

Report on
Conference on Parliament Accountability and Local Governance
in Malawi

4 - 5th March 2010

Liwonde, MALAWI

On March 4th – 5th 2010, the Institute of Federalism at the University of Fribourg (Switzerland) (IFF) and the Institute for Policy Interaction in Blantyre (Malawi) (IPI) organised in Liwonde a conference on Parliamentary Accountability and Local Governance in Malawi. It was the culmination of a project financed by the Swiss Agency for Development and Cooperation (SDC) on increasing the effectiveness of the Malawian parliament. Reports on Parliamentary Sessions in Malawi between 2005 and 2008 were presented at the conference along with papers by young scholars on parliamentary accountability. Participants included members of parliament of Malawi, civil society organisations, academia and the media.

General Information about current situation in Malawi

From a political perspective, Malawi currently experiences quite a paradoxical situation. After some decades of dictatorship (by Dr. Kamuzu BANDA, the “Father of Independence”), multiparty democracy could be enshrined in the country in 1993. From 1994 to 2004, the president was Mr. Bakili MULUZI, who could not compete for a third mandate. The president elected in 2004 is Mr. Bingu wa Mutharika, who has been re-elected in 2009. May 19th 2009 elections could also be held “free and fair” but their result is quite surprising. Many MPs have been elected as independents (the electoral system there is the so-called “first pass the post”), but once they have been elected they have “crossed the floor” (even if it is expressly forbidden by Art. 65 of the Constitution) to join the presidential majority, and therefore the DPP, the President’s party, now enjoys an overwhelming majority.

This situation creates two problems that have been discussed at the Conference.

1. The first one is the accountability of MPs. Who is supposed to control the MPs’ activities?
2. The second one deals with the constant postponement of local elections. Contrarily to the constitutional mandate, the latter have not been organized since 2000 (But of course, local powers could represent a counter-power for the government...).

In this context, one has to note the constant trials that have been made to limit the access of citizens to the Parliament. For instance, candidates have to speak English, what is the case for 40 percent only of the population. A new draft proposes to oblige

candidates to have a university degree, which would further restrain candidatures to 20 percent of the total population only.

Information about the Project

Launched in 2005, the co-operation between IFF and IPI has focussed on the parliament. As a matter of fact, IPI's goal is to "build bridges" between parliament and civil society, a task that becomes always more and more urgent as democracy progresses in the country.

The cornerstone of this work are the so-called "Malawi Parliament Observation Reports." Sponsored by the IFF, the IPI engages people to follow the Parliament's sessions and write summaries and comments of what took place. The goal is not simply to make a statement of the sessions, but to summarize and comment what has been discussed. The Reports 2005 - 2008 have been published by the IFF and presented at the 2010 Conference in Liwonde.

IPI considers this work as very important, as it allows to have a clear vision of what has been discussed and decided by the Parliament, and therefore to establish clearly the Parliament accountability, but also to have scientific arguments to oppose to some rumours and misinformation.

In fact, after a long period of presidential dictatorship, the Malawi Parliament tends to lack maturity. On the one hand MPs close to the government support it without any critical spirit, and on the other hand opposition contest everything in a kind of sterile posture. Such a situation remains quite unhealthy for the "good governance." The parliament's attitudes can hinder development, create political instability as well as a sense of insecurity. Therefore, parliamentary debates should launch a large interest and represent a permanent source of information for the citizens of Malawi. But some difficulties to access pertinent information (despite the fact that the parliament seats openly and publishes its discussions, but without any attempt to synthesize them) create some fears in the public opinion that the parliament does not play its role in the system of "checks and balances".

Apart of these "Observation Reports", the co-operation between IFF and IPI has been marked by the realisation of several projects.

- 1) A Study Tour in Switzerland for a handful of MPs, in order to make them more familiar with the Swiss system of decentralization and local authorities.
- 2) An informal meeting in Lilongwe where MPs and representatives of local authorities have been able to meet, in an attempt to improve the conflicting relations between MPs and Councillors.
- 3) A "call for papers" aiming at finding two young students who could make use of the Parliamentary Reports in order to study more deeply some interesting points. Finally these two researchers have then been invited to come to Fribourg for one month. This stay should also contribute to the vocational training of young scholars.

The works these two Malawian guests have dealt with are as follows:

- a. Mrs. Theodora THINDWA, *Parliamentary Committees and their effectiveness in ensuring horizontal accountability*
- b. Mr. Chancy NTHOWELA, *Are MPs accountable to their constituencies?*

Discussions at the conference itself:

During the Conference, the same general concept has been used for the three panels:

One Discussant	10 minutes
Two Presentations	40 minutes (20 minutes each)
Three Commentators	15 minutes (5 minutes each)
Plenary Discussion	40 minutes

At 09:00, the Welcome Address and the Conference Objectives have been reminded by Dr. Nandini PATEL (IPI) and Dr. Nicolas SCHMITT (IFF).

The first Session has been devoted to the Malawi Parliament, with a special interest for the challenges to, and opportunities for effectiveness

The question that this panel has tried to answer is as follows: To what extent is the Malawi Parliament able to perform its oversight and representational roles, given the challenges that it contends with? This session combines an overview of Parliament with some observations on the oversight role vis-a vis Parliamentary Committees and also touches upon MP relations with their constituencies. The MPs on the panel will be invited to offer their perceptions as practitioners – on the front line.

Discussant:

Dr. Nandini PATEL (IPI), Malawi

Presenters:

Rafiq HAJAT (IPI), *Observations from the Malawi Parliament since 2005*

Theodora THINDWA, *Parliamentary Committees and their effectiveness in ensuring horizontal accountability*

Chancy NTHOWELA, *Are MPs accountable to their constituencies?*

Commentators:

Hon. Willard GWENGWE, MP, Malawi Congress Party

Hon. Ralph JOOMA, MP, Democratic Progressive Party

Hon. Dr. Clement CHIWAYA, MP

Senior Chief NYAMBI

Mr. Willard KAZEMBE, Research Officer, Malawi National Assembly

As first speaker, Rafik HAJAT opened the discussions in presenting the Malawi Parliament Observation Reports. He complained that people do not understand what is going on in parliament. In order to fully understand, they should be expert in almost everything. With concrete examples, he showed how the latter were important to avoid misunderstandings and to allow clarifications. He explained that the reports showed very clearly that at a certain time the parliament had the unique opportunity to take advantage on executive, but unfortunately wasted this chance.

Then, Chancy NTHOWELA presented his paper, where he concludes that MPs should (what they do not do in Malawi) be the link between the government and the provision of services at the local level. He also mentioned the problem of local government elections. This paper shows a lack of concertation between MPs and constituencies, as it also exists between MPs and councilors.

After that, Theodora THINDWA presented also her paper devoted to the appointment committee in Malawi. She concludes that there is a strong executive dominance and that parliamentary recommendations do not have much power. More collaboration between Parliament, media, civil society, would be required. Contrarily to Malawi, in Uganda or Ghana, the executive can be called before Parliament. She also opened the debate concerning who can stand for elections. Some Constitutions foresee a reservation of seats for women and marginalized groups. But in Malawi it would be simply better to remove the restriction on who can stand for elections. The obligation to speak English prevents 80% of citizens to stand for elections, and now the draft to oblige candidates to have a degree would prevent 90% of citizens. From that point of view, the Parliament remains far away from the electors.

Hon. Ralph JOOMA, MP, Democratic Progressive Party (Ruling Party) defends the Committee system in explaining that his Committee (on budget and finance) meets a minimum for six weeks a year, as do several other committees.

Hon. Willard GWENGWE, MP, Malawi Congress Party (Opposition party), describes the "Best Practices Act" and also the "Strategic plan for Parliament 2004 – 2009." He reminds of the fact that currently there are exact dates when parliamentary committees meet.

Hon. Clement CHIWAYA explained that the current situation had to be avoided, where all members and presidents of these Committees are nominated by the government. The DPP has decided to chair ALL committees. At the beginning, it should be at least two members of the opposition in all committees (he is himself member of the Business Committee). But the issue of concertation is not evident, and one should not put the blame on Parliament.

After that, the discussion remained vibrant and several speakers proposed their solutions in order to improve the parliamentary committees system, but also the interactions with constituencies. At the end, no answer could be found, but only a very philosophical question: how democratic is democracy? People start being demanding from MPs and aware of their rights. And finally, some speakers reminded that the Local development fund was not yet operational, but that the Constituency development fund had been granted 5 Mio. Kwachas.

Finally Nandini PATEL said that the political system of Malawi took some bad elements of the parliamentary *and* of the presidential systems, so that someone could denote the system as *hybrid*.

The Second Panel has been devoted to the Local Governance, with a special interest on Elections: Challenges and Opportunities to Effectiveness

Despite the fact that the Constitution provides for Local government elections in Malawi every 5 years (i.e. one year after Parliamentary & Presidential General Elections), they have been held only once in 2000 and since then, have been thwarted by uncertainty, seeming lack of political will. How does this impact on governance effectiveness at local levels? How do different stakeholders such as Traditional Authorities on one hand, and the Executive on the other perceive the status quo? Why is it allowed to continue unchallenged despite the obvious violations of the Constitution?

Discussant:

Dr. Rekha OLESCHAK-PILLAI, IFF Switzerland

Presenters:

Dr. Mustafa HUSSEIN (UNIMA), *The Local Government Elections bill of 2009 and its implications on local governance in Malawi* (tentative title)

Dr. Nicolas SCHMITT (IFF), *Local Government from the Swiss perspective: Some pointers and lessons for Malawi*

Commentators:

Mrs. CHIKOKO (Malawi Local Government Association, MALGA)

Mr. Patrick KABAMBA (Principal Secretary Ministry of Local Government, and Senior Chief TA, Liwonde)

James CHARULA, *Daily Nation* Journalist

Dr. Mustafa HUSSEIN (UNIMA) presented the Local Government Elections bill of 2009 and its implications on local governance in Malawi. In fact, this bill raises questions. In 1994 there were new provisions for democratic governance, and local government as well as democratic decentralization was anchored. Section 1-46 provides for local governments, and subsection 3 clearly stipulates the existence of a local level under the supervision of local level authorities.

Until 1995 the Local Government Act had to implement the Constitution. Its aim could be summarized as follows: accountability, transparency, decision-making, participation. Unfortunately, it seems that in fact the bill has allowed for a concentration of power in the Presidency and has had a negative effect on decentralization.

For the future, the situation should not improve. The 2009 bill provides for fewer councilors sitting in larger areas. Moreover, MPs have problems in talking to their constituencies. When they vote, whose interests would MP represent?

The issue of representation remains open. What is the representative nature of Councilors? The closeness of the people to the government is undermined if we are reducing the number of councilors, and it has a negative effect on decentralization. In fact, all these trends path a way going from decentralization to centralization.

Nicolas SCHMITT described some specificities of the Swiss system of local government in order to explain how municipalities are important for the consolidation of democracy. In Switzerland, for instance, there are about 2'600 municipalities representing the roots of democratic life in the country. Their heterogeneity allows citizens to feel comfortable where they live, and their powers make them an important source of identity. The speaker has concluded his presentation in pointing out several elements that show that municipal democracy is not just an "intellectual pleasure" but is really helpful. Firstly, it gives to the country a *democratic legitimacy* "bottom-up". Secondly, it provides for *political vocational training*; young politicians can start working at the local level, and then, if they are good, they can be elected at the regional and, later, at the national level; it prevents inexperienced politicians to play a too important role at the top of the state. Thirdly, it allows for *efficiency*; at the micro-level, when some topics are allocated to the local level, they can be achieved more quickly and efficiently than at the national level; at the macro-level, too, decentralisation allows for taking into account local specificities. The centre often does not know exactly how and what has been done at the local level; as a consequence, federations often belong to quite wealthy countries. Fourthly, it allows for *lowering of inequalities*, as it is quite easily possible to organize a form of financial equalization between municipalities. Fifthly, municipalities represent *laboratories of politics*; small communes can try to find solutions which are adapted to their exact specificities, and if the solutions found by one commune provide to be suitable for others, then the good solution can be copied very quickly by other collectivities. Finally, they represent the cornerstone of *citizens' identity*, compensating the trend toward globalization.

As a last word, the speaker has made a comparison with other African countries like Rwanda and Burundi, where the complete lack of decentralization has driven to the most dramatic events.

Mrs. CHIKOKO from MALGA has then spoken of the Program for knowledge management. The major problem about local government elections, she said, is the lack of culture for local councilors. In fact, why do we need councilors? There is a mistrust between assemblies and people. The lack of elections, e.g. the absenteeism, has created mistrust. Bylaws have never been enacted. Some assemblies use very old by-laws; some traditional leaders are happy, because they are not accountable. There is confusion in the community about the respective roles of councilors and MPs. One should look for grassroots empowerment.

Mr. KABAMBA, Principal Secretary, Ministry of Local Government, said a few words about the policymaking role of local authorities. The constitution does not give absolute powers. The Local Government Act contains some inconsistencies. For instance Section 6 speaks of policy making, but section 21 mandates minister to suspend Assembly. The functions of local assembly are not clearly defined and the resources come exclusively from the center.

By reducing the number of councilors, the Act has also reduced the representation. Previously, there was one councilor for 25'000 citizens; in other country, there are about as low as one councilor for 1'000 citizens. With the new provision in Malawi there should be one councilor for 45'000 persons. Moreover, meetings have been postponed due to the lack of funds. There should be an increase of resources, estimated from 5'000 MK/month to 15'000 MK/month.

Senior Chief NYAMBI from Liwonde has added some short comments. He agreed with all documents and reminded of the fact that some constituencies were much bigger than others.

James CHARULA, Journalist "Daily Nation" has asked what Malawi has lost with local councilors? Some MPs have exerted undue pressure. There is also a lack of oversight, which is sometimes counterweighted, for instance by the HIV/AIDS Oversight Committee. He also questioned whether the country would have made so many limitations for presidential and parliamentary elections? Certainly not. But the result is that the sacrificing of local powers is currently constitutionally enshrined. And concerning the parliament, there is a lack of sanctions, and a very strong call for accountability.

After a friendly lunch which took place on the terrasse overlooking the Shire River, during which all participants gathered and chatted, the Third session could begin. It was devoted to **Decentralisation and Grassroots Empowerment in Malawi.**

In a democracy, the devolution of power from the central to the local levels should enhance the roles of institutions at the local levels and, at the same time, empower grassroots to secure service delivery from these bodies by demanding accountability. How far has Malawi proceeded down the road of devolution of powers which empowers grassroots by making them responsible for their own security and welfare.

Discussant:

Rafiq HAJAT, IPI Malawi

Presenters:

Dr. Silvio DECURTINS (MGPDD), *A Critical Evaluation of the Malawi German programme for Democracy & Decentralization* (tentative title)

Dr. Lewis DZIMBIRI (UNIMA), *Is Decentralization in Malawi empowering local communities?* (tentative title)

Commentators:

Mr. Dyton MILANZI, Lilongwe City Assembly

Mr. Amani MUSSA, Democracy Consolidation Program (DCP)

Mr. Jeff KABONDO, NICE

Dr. Silvio DECURTINS explained that the country had still moved, although not so quickly, and the Constitution describes very well this process. The remaining question is: how far, how fast can we go? And also: what is happening to the structure below the local level? The Council may create any structure necessary.

There is a program between Germany and Malawi created to promote good governance. There is also a strategy paper agreed upon by the two governments.

Nevertheless, there are some milestones. For instance, the Local Development Fund is still there. There are also 40 assemblies. A lot of work has been done in putting the

system in place. We never faced any problem in providing grass-roots empowerment.

But a “Devolution task-force” is missing, in order to regulate the allocation of tasks. Parliament devolves only what it does not like. DECURTINS reminded that decentralisation is a long and curved way. It took 700 years to implement in Switzerland, but in Malawi he prefers to say that the glass is half-full than half-empty. The demand has to come from the bottom, as it is better to create a system of its own than to copy a system from elsewhere.

CHIPPARA and Lewis DZIMBIRI on their side have presented a large comparative study devoted to decentralization in Africa. Their observations and conclusions are rather pessimistic. Decentralization boosted central control rather than enhanced local authorities. The so-called Malawi National Decentralization Policy (1998) should promote popular participation. But the reality is different. Participation at the grassroots level remains a challenge in most communities. Democracy is far from being a reality, and the voice of citizens is often ignored.

Amani MUSSA explained that, once the people are empowered, they can change the system because the people are demanding. This is a question of critical mass. There should be active participants in the implementation project.

Dilton MILANZI made a very basic and important comment: all local structures are in place, but the most important, the councillors, are missing.

Mr. KABONDO described the problem of participation, e.g. as a villager. Does decentralization guarantee free, active and meaningful participation? Not yet, of course. Therefore, what kind of participation are we talking about?

A few concluding remarks

Malawi Democracy is very young. As such, there have been improvements, but it is still a long way to go. This conference has allowed highlighting some points which need improvements.

According to the *first panel*, there is confusion about the role of the parliament, the values it has to defend and also who it is accountable to: the country, the head of State or the constituencies? A solution to this dilemma has not been found so far.

The *second panel* has highlighted the fact that decentralisation broke down in Malawi, despite all advantages it could have for the country. Amendments to the *Local Government Elections Bill* threaten the very existence of local government.

Finally, the *third panel* reminded of the fact that decentralization, when it is not properly organized, is not always the panacea and can strengthen the central power rather than the grassroots democracy citizens are demanding.

Once problems have been identified, it is time to find solutions, but to solve all these complex problems will require a long work and a lot of time. The lack of demand from the bottom to the top is an obstacle, but the situation is about to change.