirations due to, among others, the poor calibre of MPs. A review of the biographical data of MPs reveals that most have inadequate levels of education. This tends to limit their ability to debate issues in favour of the people they are purported to represent. The use of English as the standard medium of communication in the National Assembly further constrains some MPs who find it difficult to express themselves in that language, limiting their ability to participate freely and effectively in the legislative process.<sup>45</sup>

It is recommended that MPs consider the introduction of a vernacular language as an alternative medium of communication in the National Assembly, thereby promoting clear understanding and easy communication. This option is available as section 54(5) of the constitution states that "the proceedings of Parliament shall be conducted in the English language and such other languages as the National Assembly may prescribe".

### *Legislation*

MPs are required to receive, amend, accept or reject government bills and private bills, initiate private members' bills on the motion of any member and amend, accept or reject such bills.<sup>46</sup> In this regard, public engagement and obtaining input from stakeholders such as citizens and CSOs relating to the legislative process is an important tenet of democracy and a critical function of MPs.

The legislative process should accommodate the views and interests of constituents. However, the major challenges that constrain effective performance

of this function include inadequate time for conducting parliamentary business and lack of technical knowledge on some parliamentary bills.<sup>47</sup>

The National Assembly meets twice a year: in May/June for a six-week budget meeting and in October/November for a four-week State Opening of Parliament. Ten weeks, however, is too short for members to debate adequately and address various issues of national interest. In most cases insufficient time is assigned to plenary sessions for debate on reports from committees that might have included the views of the public. In addition, MPs are not given adequate time to read the bills: the 21 days<sup>48</sup> allowed to facilitate research, consultation and analysis of bills is often not observed since most bills are rushed through parliament.

It was also noted that many members find it difficult to understand the budget documents as well as the legal jargon used in most bills. This was confirmed by the Money Laundering and Proceeds Bill No. 6 of 2002 that was referred back to the parliamentary draftsman because almost all members could not understand it because of the technical language used.<sup>49</sup>

The performance of MPs is also constrained by inadequate physical, financial and human resources. For example, members lack office equipment, vehicles, office space and information systems such as computers, the internet and telephone facilities. This contributes to members' inability to undertake effective research, utilise information data bases, interact with stakeholders and, ultimately, represent the genuine interests of their constituents.<sup>50</sup> Furthermore, ineffective communication means that stakeholders (the public and CSOs) are not aware of agenda items, parliament's calendar of events, or its committees. In addition, the shortage of adequately and appropriately trained senior personnel negatively affects the conduct of parliamentary business and, in particular, activities of parliamentary committees. The few parliamentary staff are overstretched, especially when parliament is in session. In some instances an individual is required to provide secretarial services to several parliamentary committees as well as at the same time attending to parliamentary business in the chamber.

Over the past 10 years, the credibility of parliament has been dented and the public's perception of parliament is negative:

*The legislature in the pseudo-democratic Malawi, 1994–2004, just like the executive, has been a mockery to democracy. It has been one of the worst, and shameful, embarrassing Parliament's in the history of this nation. It shall go down in the country's history as trash, to say the least, characterised by political prostitution, corruption, self enrichment and most of all gross mismanagement of the Constitution. There is just nothing, I repeat, nothing, to write about the legislature of 1994–2004.<sup>51</sup>*

Among the major factors that have tarnished the image of parliament is the media and public perception that MPs lack seriousness in addressing issues of national importance, as shown by parliamentary boycotts and absenteeism. Parliament has been likened to a kindergarten or playground:<sup>52</sup> MPs tend to focus on trivial matters, as evidenced by the petty questions asked by some members.<sup>53</sup> MPs are also perceived to be selfish and greedy, as manifested by their persistent demands for higher allowances and perks.<sup>54</sup> Parliament has also lost integrity due to allegations of corruption, the idea that MPs can be 'bought', as well as inter- and intra-party bickering at the expense of representing constituents' interests.

Some of the major challenges facing the National Assembly are: the lack of central coordination of donor assistance and support for capacity building; absence of a clearly articulated vision and mission statement to provide direction and guide the practice and culture of the National Assembly; limited public access to parliament due to strict controls on the admission of the public (such as a dress code) and geographical distance to the parliament building;<sup>55</sup> under funding; inadequate staff; and gender imbalance.<sup>56</sup>

A number of measures have, however, been taken to improve the performance of MPs, including workshops and training programmes on various topics. One such programme is the Parliamentary Training Programme (PTP) offered by parliament, in conjunction with the University of Malawi. This programme covers such issues as HIV/AIDS, poverty studies, public finance, communication, environment and development, democracy and governance.<sup>57</sup> A recent assessment of the PTP showed that most programme participants reported improvements in the manner in which they conducted themselves and participated in parliamentary debates.<sup>58</sup>

### *Parliamentary committees*

The oversight function of government operations is undertaken by department-related parliamentary committees – also called portfolio committees – which are formed in line with government ministries. There are currently 13 National Assembly standing committees with membership ranging from 13 to 20.<sup>59</sup> Four of these committees – Legal Affairs, Budget and Finance, Public Appointments, and Defence and Security – are established by section 54(7) of the constitution. Standing Order 155(1) provides for such committees as Public Accounts, Agriculture and Natural Resources, Education, Science and Human Resources, Health and Population, Commerce and Industry, Tourism, Social and Community Services, Media and Communications, Transport and Public Works, and International Relations.



The committees are mandated to create sub-committees whose membership is drawn from the list of its members. Other important committees in parliament are the Business Committee, which examines business items received from members before they are placed on the order paper by the clerk, and the Parliamentary Development and Coordination Committee, which reviews activities of standing and departmental-related committees.

The composition of the Business Committee includes the Speaker as chairperson, party whips and their deputies, Leader of the House, Leader of the Opposition, and leader of the largest party as an *ex-officio* member. The Parliamentary Development and Coordination Committee comprises all committee chairpersons and it is chaired by the Speaker.<sup>60</sup> Membership of standing and departmental-related committees is drawn in proportion to the number of seats political parties hold in parliament. Committees therefore comprise members of all political parties in parliament as well as independents. The chief whip of each party is required to submit proposed names for various committees. Independent members must indicate their preferred committees in writing to the Speaker, who presents the same to the Business Committee for consideration.

The standing committees are empowered to examine and enquire into all matters referred to them by the National Assembly as well as to make recommendations to be considered by the National Assembly. According to the Speaker, leaders of parliamentary committees have the power to scrutinise public policies and to hold government and persons accountable for their operations.<sup>61</sup> In principle, the proceedings of parliamentary committees are publicised through reports to ensure transparency and openness, as regulated by standing orders and conventional practice. The Public Accounts Committee, for example, has published reports of mismanagement of public resources and corruption in government ministries and departments, such as the Education Scam and the Maize Scam.<sup>62</sup>

However, the executive tends to undermine the functions of some parliamentary committees. For instance, the Inspector General and the Director of Public Prosecutions were appointed and started their work before scrutiny and confirmation by the Public Appointments Committee.<sup>63</sup> In addition, not much is known about the parliamentary committee meetings and deliberations due to ineffective communication, inadequate funds to facilitate meetings, lack of publication and dissemination of reports and irregular conduct of parliamentary committee meetings. A survey of parliament records in major libraries showed that these were scant, and records of public hearings are not readily available.<sup>64</sup> Some senior parliamentary staff stated that one area in which they had not excelled was in communicating parliamentary issues to the public.<sup>65</sup>

## Public hearings

Parliamentary committees conduct public hearings when necessary to solicit views on particular bills. Committees also call for written and oral submissions from the public and concerned groups through advertisements placed in the press and aired on radio. For instance, public hearings on ADMARC Bill No. 39 of 2003 and on land policy were advertised and conducted at district level to solicit views from various stakeholders.

Respondents in the rural areas<sup>66</sup> indicated, however, that they seldom hear of such public hearings or of committee meeting activities. A reason given for poor stakeholder attendance at public hearings is inadequately disseminated information regarding such hearings in media with wider coverage, such as television, newspapers and the state-run radio stations. Poor attendance by the public and other stakeholders is also attributed to low literacy levels among the general public. A further reason why public hearings are not held regularly and why attendance is minimal is the general apathy among stakeholders: most Malawians tend to be passive bystanders and lack civic education. Interviews showed that parliamentary activities are considered by most citizens as 'government business' that is peripheral to them.<sup>67</sup>

The lack of adequate resources and technical expertise to facilitate effective operation of the standing committees is a major challenge. The human and financial resource constraints negatively affect the performance of these committees in that research and secretarial support is inadequate. As a result, most of the committees do not meet regularly to undertake their oversight functions effectively. The Speaker clearly stated that "like other Parliaments in the SADC region, Malawi Parliament is dominated by the Executive arm of government and that it lacks vibrancy, and an effective committee system which is well resourced and articulate".<sup>68</sup>

It was also noted that the choice of members to certain committees is often contentious. Neo-patrimonial networks influence the choice of membership since most members prefer to be part of committees that offer the greatest opportunities for allowances and privileges.<sup>69</sup> The dormancy of many standing committees is also partly due to the lack of leadership skills, initiative and creativity of the chairpersons. In addition, legal procedures are inclined to restrict effective delivery of the committees' oversight functions since committees can only report and make recommendations but have no power to enforce their decisions.

It is recommended that parliament should ensure that records of such public hearings are widely disseminated for public consumption. It is also important that mechanisms for monitoring parliamentary activities be established. For example,

a website can be set up to facilitate interaction and monitoring. It must be mentioned that some donor agencies and local NGOs have played a role in providing funding to promote effective performance of parliamentary committees. For instance, the National Democratic Institute for International Affairs (NDI) has organised several seminars to strengthen the role of parliamentary committees.<sup>70</sup>

Parliament, with the support of the United Nations Educational, Scientific and Cultural Organisation (Unesco), is currently involved in a programme of 'taking parliament to the people', rather than waiting for people to come to parliament. In this programme, parliamentary staff visit various institutions such as government departments, colleges and schools to disseminate information relating to parliament. The public hearings conducted in districts regarding land policy and the ADMARC Bill were part of this initiative. Parliament has also undertaken a youth project called 'Children in Parliament', with the support of the United Nations Children's Fund (Unicef). This programme brings youths to parliament to role-play as MPs and present issues relating to the younger generation. Since 'Children in Parliament' activities are covered by the media and reports are submitted to the Speaker and circulated among MPs, the programme has raised awareness about youth concerns.

### **Local assemblies**

MPs are *ex-officio* members of local assemblies such as district, city, town and municipal assemblies. During the assembly meetings, MPs interact with the public and traditional leaders, and disseminate information about parliament in the process. Local assembly meetings are open to the public, and CSOs are also represented. Local assemblies therefore offer opportunities for interaction and engagement with parliamentarians. However, most assemblies have been characterised by conflict between MPs and councillors, and as such they do not provide an environment conducive for effective engagement.<sup>71</sup>

### **Public petitions**

Public petitions is another mechanism that allows the public to engage with MPs. A petition is addressed to MPs and seeks redress of public grievances.<sup>72</sup> Petitions can be presented to the National Assembly by any MP; however, interviews with CSOs reveal that very few organisations have used public petitions to advance their views and that some MPs demand financial rewards before they will present a petition in the National Assembly on behalf of citizens or CSOs.<sup>73</sup>

## Publications

Parliamentary activities are disseminated through parliamentary publications such as Hansard, committee reports, fact sheets and advertisements. Hansard and committee reports are written in English and are available at the parliament buildings and at institutions such as national and college libraries. Distribution is, however, not wide enough, particularly in the case of rural people, with the result that publications are hardly available and accessible to the public. Chancellor College Library, for example, does not stock adequate and complete sets of Hansard.<sup>74</sup> The speed at which Hansard is printed and distributed leaves a lot to be desired – the delays in publishing a Gazette on the May 2004 election results being a case in point.

Fact sheets and parliamentary magazines are designed to educate stakeholders and MPs about topical issues and operations of parliament. Currently, most fact sheets are in draft form.<sup>75</sup> The plan is to distribute fact sheets to individuals and institutions, such as schools and the media, but since this is a recent programme many people are unaware of these fact sheets.

## The media

Electronic and print media, such as television, radio and newspapers, disseminate information about parliamentary activities, cover parliamentary proceedings and conduct interviews with MPs. For example, newspapers run daily columns to cover issues raised in parliament, and the MBC and TVM broadcast programmes to air debates and activities when parliament is in session.<sup>76</sup> Parliament has also established a media gallery with facilities for journalists to enable them to cover activities in parliament.

The challenges facing the media in Malawi have been well documented by researchers.<sup>77</sup> These include lack of editorial independence due to political ownership or monopoly of the media, cases of intimidation and harassment of journalists, and lack of appropriate training for media personnel. Political ownership and control effects the motivation and degree of independence enjoyed by the media. The state radio station (MBC), however, tends to be effective as it reaches the rural populace, but the level of poverty in the country impacts on affordability of batteries.

As mentioned, the image of state-run media has over the years been dented due to perceptions of bias towards the ruling party. For instance, it was stated that “journalists from the public broadcaster were not free to interview the opposition for fear of losing their jobs”.<sup>78</sup>

Although the Malawi Institute of Journalism and some donor agencies, such as NDI and the SAIIA Nepad project, have played a role in training journalists, reporting is generally not professional. Journalists are apparently motivated by the desire to earn high sales and reporting is therefore inclined to be sensational, focusing on scandals rather than substantive issues. This tendency has strained relationships between journalists and politicians. The Minister of Agriculture recently stated that most local journalists, especially those who work on newspapers, are not qualified enough and that they are 'cheque book reporters'; this is, they accept money for writing and publishing negatives stories aimed at destroying other people's reputations.<sup>79</sup> Similarly, the National Media Institute of Southern Africa (NAMISA) Malawi Chapter stated that cheque book journalism is detrimental to the cause of information dissemination in Malawi.<sup>80</sup>

In short, a number of obstacles hinder effective reporting on parliamentary activities. These include interference with editorial independence, unfair access to the media by all political party leaders, mistrust between MPs and journalists, and lack of professionalism among media personnel.

There is need for media institutions to coordinate their efforts to ensure effective training and to uphold ethical codes in journalism. Media personnel should play a role in the consolidation of democracy by promoting engagement and interaction with MPs, cultivating good relations and reporting objectively on issues relating to parliament.

## **4. Civil society's engagement with parliament**

Since the advent of Malawi's multiparty dispensation in 1994, a number of CSOs in the area of governance have emerged (see *Appendix 2*); these include NGOs, community-based organisations (CBOs), voluntary associations, religious-based institutions and the media.<sup>81</sup> The mechanisms used by CSOs to engage parliament include advocacy and direct lobbying, developing position papers that are submitted to MPs, civic education and networking.

### **Advocacy and lobbying**

CSOs, especially those engaged in the governance arena, advocate and lobby directly against anti-democratic forces through various forms such as issuing press releases and statements, meeting with individual MPs, and making presentations during public hearings.<sup>82</sup> CSOs have also lobbied on matters relating to high-level corruption, political violence, the conduct of elections and constitutional amendments, and have also proposed bills to be discussed by MPs. For example, the Consumer Association of Malawi submitted a proposal that was discussed and has since been passed as the Consumer Protection Act No. 2 of 2002. Similarly, NAMISA has recently presented a draft bill to the Deputy Minister of Information for consideration. Among others, the bill seeks to establish an independent public information commission to: compel public institutions to release information to the public; empower organisations to make it mandatory to keep proper records; employ media liaison officers; and protect from prosecution public servants who reveal information (whistle blowers).<sup>83</sup> The submissions by CSOs during parliamentary sessions tend to be effective since they immediately draw the attention of parliamentarians. In 2003, for instance, CSOs lobbied against the proposal to amend section 80 of the constitution to extend the term of office of the state president beyond two terms. In addition, as mentioned earlier, CSOs held successful meetings with members to demand the reinstatement of MPs whose seats were declared vacant when section 65 (Defection Bill) was enforced.

### **Civic education**

Some CSOs offer civic education and training programmes to MPs. These

programmes provide opportunities for interaction with parliamentarians. For example, the Institute for Policy Interaction (IPI) organised a training workshop under the theme 'Building bridges between parliament and civil society'. The workshop provided an opportunity for interaction between civil society and parliamentarians;<sup>84</sup> however, such training programmes have been irregular largely due to funding problems.

## Networking

CSOs are also involved in networking in order to increase the representation of disadvantaged groups, especially women. During the 2004 election campaign, for example, the Gender Electoral Support Network comprising members from the Civil Liberties Committee, Women's Voice and Association of Progressive Women launched a campaign to increase the representation of women in parliament. Their activities included profiling aspirants in newspapers and on the radio, lobbying traditional and religious leaders and coordinating their activities with the Women's Caucus, comprising women in parliament. This network has facilitated an increase in the number of women in parliament from 17 in 2003 to 28 in 2004, representing a 14.7 % improvement.

A number of factors, however, limit CSOs' effective engagement with parliament. The following are some remarks made by CSOs regarding their engagement with parliament:<sup>85</sup>

- Engagement between CSOs and parliament is reactive, irregular, unsystematic and ad hoc.
- CSOs resist aligning themselves with MPs for fear of being deemed partisan.
- CSO roles, missions and goals are not known or are misunderstood by parliamentarians.
- Most parliamentarians have a negative attitude towards CSOs.
- CSOs lack skills, competence and physical and financial resources for effective engagement with parliament.

In this regard, lobbying has not been fully established as a mechanism to engage MPs. Most CSOs are likely to be reactive and their operations are confrontational, unplanned, uncoordinated and usually done on an individual basis.<sup>86</sup> CSOs do not have formal arrangements for engaging with parliamentarians and there is a marked decline in trust between the two; MPs consequently pass bills without adequately engaging CSOs. For instance, the NCO Act (Bill No.19 of 2000) which requires that all activities of CSOs, and in particular NGOs, be coordinated by the

NGO Board of Malawi and the Council for Non-Governmental Organisations was passed without the adequate involvement of CSOs. The NGO Act has raised fears of interference in operations and erosion of the autonomy of the CSOs that seek to be active in the political arena.

It was noted that CSOs have not developed effective methods of lobbying and instead tend to challenge politicians rather than actively engaging them. Most MPs are suspicious of the motives, neutrality and credibility of CSOs. Engagement is further weakened by perceptions that CSOs are geared towards undermining the authority of parliamentarians, and as a result submissions by CSOs have not received support.<sup>87</sup> MPs tend to harbour negative feelings towards CSOs, especially those considered to be partisan.<sup>88</sup>

There are numerous challenges facing CSOs in their attempts to engage parliamentarians effectively. These include inadequate capacity, lack of knowledge relating to parliamentary procedures, and disorganised or fragmented operations. Most senior personnel in CSOs lack knowledge of parliamentary procedures, operations and mechanisms to ensure effective engagement with parliament and do not know how best to engage parliamentarians.<sup>89</sup> In addition, there is general apathy among CSOs and the public arising partly from the perception that they cannot really bring about change regarding government functions. The lack of resources (financial), infrastructure (including basic office systems and equipment), skills and competencies undermine the efforts of many CSOs. CSOs therefore tend to rely on donor funding, which increases their vulnerability to manipulation and control by donor agencies.

There is thus need for a change of mindset among both CSO personnel and the public through civic education and other capacity-building measures to ensure active participation in matters relating to parliament. It is important that leaders of CSOs cultivate good relationships with MPs to promote mutual understanding. It is recommended that a civil society liaison office be established and managed by professionals from selected CSOs in order to solicit views effectively from the public and MPs, as well as to ensure coordination among the various CSOs. It is further recommended that a calendar of events of parliament be publicised in order to facilitate planning and meaningful responses by CSOs to issues raised in parliament.



## 5. The role of parliamentary opposition

The opposition plays a critical role in ensuring efficiency and effectiveness in the conduct of parliamentary business by engaging in constructive criticism and oversight of government performance, scrutiny of policies and acting as an alternative or government-in-waiting. Parliamentary opposition is instrumental in the modification of policies presented in parliament. The voice of the opposition contributes to the enforcement of separation of powers by exercising checks and balances on the executive branch of government. It also ensures that legislation passed by parliament serves the interests of constituents rather than some sectors of society only. The opposition is afforded time every Thursday in each sitting week to move motions and raise matters of their choice, including condemning and criticising the government for not pursuing certain policies or neglecting to pursue existing policies.<sup>90</sup>

The opposition in Malawi initially had numerical strength in parliament, as manifested during the 1994 first sitting of the National Assembly, where the Speaker was elected from AFORD and both deputy speakers were from the MCP. However, the political opposition was weakened due to alliance shifts by AFORD: owing to its lack of majority seats, the UDF entered into an alliance with AFORD to ensure numerical strength in parliament, resulting in AFORD breaking away from its coalition with the MCP in September 1994. However, the AFORD–UDF alliance was short-lived and collapsed after two years in 1996.<sup>91</sup> The strength of the opposition was also manifested during the 1997 nine-month parliamentary boycott in which the majority of MCP and AFORD members stayed out of deliberations. The boycott by these parties hindered effective performance of parliamentary business.

After the 1999 elections, for fear of strong opposition, the UDF resorted to what was dubbed as 'buying opposition members'. As a result, some opposition MPs defected to the ruling party and eventually AFORD re-joined the UDF as a coalition partner. As shown in the May 2004 election results, the numerical strength of the opposition political parties and independents in parliament increased dramatically; however, the UDF has entered into an alliance with political parties such as RP, MCODE and AFORD and has incorporated over 27 independent candidates into its fold to ensure adequate support for its policies.

The weakness of parliamentary opposition can be attributed to such factors as lack of finance of their political parties, minimal interaction with the electorate,

regionalism and inter- and intra-party bickering.<sup>92</sup> Section 40(2) of the constitution requires the state to fund any political party that obtains more than one-tenth of the national vote to enable its representation and performance. Parliamentary boycotts and failure to submit audited accounts has, however, meant that these funds have been withheld at times. Patronage systems within parties have also been promoted due to a reliance on funds from individuals.

Political parties adopt a top-down approach in policy formulation and decision making, with little involvement of local supporters. This has been demonstrated in the past 10 years by the frequent postponement of party conventions: AFORD and the MCP have held only two conventions since the advent of multiparty democracy in 1994, while the ruling UDF has held only one convention. National party conventions are important avenues that enable ordinary members to interact with MPs, but since they are held irregularly the public is not adequately engaged in determining policy issues and key decision-making processes.

The political landscape is polarised along regional and ethnic lines, as manifested (and discussed earlier) in the electoral results of 1994, 1999 and 2004. The absence of issue- or ideology-based politics in Malawi tends to promote ethnic mobilisation. Thus, political parties perpetuate regionalism, tribalism and nepotism by offering 'handouts' in return for political and electoral support. The domination of parties by particular ethnic groups also influences the clientelistic basis of political support.

Another factor impacting on the opposition and other political parties is the underdevelopment of a requisite political culture appropriate for the democratic dispensation. Many political leaders, including opposition members, apparently find it difficult to adhere to democratic principles. Undemocratic behaviour among politicians persists, as shown by practices and the provocative speeches delivered by political leaders, especially during political rallies and electoral campaigns.<sup>93</sup> A culture of antagonism, lack of political tolerance and mutual respect among political opponents characterises the general political environment, including that obtaining in parliament. Among the causes of political violence include manipulation by political agents to incite violence and inadequate political space in terms of public resource use, such as the state-run media.<sup>94</sup>

In short, the performance of the opposition has been weakened by, among others, intra-party conflicts or the lack of democratic practice within political parties, lack of resources and inadequate training regarding the role of the opposition. There is therefore need for political parties to promote openness, accountability and transparency as well as to enhance genuine citizen

participation in the political process through interaction with MPs, regular conventions and the involvement of local party leaders in key issues at district, area and village levels. Traditional, political and religious leaders, CSOs and the public should be enlightened regarding the need for active engagement with MPs to improve the quality of decision making.

## 6. Conclusion and recommendations

The democratisation process marked by the 1993 referendum in Malawi has resulted in political and institutional reforms in the various governance institutions, including parliament. The constitution has incorporated elements of liberal democracy such as pluralism, democratic elections and representative parliament. Since the advent of a multiparty dispensation, three presidential and parliamentary elections have been conducted. While the 1994 elections were relatively free and fair, the election results and fairness of the electoral process in 1999 and 2004 were highly contested due to electoral irregularities.

In this regard, the performance of the MEC has been a source of debate. There is need for a review of the structure, functions and composition or membership of the MEC. While the multipartisan approach, which derives representation to the commission from political parties, has been used in Malawi, there is need to debate the merits of other approaches such as the judicial approach, which delegates the running of elections to the judiciary; the executive approach, which entrusts the running of elections to senior civil servants, in particular a government ministry; or the professional approach, which involves a choice of members to the electoral commission based on individual capabilities or merit.

Of greater significance is the review of the electoral system, and instituting capacity-building measures to ensure effectiveness in the electoral process and administration. The FPTP electoral system does not adequately provide for a representative elected by 'the majority' in constituencies, particularly where there are more political parties or candidates. It is recommended that both MPs and civil society discuss and explore an alternative electoral system, such as PR.

All registered political parties are allowed to conduct election campaigns freely; however, major challenges facing election campaigns include:

- the monopoly of the state media by the ruling party;
- lack of pragmatic policy and ideological differences among political parties;
- political violence that has in some cases resulted in loss of life; and
- inequitable political competition that casts doubts on the fairness of the electoral process.

It is therefore recommended that the state-run media, which enjoy relatively

wider coverage than the private media, open up and present the views of the opposition to enable the public to listen and assess alternative views.

Although the constitution clearly highlights a presidential system of government, in practice the Malawi governmental system also incorporates some elements of a parliamentary system. The challenges that have emerged include tendencies to undermine the separation of powers and the assertion of enormous powers by the executive over the other branches of government. In addition, the integration of presidential and parliamentary government systems has led to a situation whereby the president comes from a political party that has a minority of seats in parliament. This raises questions of legitimacy and credibility regarding the current government.

The ideal situation is to have a prime minister who is in charge of government, chosen from the party with the majority of seats in parliament, and a president who is elected directly and who plays a ceremonial role only. In addition, there is need for a constitutional review to address the constitutional inadequacies in order to ensure effective separation of powers and checks and balances among the three branches of government.

The structures and channels used to disseminate information about parliamentary activities include the National Assembly plenary sessions, parliamentary committees, public hearings, public petitions, publications, the media and local structures such as the district, city, town and municipal assemblies. The operation of parliament business and the behaviour of MPs have, however, attracted criticism over the past decade. The image of parliament has been dented due to, among others, perceptions that MPs lack seriousness in discussing issues of national importance, as evidenced by parliamentary boycotts and absenteeism. In addition, MPs are perceived to be selfish and greedy; they lack integrity, as evidenced by allegations of corruption, and tend to toe the party line rather than express the wishes of constituents.

In general, parliament tends to be elitist and alienates the local populace from the parliamentary process. Disadvantaged groups such as women, youth, minorities and the disabled are not guaranteed representation since there are no legal provisions for the reservation of seats for such groups. The Senate (second chamber), which was constitutionally provided for and was to include representation of traditional leaders, business leaders and special interest groups such as union leaders and professionals, was abolished. This move eroded parliamentary democracy since it denied representation and participation of critical sectors of society.

The ineffective participatory legislative process is attributed to a number of factors including:

- lack of information and apathy among stakeholders and the public;
- inaccessibility of MPs to their constituents due to inadequate or non-existent constituency offices as focal points for effective communication and information sharing;
- lack of time for effective interaction between MPs;
- insufficient time assigned to plenary sessions for debate on reports from committees which might include the views of the public; and
- inadequate information communication technology.

The oversight of government functions by parliamentary committees is ineffective due to, among others, lack of financial resources to facilitate regular meetings, inadequate personnel to service the committees and lack of effective leadership. In addition, committees do not have the power to enforce their recommendations, which the National Assembly easily undermines. The major challenges facing the National Assembly include:

- under funding;
- inadequate staff with proper training;
- lack of infrastructure in terms of vehicles, office space and equipment;
- gender imbalance;
- use of English as the medium of communication; and
- inter- and intra-party conflict.

It is recommended that:

- MPs re-instate the Senate in order to widen representation and enhance participation of various stakeholders in parliamentary activities.
- There is need for proactive recruitment and training programmes as well as capacity-building measures to improve the performance of both staff and MPs. Parliament should intensify its training and orientation programmes to acquaint committee members with their role and responsibilities and to sensitise them regarding leadership skills. The major topics to be covered should include human relations, government and politics, budgeting and finance, gender studies, communication skills, constitution and parliament, group dynamics, computer application and information management systems, general administration and management.
- Parliament should design procedures and processes to promote gender and

public participation. These should include civic education or awareness programmes that stress the need for participation in parliamentary activities by various stakeholders.

- Government should provide resources for the construction of a well-designed parliament building, which should be located at a place that is accessible to all.
- Constituency offices should be established to enable communication and information exchange with the media, civil society and the public.
- Lack of information and effective communication mechanisms tend to affect members' contributions during the National Assembly plenary meetings. In this regard, it is recommended that the research unit be strengthened by ensuring it has adequate and appropriately trained personnel.
- Library services should be further developed and enhanced by, among others, installing information technology and establishing a resource centre with internet facilities.
- There is need to review parliamentary procedures and to outline areas where committees can enforce their recommendations. In order to improve current parliamentary practice and the structure of the committee system, there is need to select carefully members who have the requisite working knowledge and experience and to assign them to relevant committees.

A number of CSOs have been working in the governance arena since the advent of multiparty democracy in Malawi. The mechanisms used by CSOs to engage parliament include networking, civic education, advocacy, direct lobbying, and developing press releases and position papers that are circulated among MPs to influence their views on particular issues. Challenges in this regard, however, include disorganisation, lack of professionalism and inadequate capacity. The mission statements and operations of many CSOs are too broad and lack focus on engagement with parliament.

Personnel in many CSOs lack knowledge of parliamentary procedures, operations and mechanisms to ensure effective engagement with parliament. In addition, the relationship between CSOs and most parliamentarians is characterised by mistrust. Many CSOs have inadequate financial and human resources, and lack basic office infrastructure, skills and competencies. There is

lack of formalised and coordinated efforts in advocacy and lobbying, as well as in facilitating the regular exchange of ideas. It is therefore recommended that CSOs:

- undertake training programmes to acquaint themselves with parliamentary procedures;
- form a civil society liaison committee to coordinate various initiatives aimed at engaging parliament and to ensure effective interaction between MPs and civil society;
- cultivate good relationships with MPs and make their missions and objectives known; and
- ensure credibility, consistency and objectivity in their performance.

The advent of multiparty democracy has led to the incorporation of an opposition in parliament. Over the past 10 years, however, a number of factors have contributed to the ineffective performance of the opposition in Malawi. These include lack of a meaningful tradition of democratic practice, fragmentation of the opposition due to allegiance shifts, patronage politics, lack of pragmatic ideological and policy differences, lack of financial resources, and intra-party conflicts and leadership crises. It is therefore recommended that:

- all MPs, including those from the opposition, be adequately trained and oriented regarding their role in parliament;
- opposition parties should coordinate their efforts and share information to ensure effective oversight and scrutiny of government business; and
- all political parties should design strategies to mobilise funds to avoid being enticed by powerful individuals or political powers.

In conclusion, the major challenges facing parliament in Malawi are those that are common to many other parliaments in the SADC region. These include absence of an entrenched democratic culture, elite-driven politics, low levels of literacy and poor infrastructure, patterns of opportunism and party patronage politics. Parliament therefore needs to cultivate principles of democratic governance, as well as mobilise physical, financial and human resources to ensure its effective performance. In addition, parliament should reinvigorate interaction and



enhance communication and information-sharing between MPs and stakeholders, in particular CSOs and the public.

## Notes

- 1 The opposition political parties contested the 1999 and 2004 presidential election results in court, but to no avail.
- 2 See, Minister reluctant to answer Manduwa because he behaves funny, *The Nation*, 22 May 2003.
- 3 See Kalea K, Living up to the needs of the constituency, *The Daily Times*, 28 January, 1999.
- 4 See Kamchedzera G, Parliamentary strike and public trust, *Lamp*, 9, Montfort Press, Balaka, July 1997.
- 5 See Dulani B, An honourable house devoid of any vestige of honour? Reflection on public perceptions of Parliament. Paper presented at the workshop on Malawi Parliament since 1994: Towards Effective Parliament, 19–20 August 2004.
- 6 The parliament building is far from the city centre.
- 7 The Malawi National Assembly, Draft Strategic Capacity Development Plan (July 2004–June 2008), 2003, p 25.
- 8 Meinhardt H & N Patel, *Malawi's Process of Democratic Transition*, KAS, Lilongwe, 2003, pp 34–37. See also Democracy Consolidation Programme, Capacity Assessment Report 2004.
- 9 With the dissolution of the NDA there are now eight political parties represented in parliament, besides the independent members.
- 10 The three political parties that contested the April 1961 elections were the Christian Liberation Party (CLP), MCP and United Federal Party (UFP).
- 11 Venter D, Malawi: The transition to multi-party politics, in Waisman JA (ed.), *Democracy and Political Change in Africa*, Routledge, 1995.
- 12 Chingaipe HG, The Electoral System, Mass Representation and the Sustenance of Political Liberalisation: The Case of Malawi, unpublished paper, Lilongwe, 2004, p 3.
- 13 Otanez M, Labour and Democratisation in Malawi. Paper submitted in requirement of an MA degree in Labour and Employment Studies, Institute of Policy Studies, The Hague, Netherlands, 1995, pp 60–66.
- 14 See UNDP-Malawi, *2003 State of Governance Report*, Lilongwe, pp 17–19.
- 15 Constitution of Malawi, Section 73.
- 16 Ibid, section 67.
- 17 Ibid, section 80.
- 18 Ibid, section 77.
- 19 Meinhardt H & N Patel, *Malawi's Process of Democratic Transition*, op cit.
- 20 AFORD party broke away from the alliance and alleged that the UDF government was corrupt; see also Breytenbach W & C Peter-Berries, Malawi: Has the struggle for economic endurance just begun? *African Insight*, 33(4), 2003, p 74.
- 21 Ibid, pp 71–78.
- 22 In line with section 65 of the constitution.

- 23 Ngubane S, *Malawi Election, Conflict Trends*, 1999, p 22.
- 24 Maroleng C, Malawi general elections 2004, *African Security Review*, 13(2), 2004, pp 79.
- 25 Parliamentary elections will also be conducted in the Thyolo and Nkhota-Kota districts where the president and vice president won as MPs and they have since given up their MP positions, as required by law.
- 26 The Mgwirizano Coalition included the following parties: People's Progressive Party (PPM), Republican Party (RP), People's Transformation Party (PETRA), Malawi Democratic Party (MDP), National Unity Party (NUP), Movement for Genuine Multi-Party Democracy (MGODE) and MAFUNDE.
- 27 Elections weren't free and fair, *The Daily Times*, 1 June 2004.
- 28 Maroleng C, Malawi general elections 2004, op cit, p 79.
- 29 Ibid.
- 30 Parliamentary and Presidential Elections Act, sections 54 and 59.
- 31 TVM and MBC broadcast live the Bakili Muluzi attacks on such personalities as the Hon. Brown Mpinganjira (leader of the now defunct NDA) and his wife during the 2004 election campaign.
- 32 MBC, TVM told to allow dissenting views, *The Daily Times*, 22 July 2004.
- 33 Interviews with opposition MPs.
- 34 FPTP is provided for in section 80(2) of the Malawi Constitution (1994) and section 96 of the Presidential and Parliamentary Elections (PPE) Act No. 31 of 1993.
- 35 Modify or justify – Malawi asked to seriously review its first-past-the-post electoral system, *Malawi News*, 17–23 July, 2004.
- 36 For this reason others have described the Malawi system of government as a 'hybrid' system, however, constitutional provisions lean towards the presidential system.
- 37 Constitution of Malawi, section 9.
- 38 Ibid, section 103.
- 39 For instance, the High Court ruled against the presidential ban stopping demonstrations against the proposed constitutional amendment of section (83)(1) which would allow an unlimited term of presidential tenure ('third term issue'). The ban was considered unconstitutional, and this ruling reinforced perceptions that the judiciary is largely independent of government.
- 40 See Chapter VI of the Constitution.
- 41 Constitution of Malawi, section 67.
- 42 Interviews with parliamentary staff and MPs; see also Standing Orders and National Assembly Draft Strategic Plan.
- 43 Interviews with MPs.
- 44 Nungu D, Mkandawire M & N Kabwazi, A Social Audit into the Role and Performance of State Institutions in Promoting Human Rights and Constitutional Democracy in Malawi, draft report, Church and Society Programme, Mzuzu, 2002, p 26.
- 45 Some CSO respondents argued that attempts to raise educational requirements for eligibility to become MPs would translate into politics of exclusion since more than 65% of Malawians are illiterate and would be deemed ineligible.
- 46 Section 66(1) of the constitution also confers non-legislative powers to the National Assembly.

- 47 Institutions such as Unicef, the United Nations Development Programme (UNDP), NDI and IPI have contributed towards capacity-building programmes and seminars on involving parliament.
- 48 There are discussions to change the period from 21 to 28 days.
- 49 Report on Committee on Commerce and Industry, 2003.
- 50 Interviews with parliamentary staff.
- 51 Silungwe N, Malawian democracy, My Turn, *The Nation*, 28 July 2004.
- 52 Minister reluctant to answer Manduwa because he behaves funny, op cit.
- 53 Kalea K, Living up to the needs of the constituency, op cit.
- 54 Kamchedzera G, Parliamentary strike and public trust, op cit.
- 55 The parliament building is to be moved but the new site has yet to be identified.
- 56 The Malawi National Assembly 2003 Draft Strategic Plan highlights the major challenges.
- 57 See Parliamentary Training Programme (PTP) modules.
- 58 Interview with coordinator of PTP.
- 59 Interview with Deputy Clerk of Parliament.
- 60 See Standing Orders 156(1) and 157 for the composition and functions of the Business Committee and Parliamentary and Development and Coordination Committee.
- 61 Shake off executive, Speaker advises MPs, *The Daily Times*, 2 November 2004.
- 62 The Education Scam involved embezzlement of over K180 million (\$1million) in the Ministry of Education by senior government officials. The Maize Scam involved the plunder of government maize reserves by former ministers which led to cases of starvation in parts of the country.
- 63 House Committee riled with unconfirmed appointees, *Weekend Nation*, 6–7 November, 2004.
- 64 For instance, a survey of the university college libraries at Chancellor College, Bunda College and the Polytechnic, which often has a wide variety of literature, showed that there were no reports on parliamentary committees.
- 65 Interviews with parliamentary staff.
- 66 Interviews were held in Mbela, Matola and Zammimba rural villages in Balaka district.
- 67 Nungu, Mkandawire & Kabwazi, A Social Audit, op cit, p 26.
- 68 Shake off Executive, Speakers advises MPs, op cit.
- 69 Interview with MPs.
- 70 NDI assists in capacity building to ensure that the National Assembly committees are effective in their oversight functions; while UNFP provides funds for the Health and Population committee; see also, Shake off executive, Speaker advises MPs, op cit..
- 71 War of supremacy in assemblies, *Malawi News*, 6–7 November 2004.
- 72 Standing Order 38:22.
- 73 During the Malawi workshop on Strengthening parliamentary democracy in SADC countries held on 28 October 2004, a CSO representative narrated a case where a female MP had demanded financial reward in order to lobby for an increased number of women in parliament.
- 74 The Chancellor College Library is regarded one of the biggest libraries with a wide range of literature material.
- 75 The titles of some of the draft facts sheets include: A Guide to Parliament; Leader of the House – Malawi Parliament; and Whips in Malawi National Assembly.

- 76 In addition, these state-run media have programmes that cover activities of MPs in their constituencies such as 'Know your MP' and 'Phungu' (Member of Parliament) on TVM and Ngani Sya Mmikuli (issues in rural areas) on MBC.
- 77 Meinhardt H & N Patel, *Malawi's Process of Democratic Transition*, op cit, pp 38–41.
- 78 MBC, TVM told to allow dissenting views, *The Daily Times*, 22 July 2004.
- 79 Chihana grills journalists, *The Daily Times*, 2 November 2004.
- 80 Namisa concerned with chequebook journalism, *The Daily Times*, 1 November 2004.
- 81 See Democracy Consolidation Programmed (DCP), Capacity Assessment Report, October 2004, which list CSOs in the governance areas attached as Appendix 2.
- 82 Interviews with CSOs.
- 83 Khunga S, NAMISA unveils information draft bill, *The Daily Times*, 15 October 2004.
- 84 Hajat R, Building bridges between parliament and civil society, *IPI Report*, Blantyre, 2003.
- 85 Summary responses from CSOs.
- 86 Malawi workshop contributions by CSOs.
- 87 Interview with MP.
- 88 For instance, the NGO Bill and the abolition of the Senate were passed with the inadequate involvement of stakeholders.
- 89 Interviews with CSOs.
- 90 Parliamentary Training Programme (PTP), Module 601, *Origins, Powers and Functions of Parliament*, Lilongwe, p 32.
- 91 AFORD broke away from the alliance on allegations that the UDF government was corrupt; see also Breytenbach W & C Peter-Berries, *Malawi: Has the struggle for economic endurance just begun?*, op cit, p 74.
- 92 Meinhardt H & N Patel, *Malawi's Process of Democratic Transition*, op cit, pp 29–33.
- 93 Kayambazinthu E & F Moyo, Hate speech in the new Malawi, in Englund H (ed.), *A Democracy of Chameleons, Politics and Culture in New Malawi*, CLAIM, Blantyre, 2002, pp 87–102.
- 94 UDF cadres demand pay for poll violence, *The Nation*, 10 November 2004.

## Appendix 1: Summary of parliamentary results 1994–2004

	<i>Political party</i>	1994	1999	2004
1	Alliance for Democracy (AFORD)	36	29	6
2	Congress for National Unity (CONU)	–		1
3	Malawi Congress Party (MCP)	56	66	56
4	Movement for Genuine Democracy (MGODE)	–	–	3
5	National Democratic Alliance (NDA)	–	–	8
6	Peoples Progressive Movement (PPM)	–	–	6
7	Peoples Transformation Party (PETRA)	–	–	1
8	Republican Party (RP)	–	–	15
9	United Democratic Front (UDF)	85	93	49
10	Christian Democratic Party (CDP)	–		–
11	Congress for the 2nd republic (CSR)			–
12	Forum Party (FP)	–		–
13	Labour Party (LP)	–		–
14	Malawi Democratic Party (MDP)			
15	Malawi Democratic Union (MDU)			–
16	MAFUNDE	–	–	
17	Malawi Freedom Party (MFP)		–	–
18	Malawi National Democratic Party (MNDP)			–
19	Mass Movement for Young Generation (MMYG)	–		–
20	National Patriotic Front (NPF)		–	–
21	National Unity Party (NUP)	–		–
22	Peoples Democratic Party (PDP)		–	–
23	Sapitwa National Democratic Party (SNDP)		–	–
24	Social Democratic Party (SDP)		–	–
25	United Party (UP)	–		–
26	United Front for Multiparty Democracy (UFMD)			–
27	Independents		4	39
	Total	177	193	184

Note: – denotes that the party has disappeared from the political scene.

Source: Strategic planning workshop for political parties, October 2004.

## Appendix 2: Organisations visited/interviewed for this study

CSOs and NGOs			
Name	Category	Area of focus	Location
Catholic Commission for Justice and Peace, Lilongwe	Religious body	Human rights, civic education, democracy	Lilongwe
Centre for Human Rights and Rehabilitation (CHRR)	NGO	Human rights, civic education, advocacy	Lilongwe
Development Centre	NGO	Capacity building	Lilongwe
Foundation for Human Rights NGOs in Malawi (HURIMA)	NGO	Human rights, civic education, adult literacy	Lilongwe
Malawi Human Rights Resource Centre (MHRRC)	NGO	capacity building, civic education, advocacy	Lilongwe
Public Affairs Committee (PAC)	CSO	Civic education, advocacy	Lilongwe
Institute for Policy Interaction (IPI)	NGO	Civic education, advocacy, governance	Blantyre
Civil Liberties Committee (CILIC)	NGO	Civic education, advocacy, governance, gender	Blantyre
Malawi CARER	NGO	Human rights, civic education, advocacy	Blantyre
Story Workshop (MBC)	NGO	Civic education	Blantyre
Women's Voice	NGO/CSO	Civic education, advocacy	Blantyre
Catholic Commission For Justice and Peace, Mzuzu	Religious body	Human rights, civic education, governance, democracy, advocacy	Mzuzu

Youth Watch Society (YOWSO)	NGO	Civic education	Mzuzu
Church & Society, CCAP Livingstonia Synod Projects Office	CSO	Civic education, advocacy	Mzuzu
<b>Other</b>			
Parliament	Constitu- tional body	Legislation, representation, oversight of government function	Lilongwe
Democracy Consolidation Programme	Government body	Governance democracy, human rights	Lilongwe



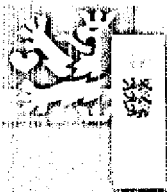
## References

- Breytenbach W & C Peter-Berries. 2003. Malawi: Has the struggle for economic endurance just begun? *African Insight*, 33(4).
- Chingaipe HG. 2004. The Electoral System, Mass Representation and the Sustenance of Political Liberalisation: The Case of Malawi, unpublished paper, Lilongwe.
- Dulani B. 2004. An Honourable House Devoid of any Vestige of Honour? Reflection on Public Perceptions of Parliament. Unpublished paper presented at the workshop on Malawi Parliament since 1994, Lilongwe.
- Hajat R. 2003. Building bridges between parliament and civil society, *IPI Report*, Blantyre.
- Kamchedzera G. 1997. Parliamentary strike and public trust, *Lamp*, 9, Montfort Press, Balaka, July 1997.
- Kanyongolo EF. 2002. Besieging the Constitution: Third Term, Second Term Around. Unpublished paper presented at Public Affairs Committee National Stakeholders Meeting, Lilongwe, 10–12 September, 2002.
- Kayambazinthu E & F Moyo. 2002. Hate speech in the new Malawi, in Englund H (ed.), *A Democracy of Chameleons, Politics and Culture in New Malawi*, CLAIM, Blantyre.
- Malawi (Republic). 2004. Parliamentary Training Programme Hand Book, January.
- Malawi (Republic), Draft Strategic Capacity Development Plan (July 2004-June 2008).
- Malawi (Republic). 2003. Standing Orders, 22 May 2003.
- Malawi (Republic), The Constitution of the Republic Malawi (revised 2004).
- Maroleng C. 2004. Malawi general elections 2004, *African Security Review*, 13(2).
- Meinhardt H & N Patel. 2003. *Malawi's Process of Democratic Transition*, KAS, Lilongwe.
- Ngubane S. 1999. *Malawi Election, Conflict Trends*.
- Nungu D, Mkandawire M & N Kabwazi. 2002. A Social Audit into the Role and Performance of State Institutions, draft report, Mzuzu, Malawi.
- Otanez M. 1995. Labour and Democratisation in Malawi. Paper submitted in requirement of MA degree in Labour and Employment Studies, Institute of Policy Studies, The Hague, Netherlands.
- UNDP. 2003. *State of Governance Report*, Lilongwe, Malawi.
- Venter D. 1995. Malawi: The transition to multi-party politics, in Waisman JA (ed.), *Democracy and Political Change in Africa*, Routledge.

## List of acronyms

ACB	Anti-Corruption Bureau
AFORD	Alliance for Democracy
CBO	Community-based organisation
CSO	Civil society organisation
FPTP	First-past-the-post
IPI	Institute for Policy Interaction
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MCODE	Movement for Genuine Democracy
MHRC	Malawi Human Rights Commission
MMP	Mixed-member proportional
MP	Member of parliament
NAMISA	National Media Institute of Southern Africa
NCC	National Consultative Committee
NDA	National Democratic Alliance
NDI	National Democratic Institute for International Affairs
NGO	Non-governmental organisation
PETRA	People's Transformation Party
PPM	People's Progressive Movement
PR	Proportional representation
PTP	Parliamentary Training Programme
RP	Republican Party
SADC	Southern African Development Community
TVM	Television Malawi
UDF	United Democratic Front

SALIA's strengthening parliamentary democracy in SADC countries project is made possible through the generous financial support of the Royal Danish Embassy, Pretoria



ISBN: 1-919969-08-X

The South African Institute of International Affairs (SAIIA)

P.O. Box 31596 Braamfontein 2017, South Africa

Tel: 27-11-339-2021

Fax: 27-11-339-2154

[www.salia.org.za](http://www.salia.org.za)

e-mail: [info@salia.org.za](mailto:info@salia.org.za)

