

VERBATIM REPORT

OF THE

5th COMMONWEALTH SPEAKERS
AND PRESIDING OFFICERS'
CONFERENCE, AFRICA REGION

HELD AT

CAPITAL HOTEL
LILONGWE, MALAWI

FROM

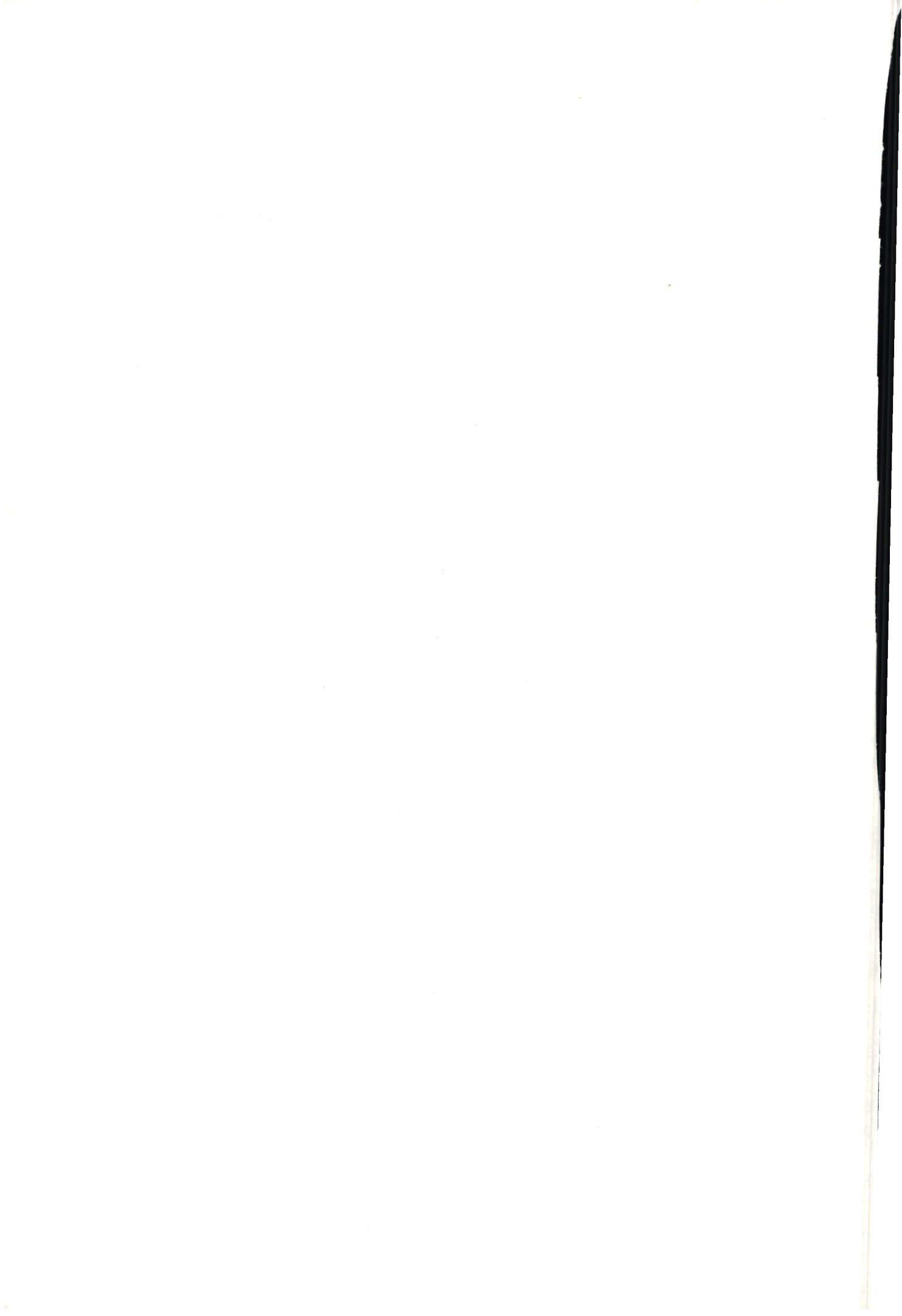
26th TO 30th JUNE, 1995

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CONTENTS

	<i>Page</i>
Members of the Standing Committee	(i)
Country Delegations.....	(i - ii)
Conference Secretariat	(iii)
Opening Ceremony.....	1 - 10
Elections of Vice-Chairpersons	11
Amendment to Rule No. 23	11-15
Adoption of Agenda	15
First Plenary Session - The Role of Speakers and Presiding Officers in Parliamentary Administration in Multi-party System	16-34
Second Plenary Session - Parliament's Independence: The Need to Control its own Budget	34-51
Third Plenary Session - Separation of Powers between Parliament, Judiciary and Executive	51-68
Proposed Amendment to Rule No. 23	69
Fourth Plenary Session - The Speaker and Party Politics	95
Fifth Plenary Session - Conditions of Service for Members	95-109
Sixth Plenary Session - The Role of Parliamentary Committees in the Legislative Process: Their Strengths and Weaknesses.....	109-119
Election of Standing Committee	119-120
Venue of next Conference	120
Closing Remarks	120-122

MEMBERS OF THE STANDING COMMITTEE

Chairman

Honourable R.T.C. Munyenyembe, M.P.
(Speaker of the National Assembly, Malawi)

Members

Dr. Hon. M.P. Tjitendero, M.P.
(Speaker of the National Assembly, Namibia)

Hon. D. ole Kaparo, M.P.
(Speaker of the National Assembly, Kenya)

Hon. M.P.K. Nwako, M.P.
(Speaker of the National Assembly, Botswana)

Hon. Justice D.F. Annan, M.P.
(Speaker of the National Assembly, Ghana)

Mr. N.M. Chibesakunda
(Secretary to the Steering Committee)

COUNTRY DELEGATIONS

Botswana

Hon. S.E. Masisi, M.P.
Mrs. C. Mompei
Mr. F.K. Sebege

Ghana

(Vacant)

Kenya

Hon. Dr. B.A. Godana
Mr. J.H. Tsola

Lesotho

Hon. E.T. Ntlhakana, M.P.
Hon. B. Masilo, M.P.
Mr. S.P. Thakhisi
Mr. M. Khaebana

Malawi

Hon. R.T.C. Munyenyebe, M.P.

Mr. R.L. Gondwe

Namibia

Hon. Dr. M.P. Tjitendero, M.P.

Mr. A.J. Kilian

Mrs. S. Winson

Ms. I.C. Wellman

Seychelles

Hon. F. Mac Gregor

South Africa

Hon. Dr. F.N. Ginwala

Mr. H.J. Coetsee

Mr. M.M. Masiza

Swaziland

Hon. L.M. Mncina

Hon. M.J. Nsibandze

Mr. B.M. Zwane

Tanzania

Hon. P. Msekwa, M.P.

Mr. G.F. Mlawa

Zambia

Hon. S.G. Mwila

Mr. N.M. Chibesakunda

Mr. J. Siame

Zanzibar

(Vacant)

Zimbabwe

Hon. C.E. Ndebele, M.P.

Miss Helen Dingani

CONFERENCE SECRETARIAT

Mr. R.L. Gondwe - Clerk of Parliament

Tours and Reception Committee

Mr. R.V.F. Chibambo - Chairman

Mr. N.T.S. Nakhumwa

Mr. B.D. Mkupatira

Mr. B.B. Liyawo

Mrs T.J.C. Chigwenembe

Transport Committee

Mr. D.C. Bandawe - Chairman

Mr. G. Nyaka Nyalugwe

Mr. M.J. Matala

Mr. G.N. Banda

Accommodation Committee

Mr. S.N. Chisanu - Chairman

Mr. J.M. Kalisosele Chiponya

Miss H. Majamanda

Mrs W.E. Nundwe

OPENING CEREMONY

New State House, Lilongwe

(The Conference started at 9.45 a.m.)

(Announcements by Conference Secretary)

Conference Secretary (*Mr. Gondwe*): The Conference Chairman, Members of the Standing Committee of the Commonwealth Speaker's Conference and Presiding Officers of the African Region, the Second Vice-President, the Right Honourable Chakufwa Chihana, Members of the Diplomatic Corps, all delegates, Honourable Ministers and all invited guests.

This morning we will proceed as follows: We will first hear a statement from the Host Speaker, Honourable Munyenyembe, who will have the pleasure of asking the Right Honourable Chihana to officially declare the 5th Commonwealth Speakers and Presiding Officers' Conference open. After that, Honourable Munyenyembe, will ask the Deputy Speaker from Botswana to respond to the Second Vice-President's opening address. The Members of the Standing Committee will take the Second Vice-President to the front of the Conference Hall for a group photograph with all the delegates, after the speech. Therefore, delegates will drive to Capital Hotel for Conference deliberations. It's now my pleasure to ask the Host Speaker, Honourable Munyenyembe to make a few remarks. Thank you.

The Conference Chairman (*Honourable Munyenyembe*): The Right Honourable Chakufwa Chihana, Second Vice-President, Honourable Speakers and Presiding Officers, Members of the Standing Committee of the Speakers Conference, Your Excellencies, the Deputy Mayor of the City of Lilongwe, Distinguished Guests, Ladies and Gentlemen.

On behalf of the Malawi Parliament which is hosting this conference; and on behalf of all the delegates, I wish to express my sense of gratitude to you, Mr. Second Vice-President, for accepting to open this important conference on behalf of His Excellency the President who, because of prior commitments could not be here this morning.

Honourable delegates, it gives me great pleasure to welcome you to this 5th Conference of Speakers and Presiding Officers of the Commonwealth Parliaments. At this juncture, let me also extend a special welcome to the Republic of South Africa which is attending this Conference for the first time. And I am glad that they are doing so in Malawi.

Mr. Second Vice-President, you may wish to know that about twelve Speakers are participating in this Conference: Botswana, Kenya, Lesotho, Namibia, Seychelles, Swaziland, South Africa, Tanzania, Zambia, Zimbabwe and of course, the host country, Malawi. all these countries have done us honour by accepting to attend this Conference.

Malawi is a young multi-party democracy and we are hosting this conference for the first time. We hope this Conference will enable us to exchange experiences and discuss matters of common interest to us and frankly. We are very eager to learn how other Parliaments operate particularly in a multi-party setting.

Fellow Speakers are familiar with the traditional role of Speakership in the discharge of their duties. Impartiality is the norm. Speakers, and aspirants to Speakership should be imbued with a genuine faith in the noble traditions of impartiality, aloofness from political controversies and independence that is associated with this office. As Philip Laundy notes in the case of Westminster, and I quote, "once elected the Speaker sheds his previous political affiliations and not only becomes totally impartial but is seen to be. His lifestyle too changes. He can no longer allow himself to the informal social activities permitted to the Members. He may not pursue friendships which would appear to favour certain members above others. To a great extent he isolates himself from the camaraderie of parliamentary life at the same time remaining accessible to all his colleagues and ever a sympathetic listener to their problems, personal as well as parliamentary".

Let me also welcome the Clerks of Parliament who are here. They too have an important role to play in the affairs of Parliament. They are, of course, a highly professional and expert body whose long experience and knowledge of the working of their Parliaments, assist Speakers in their parliaments. It is believed that Clerks are expected to know everything that is to be known about anything that has any reference to Parliament and its business. This Conference will therefore afford them the opportunity to exchange and share experiences.

Distinguished delegates, these conferences are held every two years and two years ago this Conference was held in Botswana where Malawi offered to host this conference. But I realise that we in the Africa Region are active in consolidating parliamentary democracy since we meet very often. Our Clerks had their seminar in Swaziland this year and our Members too had their conference in Arusha, Tanzania last month and we are now meeting here in Malawi. This really signifies the importance we attach to the meetings, seminars and conferences of the Commonwealth.

As is tradition, with these conferences, delegates are taken on pre-conference tours and I am pleased to inform you that the delegations were taken to Mangochi District to see our beautiful Lake and some of them even went on a boat ride. In addition, they have also been to Dwangwa in Nkhota kota District to see our sugar factory. I believe it was quite an experience to see the country side. And for those who have been to Malawi before, I am sure that they have seen some changes due to the developments that are on-going.

It is now my pleasure to ask the Second Vice-President to open this conference for us.
Thank you. (*Applause*)

OPENING ADDRESS

The Second Vice-President (*The Right Honourable Chihana*): I will begin with an unusual, very untraditional greeting, this morning. I am rather excited.

It was a dark hour some 20 years ago or more when my very dear comrade sister, now

the Honourable Speaker of the National Assembly in South Africa, that we shared the same agony, the same experience, the same mental torture, torn apart from our loved ones, didn't know whether we would see the next day. And it is true, this experience that we saw our very dear friend and comrade, Dr. Mondelane of Mozambique being killed by a parcel bomb at lunch time. For many years my sister had been thrown away, denied the right to live in her own country, she is now an honourable person. Then she was denied not only citizenship, but even the right to live as a human being. I am personally, this morning privileged to welcome you to Malawi. I am really delighted. For me this is what the Germans would say "*geschenk*". A gift. I did not expect to meet you after so many years. You are most welcome to Malawi.

The Conference Chairman, Honourable Munyenembe, Members of the Standing Committee, Honourable delegates, Members of the Diplomatic Corps, the Civic leadership, invited guests, dear friends and comrades and gentlemen. I wish to thank the Conference Chairman for inviting me to come and open the Conference on behalf of His Excellency President Bakili Muluzi. It is an honour to me that I perform this task on his behalf and I wish to put it on record that all the delegates here are most welcome indeed to Malawi. This welcome is from the Government and the people of **Malawi**. Our hope is that during your short stay here, you will meet some of the Government **personnel** and members of the general public.

I wish to join the Conference Chairman who has just spoken in thanking the Republic of South Africa for sending their delegation to be with us at this important Conference. We welcome them in a special way for joining the community of nations. And we look forward to their contributions to conferences of this nature in the future. These conferences, no doubt, promote constructive dialogue between Speakers of the Region on matters of procedure and administration. In addition, they enable Speakers to know each other's countries.

The Commonwealth, Mr. Chairman, is not only a very large family. It is a large family consisting of large and small nations, rich and poor nations, varying degrees of democracies and leadership. But we are all agreed that good governance should exist on the respect of the rule of law, holding of regular free and fair elections and that the public should be heard through their representatives before laws are passed in the National Assembly.

I am informed that Speakers Conferences are held every two years. Since you last met in Gaborone, Botswana, in 1993, a lot has happened in our Region. Malawi, Botswana, Namibia, South Africa and Zimbabwe have held successful elections which have changed the Parliamentary face of the Region. Tanzania will be holding elections this October. Kenya had elections in 1992 and has a multi-party Parliament. And I may say the same for other countries represented here.

The record of elections in the Region in recent years shows clearly that the Parliamentary configuration of our Region is changing - it testifies to accommodating change and tolerance and it is incumbent upon us to run towards maturity in the systems we have adopted. In many ways, this transformation has been remarkable indeed.

My verdict on these developments in the Region is that you are "new Speakers in new Parliaments" and your tasks should be onerous, if the Malawi example is anything to go by. We have a Parliament in which more than two-thirds of the membership is new, that is, members who have never been in Parliament before. They have or haven't been in face of the eyes of the Speaker. The Speaker is not appointed by the President as it was in a monopolistic system before, but he is elected by the House - again, he is a new Speaker. Your Conference Chairman has never been Speaker of the National Assembly before.

Under the new Constitution, our President attends Parliament to answer questions from Members of Parliament - a task which his predecessor never did, because he was not only above the Constitution, but he was the superman. I say all this to emphasize the point that in spite of our newness, the Malawi Parliament has to discharge its Parliamentary tasks with the same efficiency as old Parliaments in terms of interpretation of internal procedure and administration of services for members. This is not easy in terms of staff, time and budgets. This brings to mind the words of one of you who recently, when opening a workshop for Senior Commonwealth Election Officers for the Region in Namibia, said the following : "We have to run where others walked if these new democratic processes are to be sustained". I totally agree.

Your meeting in Malawi, this week, is a timely show of willingness to engage in the

analysis of your work in the wake of the new wind of change. You are not going to run on uncharted ground - you have some Parliamentary roots within your own Parliaments and the Commonwealth of Nations to draw from, so that you are responsive to the public you serve. Then run you should, together with your Members of Parliament, as time is not on your side, and do so efficiently and innovatively. In this regard, speaking for Malawi, I should thank all donors present and those who are not here, who are helping the Malawi Parliament and others, in this political crusade that we have chosen.

A word of caution here is necessary, however. While I accept that you should run to catch up with the rest of the world, as Speakers, in new fragile and economically weak democracies, you should not forget that your role is one of a patient and impartial arbiter over the deliberations of the House and guarantor of an open discussion on any matter. To your aid, you have rules and practices of your Houses. You have with patience, to balance between freedom of expression of your members and the requirement to oppose or criticise so as to improve on the efficiency of Government policy and machinery. We who are in the Executive Branch of the Government are not against constructive criticism in the House against our policies, and we do not look at it as disloyalty to anybody or institution, not at all. Our hope is that criticism will bring better alternatives to those offered. Criticism which is designed to mock or annoy Government or criticism for its own sake, falls below this hope.

The sustenance of Parliamentary democracy may depend on many factors, as I see them, some of them are as follows:

- (a) A hospitable society to attributes of a new political democratic culture;
- (b) These attributes may need a long time to take root on the ground and mature, hence, political tolerance and sense of duty become catalylists for a durable democracy;
- (c) In addition, political and structural conditions must be fostered to facilitate this maturing process;

- (d) Economic development and distributive justice must become critical ingredients for not only the sustenance of parliamentary democracy, but also a secure and healthy society. Of course a strong and independent Judiciary cannot be over-emphasised.

These pressures will challenge the political capacities of new democratic states of the Commonwealth and possibly even the stability of their Governments. It is a challenge which leadership in this new democracy must sustain. It is a thermometer that will test all of us, those that have opted to acquire these values which are new on our grounds if we are to be accepted in the global village which everyone is now struggling to enter.

It was once said, that if Governments were a matter of will upon any side, it ought to be superior. But Government and legislation are matters of reason and good judgement and not of inclination at all and Parliament is not a political party assembly, but an honourable deliberative House of one nation, with one interest, that of the people, and therefore, the whole nation. Therefore, the responsibility of the Speaker is more than that of a priest. The responsibility of a Speaker is larger than the heart of the Speaker herself or himself because you are the arbiter, you are the referee between the Executive and the people.

As honourable Speakers, you also have another role in these new democracies. You should not lapse into legalism and fail to relax the rules of the House to accommodate new realities as you find them on the floor of the House. How will you evolve parliamentary practices if such is not the case? Even those older democracies which walked this road before and which we take for granted, are still on the learning curve, constantly re-assessing the relevance of their rules to the realities as they emerge. Young democracies cannot do less.

Your office requires you to be impartial and patient arbiters. I would add that you should be symbols of certainty to inspire your members, to deliberate and resolve with certainty, issues before them. If this is not the case, you will become victims of indifference or contempt in the eyes of your members and the public at large. Speakership should be the anchor of the nation's hope in Parliament by insisting on fair play, in open discussion in the context of your procedures

and Conventions. It is there that we shall all be judged. Whether our deliberations are instruments of peace and stability.

Finally, brother Chairman, to assist in national development, Parliaments should evolve an all inclusive legislative process whereby the electorate participates meaningfully in the legislative processes. This may not be easy unless Parliaments have well structured committees for the purpose and also members realise that laws passed have to stand the test of time.

Our Parliaments should also be outward looking. There should be a deliberate attempt to strive to talk to each other on matters which cut across our Parliaments so that we consolidate the gains we get from a forum like this one.

I wish to thank all the delegates for doing us the honour of visiting our country on this occasion. Our hope is that your stay in Malawi will make the ties which already unite us much stronger and that you will take away memories of a country worth coming to again, in whatever capacities.

It is now my pleasure to declare the 5th Commonwealth Speaker's and Presiding Officer's Conference for the Africa Region officially open.

I thank you (*Applause*)

VOTE OF THANKS

Deputy Speaker of Botswana (*Honourable Masisi*): Mr. Chairman, Your Honour, the Second Vice- President of the Republic of Malawi, Honourable Speakers and the Presiding Officers, Honourable Ministers, Members of the Diplomatic Corps, Your Worship the Deputy Mayor of the City of Lilongwe, distinguished guests, ladies and gentlemen.

It is indeed a great day for me to be afforded this opportunity as co-Chairman to give a vote of thanks to you in particular your Honour, the Second Vice-President.

Firstly, Mr. Chairman, let me bring with me the brotherly greetings from the people of Botswana. The people of Botswana are happy that the wind of change has brought this beautiful country to the present state of affairs and wish you great success in the years ahead.

Mr. Chairman, may I, through you, Sir, thank you for the warm welcome extended to us on our arrival in this beautiful country. To some of us who once had a chance to visit Malawi some years ago, can today say with confidence that now we are in a totally different Malawi. Unlike those days, today we can chat with anybody anywhere at anytime. We thank you for this democratic change and I can assure you your Honour that this August body joins me in applauding you for this success. On behalf of my colleagues, I would also like to thank you very much for the pre-conference tours which really enlightened us on the natural riches of the country observed during our visit to Lake Malawi. We were entertained to good receptions and hospitality. Your chambo is very delicious.

We also visited the Sugar Factory at Dwangwa in Nkhotakota yesterday and that was an eye-opener to us and hope this factory will prosper and boost the economy of this country.

We also observed Mr. Chairman that Malawians are committed to self-reliance. Mr. Second Vice-President, we thank you for accepting to bless this Conference in spite of your busy schedule. We are very happy with your presence Sir, and I hope that all delegations would carry your message throughout the Conference and that message will inspire us in our discussions of the different topics before us.

Mr. Chairman, your words of wisdom have made us feel comfortable and we believe you are committed to sustaining your young developing democracy. Your democracy can only be sustained if you will continue to enhance the social economic and political development.

We therefore, Mr. Chairman, agree with what Mr. Second Vice-President has said that we in the Region do continue to learn and nurture our young democracy for the well being and stability of this Region.

With those few remarks, I would like to thank you very much for having opened our Conference. Thank you very much. (*Applause*)

The Conference Chairman (*Honourable Munyenyembe*): Honourable delegates, we can now go outside for a group photograph after that we leave for lunch at Capital Hotel. The Conference will resume at 2.00 p.m. in the Mulanje Room. Thank you.

(Conference was suspended at 10.40 a.m.)

(The Conference resumed at 2.05 p.m.)

The Conference Chairman (*Honourable Munyenyembe*): I now, call the meeting to order. Before we proceed, may I extend a hand of welcome, a special hand of welcome to the Speaker of South African Parliament who is attending this conference for the first time, I say; you are most welcome.

By the same token, may I also extend a hand of welcome to the Speaker of the Zimbabwe Parliament. I thought I was the youngest Speaker of Parliament in terms of experience, but I am happy to report that I have a younger brother who is two and a half months old. You are most welcome.

I am also advised that Seychelles has not been attending these conferences for a long time. It is a pleasure to see you here, Honourable Mac Gregor. You are most welcome.

The same welcome goes to each one of you delegates. You are most welcome. It is only unfortunate that you don't have ample time to stay in our country to see the Lake and other parts of Malawi. We have got a variety of beautiful places for you to see.

ELECTIONS OF VICE-CHAIRPERSONS

The Conference Chairman (*Honourable Munyenyembe*): We have one or two items to dispose of before we actually come to discussing the topics. The first one is the election of two vice-chairpersons for this meeting. Can I have the nominations? Yes, Honourable Ndebele?

Honourable Ndebele (*Zimbabwe*): Thank you Mr. Chairman. I propose Seychelles as Deputy Chairman.

The Conference Chairman (*Honourable Munyenyembe*): Any Seconder? (*Interjection: Secoded!*) Yes, Honourable Dr. Ginwala.

Honourable Dr. Ginwala (*South Africa*): I would like to nominate Lesotho as one of the Vice-Chairpersons.

The Conference Chairman (*Honourable Munyenyembe*): Any seconder? (*Interjection: Secoded!*) So we have got these two nominations. Any further nominations? By consensus it appears that we have Seychelles and Lesotho as Vice-Chairpersons. Thank you.

AMENDMENT OF RULE NO. 23

OF THE COMMONWEALTH AFRICAN REGION SPEAKERS CONFERENCE

The Conference Chairman (*Honourable Munyenyembe*): The second item to dispose of is the amendment of Rule 23. When the Standing Committee met yesterday, they came up with an amendment to Rule 23 and the amendment reads as follows:

"A motion on the part of a single Speaker, or Presiding Officer supported by a 25 per cent of Speakers and Presiding Officers, the Conference may go into camera in order to determine whether a particular issue should be debated in camera. The decision to do so will require a simple majority of Speakers and Presiding Officers present".

Yes, Honourable Tjitendero from Namibia?

Honourable Tjitendero (Namibia): Thank you, Mr. Chairman, Sir. I have difficulty. I attended this meeting but I think the wording here is not explicit enough to get the point across. I think I am getting it because I had the background. I am wondering whether we could still do something to get this point clearer. I don't know. I am just putting it out. If the other members feel it is very clear, fine, but this is not clear. Maybe it is grammar.

The Conference Chairman (Honourable Munyenyebe): Maybe you could help to state exactly what makes you unhappy. Honourable Deputy Speaker from Kenya?

Honourable Godana (Kenya): Thank you, Mr. Chairman. I couldn't agree better with the sentiments expressed by Honourable Tjitendero. I have, in fact, tried to scribble something to cancel out some words and scribbled something to make sense. I think the two versions are there, but I think it is a question of grammar and I wish to propose something like this:

"A motion by a single Speaker, the words 'on the part of' go out by a single Speaker or Presiding Officer, the word 'presiding' goes out, supported by, the word 'a' goes out, supported by 25 per cent of Speakers and Presiding Officers present, shall be sufficient for the conference, the word 'may' goes out, for the conference to go into camera in order to determine whether a particular issue should be debated in camera. A decision to do so shall require a simple majority of Speakers and Presiding Officers present".

I was rather slow. Maybe it will make sense for you if I read it faster. I will repeat it now. The amended version will read:

"A motion by a single Speaker or Presiding Officer supported by 25 per cent of Speakers and Presiding Officers present, shall be sufficient for the conference to go into camera in order to determine whether a particular issue should be debated in camera".

Is that okay?

Honourable Dr. Ginwala (South Africa): To the second sentence, I think the words "a decision to do so", can also cause confusion. We might wish to say, "a decision to debate the issue in camera will require a simple majority".

Honourable Ndebele (Zimbabwe): Before we can have another version of the amendment, allow me to comment and not talk of the offer or alternative, because my friend Honourable Speaker from Namibia has already offered to do so. I think that the second sentence of 25 per cent and then going down to speak about a simple majority is a contradicting term. Once you have called for 25 per cent, what then is the call for a simple majority. I think that all that it should do is that on the motion of a single Speaker to move that the conference go into camera in order to determine a particular issue, shall be decided by a simple majority as the Honourable Speaker of South Africa has said. But I stand to hear what the Honourable Speaker from Namibia, will say. A mover need not be supported by 25 per cent.

The Conference Chairman (Honourable Munyenyembe): The Speaker from Namibia, did you have another version altogether?

Honourable Dr. Tjitendero (Namibia): I have a much simpler one by just inserting a proposition on a motion 'by' and delete 'a' on the part of. That whole phrase is out; 'single' is out. Let me read it.

"On a motion by a Speaker", and then it remains, we only delete "presiding" and after 'by' 'a' and then the wording remains as it is".

The reason why we are trying to do this is to accommodate a very difficult discussion that was held last night on the two elements. First the motion to enable the debate to go into camera, and then the second part to decide whether indeed it should come back or remain in camera. Those were the two elements that were giving us difficulty in wording.

The submission by Honourable Speaker from Zimbabwe was the original wording. A motion by a single Speaker should determine that the meeting goes into camera and then we were reminded that there are two stages to go into camera to decide the fate of the issue under discussion.

The Conference Chairman (*Honourable Munyenyembe*): With your permission, can I make a suggestion? Let us have the amended version by Deputy Speaker from Kenya in writing and the amended version by the Speaker from Namibia. Once these amended versions are typed, they will be circulated and we can look at them and compare. But as it is now it is difficult to comprehend what we are talking about.

How does that sound? (*Interjection: Yes, it is alright!*) So we defer discussion until the very end with your permission. Fine.

Now let's take item 2(b). We skip 2(a) and take 2(b). In the absence of Honourable Speaker from Tanzania, we didn't make any headway and, unfortunately, I haven't had the time to discuss with him. I think the time is now opportune for you to raise that issue.

Honourable Msekwa (*Tanzania*): Thank you, Mr. Chairman. We defer item 2(a). But while we are deferring 2(a), I had a question. I wondered why the need for the mandatory 25 per cent. I thought the wording should be, "not less than 25 per cent". But if you say 25 per cent which means less than 25, is no good, more than 25 per cent, is not good.

So why that mandatory 25 per cent. I should have inserted the words, "not less than 25 per cent" into the Kenyan amendment.

Now with regard to item 2(b), Mr. Chairman, I would like to say that the Tanzanian delegation is withdrawing this amendment for two good reasons. (1) We were not invited to the Standing Committee to explain properly the background to this amendment. Since proper procedure in these meetings requires that the business is thoroughly discussed by the Executive Committee in the first place before the business is presented here for approval, that alone

disqualifies this business from consideration because it was not submitted to the Executive Committee.

But if it had gone to the Executive Committee, Mr. Chairman, I would still have withdrawn, because I have found that the amendment does not concur with the Rules of the International CPA Speakers Conference. I think we should not be different from the International CPA. We are one body. This is only a Regional unit within the International CPA and what we were suggesting here is at variance with the International CPA Rules, so I think it is not proper.

I was going to ask the Executive Committee to agree that we withdraw this amendment. Thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much. So, that item is withdrawn, with the concurrence of the Executive Committee as well as the plenary.

We will come to Item 3 at the very end once we have looked at the various amendments. We go to Item 4.

ADOPTION OF AGENDA

The Conference Chairman (*Honourable Munyenyembe*): I hope that each one of you has got a copy of the Conference Agenda. Are there any proposals concerning amendments or anything else you want to be added?

Yes, Honourable Speaker from Tanzania?

Honourable Msekwa (*Tanzania*): Mr. Chairman, I propose that the Agenda be adopted as presented.

The Conference Chairman (*Honourable Munyenyembe*): Any seconder? Namibia, any

counter-proposal? There is no counter-proposal. The agenda is adopted.

FIRST PLENARY SESSION

The Role of Speakers and Presiding Officers in Parliamentary Administration in Multi-party Systems

Opener: Malawi

Seconder: Lesotho

Honourable Munyenembe (*Malawi*): In presenting this topic, I have decided to divide it into sub-headings and I will be mentioning these sub-headings as I go along.

I will start by stating that it is important for the Speaker's and Presiding Officers serving members in a Multi-party Parliament to promote the protection of the fundamental rights and freedom of individuals as laid down in most constitutions as guiding principles.

Individuals are equal before the law and therefore all Members of the House have the same rights and privileges.

The Traditional Role of the Speaker

The Speaker is a principal spokesperson of the House. You will excuse me that I am not using the neutral gender, but you will appreciate what I mean. As the principal spokes-person of the House, the Speaker represents its collective voice and also represents the House to the outside world. His position as the presiding officer of the House, therefore assumes great authority. The supreme authority of the speaker inside a multi-party parliament is based on his absolute impartiality in exercise of powers vested in him. The Speaker has to be impartial in the exercise of his/her powers in spite of his/her party affiliation.

As Philip Laundy notes in the Westminster and I quote: "Once elected, the Speaker sheds his previous political affiliation and not only becomes totally impartial, but should be seen to be.

His life-style too changes, he can no longer indulge himself in informal social activities as opposed to the Members. He may not pursue friendships which would appear to favour certain Members above others. To a great extent, he isolates himself from the camaraderie of Parliamentary life. At the same time, he may remain accessible to all his colleagues and be a very sympathetic listener to their problems, personal as well as parliamentary"

This is indeed a challenge to the Presiding Officers especially in the political climate of our country and I believe it is the same with other countries in our Region.

In Malawi, it is being proposed that the Speaker be the Chairman of the National Assembly Commission to be formed under an Act of Parliament. This Commission shall be the ultimate administrative authority. It will be the sole employer of staff and will prescribe remuneration and other conditions of service which are expected to be broadly in line with those in the Malawi Civil Service. In addition the Commission will be responsible for approving the budget for the National Assembly and submission to the Executive. By the present arrangements, the National Assembly is at the mercy of the Treasury as far as budget requirements are concerned. You would wish to learn from this gathering the involvement of the Speaker and Members of Parliament on the issues that have been raised here.

There is also need for the Speakers and Presiding Officers to provide parties and Members adequate support services like research facilities, etc. This is always not easy. In Malawi, for example, our present Parliament precincts were built to cater for not more than 50 Members. Well, this limitation did not cause concern in 30 years of one party Parliament. It has now become a serious cause for concern. There is little space or facilities for the three parties represented in Parliament. This obvious adversity affects the Speaker's ability to effectively administer Parliament. Lack of research facilities for Members and Table Officers create enormous difficulties for the proper gathering and dissemination of parliamentary and other related information.

In our young democracies where the general public may not be well informed about the status of Members of Parliament, the Presiding Officers have an onerous task of protecting and defending these privileges.

There are also the uncertainties of the role of the Speaker in ensuring that there is a well motivated staff to service in a multi-party Parliament. This is achieved by the Speaker assuming considerable control as being proposed in the case of Malawi. This is all I wanted to say on this subject. Thank you.

Honourable Ntlhakana (*Lesotho*): Thank you for the honour that has been accorded to Lesotho to be the Seconder of this very important topic - "The Role of Speakers and Presiding Officers in Parliamentary Administration in Multi-party Systems". In seconding Malawi, we shall try to be as narrow as possible, dwelling mainly on the word "administration", because the role of the Speaker can be very broad indeed.

Now let us look at Lesotho's Parliamentary scene. We are the products of a multi-party electoral system. In Lesotho, we have two Houses - the Senate and the National Assembly. The National Assembly has 65 elected Members, fully elected, no nominees; and the Senate is composed of 33 Members, 22 of whom are hereditary senior Chiefs and 11 are nominated members, nominated on the strength of their experience, expertise or skills. So that is how we are.

The Speaker of the National Assembly has for as long as I can remember been elected from outside the House and that is the position of the Speaker or President to the Senate today. For the House of Lords, we refer to the Presiding Officer as a speaker. So when we say the President of the Senate it is just for convenience. But I shall use the word Speaker very freely, for both Houses.

Now, what is the role of Speaker in a Parliament? Whether it is in the Lower House or Upper House. When I say "Lower House" here I mean the term that is used at Westminster and it is not intended in any way to minimise the role played by the National Assembly. It is a

traditional term given to this House, the National Assembly being the "Lower House" and the Senate being the "Upper House".

So let us look at the role of the Speaker or Presiding Officer. He oversees the administration of the Parliament. We in Lesotho do not have an independent staff yet for some time now. So our staff still belong to the Civil Service. We have been working towards the establishment of an independent staff

In the Senate the situation is like this: We have three Sessional committees; the Business Committee whose Chairman is the Minister who is Leader of the House or Leader of the Senate, and four other members nominated by the President. That is, the Business Committee which sees to the business of the House, ranging from whatever is going to be on the notice and the Order Papers and to other things that may be referred to it from time to time.

We also have the Senate Amenities Committee which is appointed by the Business Committee and whose role is to see to the comfort and convenience of Senators. It elects its own Chairman, and the Secretary's role is to provide Clerks for all the Committees. And when I say the Secretary, I mean the Clerk.

We have the third Committee which is the Standing orders and Staff Committee. That Committee is intended to be very important as, Standing Orders and rules are very important for the smooth running of any Parliament. It is chaired by the President of the Senate and its other members are nominated by the Business Committee. It also oversees the drafting and amending of the Standing Orders, whenever necessary. It is also supposed to look into the staffing of Parliament, but the staff of the Parliament, as I have said, continues to belong to the Civil Service.

The role of this Committee as far as staffing, is therefore, not very important at the moment. The President is consulted whenever important appointments or transfers are planned.

So the role of the President or the Speaker is consultative or advisory on staff matters.

He is consulted by the Principal Secretary to the Public Service and by the Minister responsible for the Civil Service on these matters. He also oversees and works very closely with the Senate Clerk. The National Assembly has its own Clerk. The Presiding Officers in both Houses work very closely with their Clerks who are the Heads of the administrative section. Mr. Clerk's Department is very important. He checks minutes, notice papers, order papers, the Hansard; prepares estimates of revenue and expenditure and development estimates and has under his control the technical staff, finance and personnel officers.

Now, I have to see to it that the proposed plans are transacted. They don't belong to us, we don't control them. But when they are within the parliament precincts, they are our responsibility.

The Speaker receives important visitors and if necessary arranges for them to address the House and after they have spoken, he generally expresses the essence of their speeches, he consults with the Leader of the House and the Chief Whip to ensure the smooth running of the Senate and National Assembly and to ensure that Senators are regularly informed of Government business. Definitely the Senate does not originate Bills. So the Speaker's role as far as that is concerned, is not as much, I mean the President's role is not as important as that of the Speaker of the National Assembly. Bills originate in the National Assembly. They only come to the Senate for revision, examination and amending wherever necessary. And when we have done that, we return them to the Lower House who will look at them again and if they agree to our amendments, the bills are presented to His Majesty for signature. If they do not agree to our amendments, they write back to us asking that we do not insist on the amendment and very often we don't insist. So co-operation between Houses is very good indeed.

While I don't know how many minutes we are given, I think I have said enough for the time being. Thank you very much indeed. Thank you.

The Conference Chairman (*Honourable Munyenembe*): Thank you very much. The topic is now open for discussion. Everybody is free to make a comment. The Honourable Speaker from Tanzania.

Honourable Msekwa (Tanzania): Thank you, Mr. Chairman, Rule 26 requires that, "depending on the number of participants attending the Conference and on the subject under discussion, the length of speaking time given to each member may be limited". May I ask, Mr. Chairman, what the limitation is on this topic, if there is any limitation.

The Conference Chairman (Honourable Munyenembe): The Chairman will be guided by the enthusiasm of the delegate's comment on the topic. On that basis, I will decide how much time should be given.

(Honourable Msekwa (Tanzania): Thank you, Mr. Chairman for giving me the first opportunity after the subject has been presented and seconded. I was attracted by the emphasis placed by the seconder of the topic on the words "administration" in this subject: The Role of Speakers and Presiding Officers in Parliamentary Administration. Yet, Mr. Chairman, the word "administration" covers two areas. There is first of all, the administration of parliamentary facilities, including Parliamentary staff and other facilities. That would cover the staff of Parliament; that would also cover the budget of Parliament. Furthermore, that would cover the privileges of parliamentarians; it would cover the buildings of parliament, the associated facilities and services. All that goes into administration, because those things have to be administered, namely the facilities of Parliament, which enable parliamentarians to discharge their functions properly.

There is also the administration of parliamentary business. That is also administration or we could call it management, fine. But that is also administration. There is the role of the Speaker in administering parliamentary business. So I think that the word "administration" should not be treated as limiting our discussion to traditional administration of facilities. It should also include administration of parliamentary business.

I think this particular topic could be revisited during discussion on subsequent topics, such as the budget, independence of Parliament and other topics. But I think there would be no disputing the fact that the Speakers and Presiding Officers have an important role to play in the administration of both parliamentary facilities and parliamentary business in multi-party systems.

Now that most of our countries are moving or have already ~~moved~~ away from single party parliaments, where the factor of Government was dominant, ~~especially~~ in relation to parliamentary business, there is no disputing the fact that in the new ~~multi-party~~ parliaments, the role of the Speaker and Presiding Officer as the head of the ~~Parliamentary~~ institution, will become more dominant in the administration of ~~parliamentary facilities~~ and parliamentary business.

Parliament is the meeting place, the end result of multi-party ~~electoral~~ competition. You know they all compete in order to come to Parliament. There will be ~~a ruling~~ party, indeed, but there will be other parties. They may not necessarily be opposition ~~parties~~ but we call them minority parties. They are all entitled to fair play. And the person they ~~look~~ upon to grant that fair play is the speaker. So he has a role there, no dispute about it. ~~And~~ where the role of government has diminished in relation to administration of ~~parliamentary facilities~~, such as staff and budget and so on, that should not leave a vacuum. That role must ~~evolve~~ on somebody else and that somebody else is obviously the Speaker or the Presiding ~~Officer~~ as head of the institution. There will be, of course, internal division of labour ~~between~~ the speaker and the Clerks and the staff generally, but in this context, I think, the ~~Speaker~~ is the head of the parliamentary institution. This role is even more important now than ~~it has~~ been in the past, at this particular stage at which we are, when we are talking about ~~multi-party~~ parliamentary systems.

So, I would like to underscore the fact that the Speaker or Presiding ~~Officer~~ has a role to play in the administration of both parliamentary facilities and ~~parliamentary~~ business.

Thank you, Mr. Chairman.

The Conference Chairman (Honourable Munyenyebe): Thank you ~~very~~ much indeed. Yes, Honourable Speaker from South Africa.

Honourable Dr. Ginwala (South Africa): In South Africa, we inherited ~~a~~ situation with very little clarity under the law. So we have had to feel our way. Under ~~the~~ ~~previous~~ system, there

was a Speaker of Parliament who was also head of the White House of Assembly and Chairperson of what they called the House of Delegates which was for Indian South Africans and the House of Representatives which was for Coloured South Africans. The Speaker of the Assembly, the White Chamber, also acted as the Speaker of Parliament.

When we drafted the new constitution, I think we all forgot about this, we ended up with a situation with no transitional arrangements and there is total ambiguity in the law. To add to the situation, we also introduced a new House of Senate with a Presiding Officer. So we have really had to sort out and feel our way as to where we needed to go.

For example, we did not know who was the employer. Some persons said it was Parliament, but what was the legal persona of Parliament. We have since then made some clarifications. Very recently it was agreed that Parliament in a joint sitting, was the employer and it delegated management and administration to the Presiding Officers who in turn could delegate to the Secretary to Parliament.

The relationship essentially is that of a Minister and a Director General or Permanent Secretary. In other words, the Presiding Officers are the policy makers and the Secretary to Parliament or the Clerks are equivalent as the Head of Departments in the Civil Service. But pre-eminently the Presiding Officers are the policy makers.

Now the employees of Parliament are nearly 800, it's a massive staff. They are not part of the Civil Service. They do not fall under the Public Service Commission. But in many ways, they were the step children because the Public Service Commission would sort out conditions, wages and everything else and inform the Speaker who implemented. So we had our workers with no say and no way of saying what should happen in terms of their conditions of work. We have now delinked the parliamentary service totally from the Civil Service. Our workers are unionised and we negotiate with them on conditions and terms of service.

The Presiding Officers also do the appointing of senior staff and the Secretary to Parliament appoints the junior staff. We also have now just introduced a democratic appointment

procedure where peer staff sit on interview panels and there are complaints procedures introduced.

We also inherited a strange management procedure, maybe it's not strange, where Clerks or people who are experts in procedure, were also managing catering, managing the cleaning services etc. We have brought in management consultants to try and rationalise, so that we got management expertise where it belongs; and our procedural and parliamentary support services could develop as a proper professional dedicated service.

Now those are just some of the kinds of changes we have had to grapple with. All along we've been working out what we think needs to be done, starting from the very ambiguous situation in which we found ourselves.

The Conference Chairman (Honourable Munyenembe): Yes, the Honourable Speaker from Swaziland.

Honourable Mucina (Swaziland): Thank you, Honourable Chairman. Just a point of clarification here. I thought I heard you talk about setting up an administrative function within Parliament of which the Speaker in Malawi will be Chairman. What I was not clear was as to whether this has already been promulgated or is it something that is going to be done.

Then there is the second one, I go back to the seconder, Lesotho. In Lesotho it seems the system is almost the same as ours where we have the Senate and the House of Assembly. Now what I was not clear with is about two points. It seems the President of the Senate in Lesotho indicated that they don't have an independent staff *per se*. They work closely with the Civil Service and by consultation or being consulted by the Civil Service. What I would like to know is how do they maintain continuity in terms of professional expertise of the Clerks and so forth, because if the Civil Service can transfer at will, then we are faced with the problem of having to get new Clerks, new people, coming and how do you survive in case of a new Presiding Officer being appointed with inexperienced staff.

Thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*): I will start the ball rolling. For thirty years in Malawi, we have had a situation here where Parliament was a mere appendage of the Office of the President and Cabinet, and therefore, members of staff could be moved at will. We had a situation where Mr. R.L. Gondwe here who is a qualified man, upon return from a course overseas, was sent to the Department of Lands and Valuation. Okay, true you have got legal matters there. But here you are with someone who spent all these years specialising in parliamentary work and yet he can be moved at will to any other government Department.

Now in order to correct that situation, the new multi-party Parliament has decided that, it hasn't been created, it's going to be created within this year, that we have to have a National Assembly Commission which is going to be headed by the Speaker so that we can employ our own staff. We think that the moment we do this, we will retain expertise within Parliament. Those who want to opt out, will be at liberty to do so. But those who want to remain in Parliament, we feel their experience, their years of experience must be utilised in Parliament.

I do not know whether I have answered your question.

Honourable Mncina (*Swaziland*): Certainly you have, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*): Thank you. And Lesotho?

Honourable Ntlhakana (*Lesotho*): Lesotho manages somehow to keep its Clerks and other senior officers within Parliament only through consultations or negotiations with the Central Civil Service: "Please don't take this person away, we will be in serious trouble if you do". "Yes, that one seems the right person to come along, let him come and join us". Just like that. Continuous process of consultation keeps our best officers within Parliament.

The Conference Chairman (*Honourable Munyenyembe*): Yes, Honourable Speaker from Namibia!

Honourable Tjitendero (Namibia): Thank you, Honourable Chairman. I still have a very simple question. I think what has been shared here is a similar situation in which we find ourselves. Ours was not inherited, but it's a question of establishment. So I believe that we still have an advantage.

I wanted to ask a question to the Lesotho seconder on the question of in as much as their negotiations are between Public Service and the Senate or the Parliament to retain staff. What happens in terms of upward mobility where the staff genuinely needs to go up in the Public Service, and legitimately so, and you also have a similar structure that goes up all the way to the seniority within the Parliament. Because the justification may be that she or he has been there for the last three years, needs promotion. Promotion is available in the Ministry of Mines and Energy. This is the problem that I am more concerned with. How do we retain these specialised staff there?

Honourable Ntlhakana (Lesotho): Thank you very much Honourable colleague. We do try to keep our men happy within Parliament by seeing to it that the salary grading within Parliament is as much the same as those of the other Departments as possible, right up to the Principal Secretary level. My Clerk's salary is equal to that of a Principal Secretary. That used not to be, but we will continue as far as the negotiations will go in improving conditions of service for parliament staff, so that Parliament should now become as attractive as any other department.

The Conference Chairman (Honourable Munyenyembe): Honourable Mac Gregor.

Honourable Mac Gregor (Seychelles): Mr. Chairman, what I am going to say is not a well set piece of presentation, but just some thoughts I would wish to say based on whatever experience is available, based on the Honourable Speaker of Tanzania, bisecting the subject so as to facilitate business.

I wonder in the area of business, the traditional idea is always that the Speaker is concerned with the keeping of order and procedure. But recent events in my own experience made me ask whether there is another area even more important, such as being the guardian of

an institution. And as a guardian, responsible to the nation, particularly when you have moved from a one party system to a multi-party system, and you find so called threats or manoeuvres against this new found conventional institution. You may not find the answers in your Standing Orders, but you see things happening. Sometimes even if you don't have the right words, but you feel you have to step in and defend the institution. A recent example happened to me and I acted more out of a reflex. It was not a subject matter of the debate before us. But I felt the remark was aimed at the institution and I had to come in to protect it.

So what I am asking here is if we stick to just the traditional roles of the Speaker, we may lose sight of what is fully needed in the Speaker of today.

I wonder whether I should stop here, but before I finish, the wording of the topic not only centres on administration, but the word "multi-party" administration. I am assuming that word was put there because many of us have moved to a multi-party system. Not too long ago, I happen by chance to have been a Presiding Officer in the one party-system and I am also one in the present multi-party. I underwent a lot of changes in my own self.

I would like to stop here because I am not sure if I am going to be articulate enough. But I think I have sent out some feelers. Thank you.

The Conference Chairman (*Honourable Munyenembe*): Honourable Ndebele.

Honourable Ndebele (*Zimbabwe*): Thank you, Mr. Chairman, I want to thank you for a well thought out presentation and also that of the seconder. I just want to make one comment and that is in regard to employment of parliament staff. I understand that in Malawi, the Speaker is the employer.....(*Interjection: Will be the employer*)..... will be the employer. Well, in Zimbabwe, we used to have it that way. The Speaker was the employer. But we had to change our constitution to make the Standing Rules and Orders Committee the employer, which is very much like the South African situation. It is still Parliament that is to be their employer. This was an attempt to run away from the possibility of capriciousness of an individual in looking after an institution such as Parliament.

In Zimbabwe, Parliament staff is not from the Public Service. They have got an independent staff. But the question I wish to pose to this distinguished conference is that of trying to get high performance from workers from Parliament. How do you do this? We are always talking about comparison with the Civil Service and we know the work attitudes and the inefficiency that is associated with the Civil Service and the Public Service.

I wonder whether Honourable Speakers and Presiding Officers have considered the possibility of employing certain senior staff in Parliament on contractual basis, so that their retention in Parliament will depend upon high performance? Thank you.

The Conference Chairman (*Honourable Munyenembe*): Honourable Godana, Speaker from Kenya.

Honourable Godana (*Kenya*): Thank you, very much Mr. Chairman. I don't really have questions as such, but I have to share the experience of my own Parliament, on the Speaker's section. I must say I have found the presentation very interesting. This is a subject which is also bothering us at home. For the last thirty years, that Kenya has been independent, say before independence, the tradition has been that Parliament staff are part of the Civil Service. Nonetheless, when openings occur within Parliament, interested people apply and are recruited by the Public Service Commission from either public sector institutions or from the Public Service Commission. Although this is the case we realise that Parliament staff, by the nature of Parliamentary work, normally are occupied much more, I mean in terms of time and commitment than the ordinary Civil Servants.

So there is a general 20 per cent top up by a way of allowances, special allowances to Parliamentary Clerks whereas the junior staff, drivers and so on are paid overtime allowance at specified hourly rates.

Now, from time to time, Parliament has felt it needed parliamentary staff who are loyal to Parliament and Parliament alone. At one time it appeared like the Government was conceding to the idea of an autonomous Parliament with its own staff. But for some reason, this idea did

not get anywhere. The fact that Parliamentary staff are part of the Civil Service means that from time to time, individuals are transferred from Parliament to the rest of the Civil Service occasionally, on promotion, sometimes at a horizontal level, maybe at the request of the individual, but sometimes of course by the Civil Service or by the Clerk in charge whether the particular individual wants to move away from Parliament or not.

The Clerk is the administrative head of the staff. The Speaker, we say, has the position of a Minister, but traditionally the Speaker should not tamper with everyday management of staff. Really it is the practice in the country, that it is the Permanent Secretary in every Ministry who is accountable for the monies allocated to the Ministry. The Minister is not responsible for the day to day administration.

Now, that we have a multi-party Parliament, Members of Parliament, have again raised the issue and, in fact, a motion has been adopted calling for the question to be re-examined by the Speaker's Committee with a view of making recommendations to the Government to bring legislation to make Parliament autonomous so that parliament staff are employed by and are loyal to Parliament. That is to say that they be delinked from the rest of the Civil Service. This is the situation in Kenya right now. The matter has been referred to the Speaker's Committee and we are awaiting its report.

The Conference Chairman (*Honourable Munyenyembe*): Maybe in the course of your contributions, you may want to answer the questions which have been raised by the Honourable Speaker from Zimbabwe, and that is, can Parliament consider the idea of engaging people on contract basis.

Yes, I saw a hand first from Lesotho. Honourable Masilo.

Honourable Masilo (*Lesotho*): Mr. Chairman, I didn't mean to respond to the Honourable Speaker's question, but our experience in Lesotho is that we do have contracts for some of our staff who we think are special for our institution to function. We do have such contracts for people we feel are vital for the smooth running of Parliament.

I wanted to make a very small contribution. Looking at this heading, it talks about the role of Speakers in multi-party systems and I think the idea was to draw our attention to the fact that we are moving from one party parliaments to multi-partyism. As far as I am concerned, in a one party Parliament, the job of the Speaker was something monotonous, not challenging. You had one party and it ended there. In a multi-party Parliament, the job of a Speaker carries more challenging tasks and is therefore more demanding. The Speaker has got to see that multi-partyism works, even in Parliaments where you have one or two opposition parties. They have to be encouraged to make democracy work.

Now, this to me is very important in a changing situation on our Continent. The Speakers should see themselves as facilitators that help, even as the Speaker from Tanzania called them "marginalised parties". People might even fear to speak, simply because they are being hated, they are being bullied and the Speaker is there to see that democracy is seen to be working within Parliament. For instance, Mr. Speaker, in your paper, you mentioned the question of the speaker keeping away from controversial political issues. Now, in a multi-party Parliament, what might be controversial, might be acclaimed by another party and this is where the Speaker has got a very, very crucial role to play.

Let me quote the Honourable Madam Speaker from South Africa for instance, that when President Chissano was in South Africa, here she was. As a speaker she said, she had to confess on behalf of the people of South Africa for what South Africa had done during the oppressive regime in that country. Now, naturally, the ANC people applauded what she said, but the National Party took an exception and I don't feel what she said was wrong. So although this was controversial to other people, she still made the statement in the interest of Parliament and the nation. This is the type of challenge we should accept because if we are so sensitive about controversial issues, we will not help our Parliament and our nations. Thank you.

Honourable Masisi (Botswana): Thank you, Mr. Chairman. In fact, I only want to indicate that the topic before us is most interesting. But I would like to confine my remarks to the experiences we have had in Botswana.

During the last term of Parliament we reverted back to electing a Speaker who is not a Member of Parliament. We have never heard any controversy during the 6th term of parliament. I think it is because we had a very, very small number on the opposition side. At one time we had seven members from the opposition against 32, at one time five, and the last time we only had three against 34.

Coming back to the role of the Speaker in the multi-party system of Parliament, I think it is essential that the Speaker should remain impartial and feel confident to use his powers as provided for in the Standing Orders.

Any Speaker is a human being and has got his own personal interests and political interests, but so far as we have noted, we have some problems with the administration of Parliament. The only thing that touches me most is that our members of staff for Parliament have been controlled by the head of the Civil Service. This arrangement is causing a great deal of concern because as some Speakers have said, the head of the Civil Service can transfer any officer of Parliament to any other place irrespective of the specialised experience he may have acquired during his service in Parliament.

This type of situation causes a lot of problems for the proper administration of Parliament especially where transferred officers were well versatile in procedures and practices of the House. This has obviously affected the independence of the Speaker and that of Parliament. We now believe that time has come for change. Parliament officials should not be controlled by the Civil Service. We haven't considered which mechanism we shall use, but I think that the Speaker should have control over the members of staff of Parliament. As far as administration of the facilities of Parliament are concerned, we have what we call a Standing Committee of the House which is a committee comprising Members of Parliament appointed by the Speaker. This Committee comprises both Members from the ruling party as well as the opposition. The Chairman is appointed by the Speaker.

This Standing House committee is completely responsible for the comfort of Honou able Members both in the House and in the places they put up when attending Parliament or meeting

of Committees. But still this is not satisfactory because the House Committee can only recommend to the Speaker that certain improvements be made, who in turn asks the office of the President and Cabinet for assistance. His recommendations are therefore subject to the approval of the Office of the President and Cabinet.

But we feel very strongly that Parliament should have autonomy over its staff so that the productivity of both staff and members is enhanced.

Honourable Tjitendero (Namibia): Thank you Honourable Speaker and let me join the others in congratulating you for a very well presented paper and a very eloquent secondment from the President of the Senate in Lesotho.

One quick comment, that is, as I am listening both as a newcomer and in a process of creating a new institution in Namibia, I clearly see it is the role of a Speaker defined on one hand in terms of a traditional role as Speaker as originated from the Westminster model with its requirements, and at the same time, I see it as the role of a Speaker today in 1995 in the staff context where we are in a multi-party democracy.

Multi-party Parliamentary Democracy has been a challenge to which we will have to rise because there are a lot of issues that we, as Speakers now, must address. I thank our Senior Speaker from East Africa, the Republic of Tanzania, Honourable Msekwa, who enumerated some of the aspects that are covered under administration. There is a general assumption that Parliament is autonomous. It is autonomous in terms of resources because one cannot administer, if one, does not make a determination over the resources that you are administering. If it is being extended from another source, then obviously again our decisions are being undermined because you still have to make a request. The administration would cover other areas such as security.

The role of the Speaker in multi-party Parliaments in Southern Africa cannot I think, be partial. The impartiality is in a stable condition, credibility is in a stable condition. But then there are other requirements of how the Speaker comes into the House. There is an old tradition

and still being practised today in the modern Parliamentary practices that the Speaker resigns from the party that elects him or her into the House in order to exercise impartiality. As Honourable Godana from Kenya has mentioned, I think we had a very unprecedented conference where all the Parliamentarians from the Sub-Region met to re-evaluate the role of Parliamentarians in Lusaka, and I think this issue also came up. The issue of the Speakers affiliation to a party, in my view may be a little bit premature. This may be possible in future. Being a Speaker is to be impartial, credible and fair. This goal is achievable, but to be suddenly apolitical once elected to the Speakership, while desirable, may not be achievable at the moment. Thank you.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much. It would appear we are pressed for time and we might as well move to the next topic. But before we do so, Honourable Ndebele from Zimbabwe raised a very important point. That is the idea of involving management contracts to give service to Parliament in order to improve efficiency. I think this is an idea which has got to be looked into very carefully because, as you already stated, because of the red-tape in the Civil Service, they take their time. They have got their own way of working, things can't move and when things cannot move, something must be done, hence the idea of involving the management contract to improve the provision of services to Parliament.

Well, I think this will give us food for thought as an idea which we might want to discuss in future.

Now, having said that, I simply want to sum up as follows: I will go by what the Senior Speaker from Tanzania said. He divided administration in two categories, General Administration and then the involvement of the Speaker in business of the House, because again, that is part of the administration. Whatever the Speaker does, he must be impartial. He must as much as possible, show his impartiality. You have also got to be credible, otherwise, you will be getting all sorts of 'flack' from members of the various political parties. This is something I think we must bear in mind. In any case, we are guided by the Standing Orders of the House and therefore if one goes by the Standing Orders of the House, I don't think you can go astray.

There is dynamism in the role of the Speaker and as such there are certain things we are likely to incorporate in the system in order to meet the day to day challenges of the Speakership. Thank you very much indeed.

Honourable delegates, we have two more presentations.

SECOND PLENARY SESSION

Parliament's Independence: The Need to Control its own Budget

Opener : **Namibia**
Seconder : **Tanzania**

Honourable Tjitendero (Namibia): I thank you Mr. Chairman, the Speaker of the Malawi National Assembly.

Mr. Chairman, it is with great honour and pleasure indeed to be one of the thirteen Speakers present here. I think the reason why I am so jubilant is the fact that the number in terms of the multi-party Parliamentary Democracies has increased. I am sure there was a time that Speakers in this Region sat very lonely. I am sure there was a time that the Parliaments or the National Assembly were dormant institutions that were used to justify the activities of the Executives without them being strong, pro-active assembly expressing the voices of the people. I think in the 90's now we have, and we should, and we must be just such representatives of the people acting in concert with the Executive, which of course, govern while parliament does govern. But I don't believe that we influence the national policy of the general direction of our countries.

I am reminded of the French Philosopher Montesquieu who once agreed that all the functions of Government could be encompassed within the categories of Legislation, Execution legislation and the adjudication of law. It is notable that this is the same basis upon which many modern constitutions are based today namely the Legislative, the Executive and the Judiciary

branches of the State.

Although the political structures of such Governments of which Namibia is one, may be clearly defined in this manner, it is obvious that the political process of any nation is encompassed in a greater forum. This forum is the greater political participation of members of the society, in which such structures operate.

Mr. Chairman, Aristotle paints the greater picture when he outlined his thought in political science and said that the only way to maximise one's individual capabilities and to attain the highest form of social life, was through political interaction with others in an institutionalised setting, designed to resolve social conflicts and to set collective goals, namely, within the context of the State.

Therefore, it may be said that all people are politicians, but some people are more political than others. Mr. Chairman, what is important, is that without law, there can never be any order and good governance, and without Parliament there can never be good law.

Let me hasten to say I am deliberately using the absolute 'never' so that we can debate. We are dealing with political reality and politics is the art of the possible. Anything is possible, but as a matter of my presentation, let me state this so that we as parliamentarians can have something, a bone to chew.

Parliaments have in modern society become the pivotal points around which all political activities are centred and it may be argued that without the independence of this organ of government, the political process in any government will become stifled by the interference of the external influences which aim at the destruction of democracy or any democratic order.

The reason why it may be said that all political activity in a democracy pivots around Parliament is exactly because most democratic societies besit the description afforded to them by Aristotle above, that I have just quoted. I believe that we have democratic societies in terms of structures; and the question now is, are these institutions and regular elections we hold in this

Region equal to democracy? Or are there necessary conditions to establish democratic dispensation? And these are questions we are here to answer collectively.

Likewise, true democracy is usually reflected in a Parliamentary setting, because it is in this context that the elected representatives of the people debate and quite literally thrash out issues of national importance.

Mr. Chairman, the growth of communities have made it impossible to give every person actual participation in a political arena, as envisaged in Aristotle's time. It is for this purpose that these people partake in a representational capacity through their elected representatives in our Parliaments.

The classical definition of Parliament as the legislator is needlessly too simple and overtly inaccurate because Parliament is not only a lawmaker, but also assimilated more distinctive features of the policy maker, advisor and general guardian of the interests of the entire nation.

The importance of this aspect of Parliament is the fact that the organs of government do not operate in a vacuum, and they must be realistic in their approach. Joan Spero states in her book 'The Politics of International Economic Relations' and I quote 'If theory and analysis are to maintain touch with reality, it will be necessary to bridge the gap between economics and politics to explore the interface between economics and politics in the international system', end of quote.

In order for Parliament to make decisions which are based on equity and focus on the interests of the nation, it must be representative in nature, and likewise unaffected by the influences which lead to corruption. Parliament cannot effectively reach this goal if the budget for its expenditure is controlled by another body i.e. the Executive, and its work and effectiveness are curtailed by such bodies. The functions of Parliament are distinctly unique, and the greater public service cannot be expected to understand and budget for these functions without imposing a restrictive interpretation on such expenditure.

In the final analysis, Mr. Chairman, government is accountable to Parliament for the good management of its funds, yet, paradoxically, in some of the Parliaments we represent here, Parliament cannot or, does not control its own budget. I think that's what you are setting out in terms of independence. The evidence of the existence of such a paradox is in the structure of Parliament. In many countries, including my own, Namibia, the right of Parliament to influence the budget is curtailed in practice, maybe unlike in the United States. The Government's accountability emits a distinctively hollow ring. The contradiction being that while Parliament approves the funds which the Government uses to implement its policies and its programmes, paradoxically in some countries the Parliament, for its programmes, will have to go to the Treasury which is a department or a Ministry of the government, to have its funds approved. Is that not a contradiction or it is not a contradiction, is it not an impediment for the efficiency and overall smooth functioning of the institution of Parliament? This is quite obviously a desirable aim, because after all, "the need to raise revenue is closely associated with the origin of popular representation" according to Philip Laundry.

In keeping with the sovereignty and independence of Parliaments, both financial and procedural, countries have recognised the independence of Parliament staff away from the Public Service, a recent example of such a move is the 1975 amendment to the law in Thailand which provided such independence.

This point, in fact, has already been pre-empted. We have indeed discussed this point right here in this Session. I think what needs to be done is to bring it into operation within that push and pull factor between that healthy tension between the Executive and Legislature. I do believe, personally, that if there is no tension, a healthy tension, between the Executive and the Legislature, then one of them is not performing its functions properly. Because that's a built-in tension - that interaction must be there and there is not always an agreement and particularly now that we represent multi-party democracy where the government, the Executive out there is one party, the ruling party and the Parliament is more a mixture of the ruling party and other parties represented in the Parliament, the tension is likely to rise but it must rise within the context of the rule of law.

Similarly, India has a separate civil service code and independently employed staff to cater for the distinctly unique requirements of parliament. This system recognises that the codes of conduct, as well as the conditions of service for the staff cannot nearly be equally equated with other Ministries in the Government, and therefore must be separate because of this unique nature and function that Parliament performs.

Quite obviously the independence of Parliament staff pre-supposes an independent Parliament budget and likewise services a second purpose, namely, the independent disciplinary and employment procedures.

I fully concur, at this point before we have implemented ours, with the positions submitted by the Honourable speaker from Zimbabwe. I therefore wholeheartedly accept that kind of a proposal whether or not we shall implement it and to what extent I still don't know. Maybe the reason why I am accepting it so easily is that we still have not reached that stage, but it is a welcome proposal.

In any event an important feature of modern Parliament should be absolute power over the entire budget of government and sovereign liberty to accept or reject requests from individual ministries and government organs.

After all, this is not a new thing. Parliaments are designed basically for that purpose whether or not we do that, that is, in fact, the question we have to ask. We don't have to do it simply because it is there. It has to be felt and it has to be based on a well justified need.

I am skipping some of the comments just to save time, Honourable Chairman. It is economic empowerment which is probably the most important feature of any independent state, and economic empowerment of Parliament can, therefore, also be said to manifest its independence which it so often claims to have, yet fails to realise in practical sense.

Democracy as we know it today, implies, maybe let me not say as we know it today, but let me say, as I know it today, implies Capitalism and Capitalism conforms to the demands of

modern economy only when correctly controlled. This control should be in the hands of the people, and the people are represented in Parliaments. Thus Parliaments must be strong proactive reactive assemblies.

Control of international capital flow can be identified as one of the more important features of democracy, and it is for this reason that countries in the African Region have decided to form the Southern African Development Community, as well as the proposed SADC Parliamentary Forum which aims at strengthening and consolidating both economic and political unity of the Southern African Region.

If we are to illustrate to the electorate that we as politicians are serious about the eradication of poverty, crime and hunger, then we must make such aspirations a reality before the electorate loses confidence in us.

Mr. Chairman, by way of conclusion, poverty, hunger and crime are only eliminated once the structures for self-sufficiency and work have been put into place and these will not evolve inadvertently. We the Parliamentarians are the ones who hold the cards and we are the ones who can make the difference when policy decisions are taken, but we can only achieve this end if our independence is realised and enforced, namely, the Parliamentary sovereignty and Parliamentary autonomy.

Thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*): thank you very much.. May I now call upon the Speaker of Tanzania, Honourable Msekwa to second.

Honourable Msekwa (*Tanzania*): Thank you very much, Mr. Chairman. I thank you for the opportunity. I appreciate this solidarity between Namibia and Tanzania because at the last meeting in Botswana, Honourable Dr. Tjitendero proposed a topic and I was asked to second that topic. It has happened again today. So I think there is magnetism between us.

Mr. Chairman, I must apologise that I don't have a prepared text which can be made available to the participants of this Conference later, but I would like by way of supporting the mover, to say the following:

First of all, I would like to congratulate him for a well thought out presentation. This was a very well prepared paper, it treats the subject thoroughly and analytically and I think this leaves no doubt in our minds that he has given a lot of thought in the preparation of his statement.

Mr. Chairman, we are talking about the need for Parliament to control its own budget. So let me dwell a little bit on the concept of control. What do we mean when we talk about Parliament control over its own staff, controlling its own budget. We have just completed our discussion on the need to control staff. All we are saying, as Parliamentarians or the heads of Parliamentary institutions, is that our objective is to enable our Parliaments to carry out our functions properly and efficiently. That is the main objective of all this discussion. We want to enable our Parliaments to carry out our functions properly and efficiently.

We think the best way of ensuring that is to enable the Parliaments themselves to have control of certain facilities. These are many but just now we are talking about the Parliament budget. Now, Mr. Chairman, I suggest we should clearly differentiate between two aspects of the concept of control. We are talking about controlling the budget. The first aspect is that we could be talking about the need to enable our Parliaments to have the authority to determine how to use the money we have. That is to say, you have an amount of money given to you in your budget. One aspect is that you want complete authority in spending that money which you have, without interference from outside. The other aspect is that you are asking for authority or demanding the power and authority to determine how much money you will have. That's the other aspect. I think when you have differentiated between these two aspects, you can quickly clear the first one because I don't think many people have a problem with the authority to spend what they have once the Parliament budget is approved.

The Accounting officer is the Clerk of Parliament and he has complete control over the expenditure of that budget. I think that is standard in all our Parliaments and there is no

controversy about that. And really that's not what we are talking about. I think what we are talking about is the second aspect, namely the power or authority to determine how much money we need for the proper functioning of our Parliaments. There again we have to differentiate between what is desirable and what is practicable. I think as responsible people we have to see that there are two aspects. Honourable Dr. Tjitendero made reference to economic empowerment. In economic terms, people who deal with economics always differentiate between interest in goods and the demand for those goods. That is to say that there is a difference between interest for goods and demand for goods. Interest is what is desirable. Demand is what is practicable.

For example, many people are interested in owning a car, but sellers of cars don't treat that as a demand, they treat it as merely an interest. What they treat as a demand is the interest of those who actually have the money to buy a car. That's what they call demand. How much demand is there for Pajero cars in Tanzania means how many people have an interest in buying a Pajero car, and they also have the ability to buy a Pajero car.

So there is that major difference between interest and demand in economic terms. In our political terms, I think there is also a difference between what is desirable and what is practicable. Controlling our own budget is certainly desirable, because of the noble objective that we want to get enough money to enable our Parliament to function properly and efficiently. That is indeed desirable.

But what is practicable? Appropriate control, or effective control, implies control over revenue. If we had power to control our own revenue, then we could raise as much as we want for the proper functioning of our Parliament. But in my humble opinion, we don't have any power at all over revenue. We depend entirely on the Ministry of Finance to raise the money by way of general taxation, and then dish out that money to the various sectors of the Government, including the Legislature.

So long as you do not have control over revenue, it is very hypothetical to talk about control over how much you need, because then you are faced with the problem of the limited

cake and of sharing that cake in the national interest. The Ministry of Finance will say that this is all we have for the coming year. This is all the revenue we expect to raise in the coming year. The Army needs so much, the Ministry of Education needs so much, everybody else needs so much; and what is left is this for your Parliamentary functions.

Now you can argue and say that is not enough for our purposes. They will say, "yes, but where do we get the extra money that you need?" That becomes very difficult indeed.

So my submission is that it is desirable to have the authority to determine how much money we need in our budget. But I think we are handicapped by the fact that since we do not have independent authority to raise revenue, we are handicapped in the sense that we must share the cake with other sectors of the community or society which are also equally important. We cannot hope to win, unless we have power over revenue. Since we don't have power over revenue, we will have to be satisfied with negotiating tactics and that is my last point. It is your negotiating capability which will enable you to get as much as you can out of the common cake.

There are many tactics of negotiation and I believe our Accounting Officers have them. We in Tanzania have developed a peculiar negotiating tactic in that the Parliamentary Finance Committee goes through the budget proposals before they are forwarded to the plenary session of the Parliament. The Parliamentary Finance Committee scrutinizes one Ministry after another. In our system, the Parliamentary budget is submitted to Parliament by the Prime Minister or the Prime Minister's Office; along with his own budget for approval by Parliament.

When the Finance Committee is going through the Prime Minister's budget proposals, the Ministers of State in the Prime Minister's Office come before the committee to defend the proposals. We recently developed what I could call a "guerilla tactic" which goes like this: "Our parliamentary Committee said that for the purposes of running the business of Parliament for the next 12 months, we need so much money. You have not given us that much. We are not going to approve the vote of the Prime Minister's Office until you agree to give us what we want". These are guerilla tactics, but it has worked in our case. The Prime Minister said to his staff, "I don't want to quarrel with Parliament, so you people go, sit down and see where you can get

extra funds. If necessary raise taxation on something, but for heaven's sake get this extra money because we want our vote approved by Parliament". This was one way of getting what we want but under normal circumstances, so long as you have no control over revenue, it will be very difficult to determine and be sure to get what you want. Mr. Chairman, that's all I wanted to say by way of seconding the motion. Thank you (*Applause*)

The Conference Chairman (Honourable Munyenembe): The topic is now open for discussion. So please, feel free to make your comments. Are you ready? Yes, I recognise the Honourable Deputy speaker from Kenya. Honourable Dr. Godana.

Honourable Dr. Godana (Kenya): Thank you very much, Mr. Chairman. I must congratulate the two presenters for the short but thought provoking presentations. On the subject of the need for parliamentary control, control over the budget, in Kenya of course, we have a system as explained by speaker Msekwa from Tanzania. The Clerk has overall control. Parliament has no control at all. The Clerk of the National Assembly who is the equivalent of a Permanent Secretary in a Ministry is the Chief Accounting Officer in a Department which falls under the Office of the President (OP). The funds are voted, the National Assembly has a sub-head vote under the general vote of the office of the President and Cabinet Affairs and he spends the money according to procedures laid down by government in Treasury and DPM circulars.

Now it's natural that any institution which has to spend money, any public institution, for that matter any individual even at a domestic setting, will want to have as much independence as possible. I think the freedom to spend even in a household, the *mama* or whoever is responsible for expenditures, will want to have as much independence as possible and if possible want to have as much more. I was very impressed by the question which Honourable Speaker Msekwa posed, that is, the need for us to distinguish between what is desirable and what is practicable and I want to say, in fact, what is desirable even from a different angle than that which he brought out.

The Public Accounts Committee has to review all government expenditure to see whether it is spent in accordance with government procedures, or whether it is properly spent or not. And

that includes expenditure of Parliament itself. But the Treasury is the one which decides how much money is available in the coffers and what it can distribute between the competing needs.

When we talk of the need for parliamentary independence, it will be useful for us to try and put ourselves also in the position of other government institutions to appreciate also the need for control of a parliament and not to insist giving ourselves so much freedom of expenditure. In practice the Clerk of the National Assembly has not found himself very much constrained. Whenever there is some major issue you know parliamentary budgets, have often exceeded what was allocated. You may have parliamentary committees, commissions of inquiry which were not budgeted for. We had one three years ago which went on for I think, three or four months, visiting the country-side interviewing lots of people.

In such situations, we had to pay the staff, you have to pay for the transport, you have to pay for special allowances for members, and so on. In fact, I understand there has been a secret understanding between Parliament and the Treasury, an unwritten rule that they should engage in close consultation and where the Clerk feels there is an emergency on which he has to overspend, notify Treasury who will honour the request so long as it has been notified and I think my colleague as Deputy Clerk has led the team in negotiating with Treasury for many years. I understand they do occasionally revert to "guerilla tactics". He may say "you know if you don't consider this request things are going to be rough on some of your Bills".

So in a sense, I think, these are checks and balances which both the Executive (Treasury) and Parliament have, and I think it is proper that, in my view it remains that way; that we do not insist on taking over the powers to determine how much money we need. Of course, we need a lot more. We even need to be paid ten times more, twenty times more. We will need to be paid for any kind of opportunity to travel around the country, to have some committees, and so on, investigate any matter. But I think it is government which has been elected, especially in a multi-party era, on a particular programme that should have the final say on what taxes they can impose on the people because what we spend has to be raised from the people. And parliamentarians have to respect that.

Thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenembe*): Thank you very much Honourable Dr. Godana. Yes, the Honourable Speaker from Zimbabwe.

Honourable Godana (*Zimbabwe*): Thank you, Mr. Chairman. I think this topic was given very adequate treatment by the Honourable Speaker from Namibia who has no doubt researched very deeply on his paper. Interestingly enough, the balanced view has been provided by his seconder, the Honourable Speaker from Tanzania. I think this has been of advantage this Conference in that the two views have been put forward for discussion.

I just want to make one observation. In Zimbabwe the budget of Parliament is not debated by custom and it is a convention which is also observed in Zimbabwe that one cannot debate where one has got a monetary interest. Until recently, the budget of Parliament was never questioned. Parliament was always given what it asked for, until of course the country and government hit hard times. That's when the Minister of Finance, for the first time, cut the budget of Parliament. Of course this makes things very difficult for us because the Treasury does not always know that there are very many factors which come into play in Parliament work.

For instance, there are ad hoc committees that are formed in Parliament which nobody can adequately make provision for because that depends on the Members of Parliament themselves making these ad hoc committees. And also it is not Parliament itself which determines the frequency of Parliament sittings, it is the Leader of the House. So, I think that if Parliament is generally not allowed to have the money that it is asking for, it is placed in a great deal of inconvenience.

When I took over as Speaker a few months ago, I recognised this problem and it was just about budget time when all the Ministries were bidding for allocations. I summoned the Minister of Finance to my office and reminded him about the privileges of Parliament and explained also the work of Parliament, these ad hoc committees and so forth, I said, "look, if you cut our budget and also if you do it drastically, we will adjourn Parliament in the middle of government business

and we will tell the country that we were not given the money to go ahead".

I also informed him that the previous custom was that the budget of Parliament was not questioned. Obviously, the Speaker and the Speaker's Office is a very responsible office, I hope that the Speaker will not allow the accounting officer to use the public funds recklessly.

So, I think that resorting to "guerilla tactics" which the Honourable Speaker from Tanzania has mentioned is another way of looking at these matters. I wish I had known of those tactics. That's why I summoned this man in a very civil manner and said, "Look, otherwise we will not sit". He was not impressed though.

I thank you.

The Conference Chairman (*Honourable Munyenyebe*): Thank you very much. Any more contributions? Yes, the Speaker from Swaziland.

Honourable Mncina (*Swaziland*): Mr. Chairman, thank you. Regarding the question of Parliament to control its own budget, may I know from the mover as to how can Parliament establish an effective mechanism to control its own budget in a case where the Executive brings certificates of urgency.

I think you all know that the Executive always brings certificates of urgency from time to time when you have already budgeted for the whole year for the business of Parliament and when they bring those certificates of urgency, it means more money needed again.

So how can you control this? This is the question.

The Conference Chairman (*Honourable Munyenyebe*): Any volunteer to reply to that?

Honourable Tjitendero (*Namibia*): Honourable Speaker, Sir, I beg your pardon, I was so mesmerised by the very, very informative and educative comments and I had been taking my

notes very seriously that is why I did not hear the question. I do not know, Honourable Speaker from Swaziland, whether I will answer the question. But I can try to state what the situation is. As I said, I think we are here to share the practical experiences we have in our various Parliaments. It is true that we can budget and there will be those unscheduled session or extensions of the sitting period as a result of bills that are being felt, within the Ministries, to necessitate the extension of the sitting period. That is absolutely true.

The control that I was talking about, because by doing that, the government itself is giving us the authority to justify expenditure as it is in the best interest of the nation. It is justifiable.

The question that Honourable Msekwa raised in terms of the level of determination of how much, I don't think that they can even reach there. That's not our domain. But it is the question of controlling what has been allocated to us without the second revisit of the Treasury or the Minister of Finance to say we now are willing to spend while the funds have already been allocated to Parliament. This maybe a peculiar requirement in our situation of course, even our colleagues from South Africa may not have the same situation because I think on the first sitting, you have attempted to change a whole lot of regulations that existed before.

This, I think, our situation is an inherited one because Namibia, as you know, was run by the public service - the politicians were in South Africa, and the public service was, in fact, running the day to day administration of the country, and as a result of that there were lots of regulations in terms of decrees that the Administrator General was passing.

So, this is what I was referring to. But I think all of us could, maybe, ponder as to the response that I have given, but in my judgement if the state in the national interest dictates that the House sits beyond the scheduled sitting dates, and of course, there are also the sitting allowances for members to come from outside of the seat of Parliament which just goes up by leaps and bounds during the sitting period. The Clerks initially have the headaches, to say, "no, if we sit more than this, it will cost us more, you are given the figure, it is going to cost us this much. How do we justify to the extension of period". I have had discussions like that with the

Clerk and my position had been to go back to the Ministry or Ministries concerned to find out how urgent this issue is, whether we should adjourn and come back in the prescribed period or continue.

I think as a new Parliament, we have been irregular because we have been sitting on and off, based on this very quickly conceived budget and pieces of legislation. They are necessary because sometimes they are enabling provision for the government to function as there were restrictions before. So you cannot say, "no we will wait until the next session". On that, I am only giving you my reactions not an answer.

I am also very grateful for the position explained and demonstrated by the Honourable Speaker from Zimbabwe on the traditions that they have had. I, as a new Speaker, fully appreciates the "guerilla tactics" which were not in my little notebook of guerilla warfare in the parliamentary sense.

I think, I don't intend to answer your question. I just wanted to react and may be, those with longer experiences of parliamentary assemblies could, in fact, answer that question. I do intend to implement some of the ideas that I am advancing here, having exchanged them with people who have had longer parliamentary experience.

I thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenembe*): We will first have Honourable Msekwa and then Honourable Dr. Ginwala.

Honourable Msekwa (*Tanzania*): Thank you, Mr. Chairman. Just an additional answer to the Swaziland question. I think the normal procedure in that case would be that this was unforeseen expenditure. At the time of budgeting, you didn't anticipate there would be these extra meetings.

So this is justifiable unforeseen expenditure and it would have to get supplementary approval through what we call Supplementary Estimates in addition to your original budget and

that would be approved in the normal way. So that would be the procedure to go about it.

Thank you Mr. Chairman.

Honourable Dr. Ginwala (South Africa): Thank you. Firstly, on the question of extra sittings, I am not sure how that works. In South Africa, the system is that if you are out of session, you get allowances for committees and so on. Now we also, to complicate our situation, have a Constitutional Assembly. This is composed of the same Members but meeting as a Constitutional Assembly. To facilitate their work and to save money, we very often convene Parliament, and openly say that Parliament will meet, say for a day, and adjourn for three weeks while the Constitutional Assembly goes on with its work. Then we don't have to pay any additional allowances on the basis that Members of Parliament are paid an annual wage and they are supposed to work for a year, not on a part time basis.

So that is the system we have been using and saving quite a lot of money, by working in the particular way. For example, when we adjourn in June, we are planning to come back on 31st July but until the 15 of August, it will be purely constitutional Assembly work. But technically, we will have a session on the 31st to debate general motion or anything else which will bring Parliament back into session. No additional allowances will be paid. It is not a manoeuvre, Members know we are doing this and it is so far accepted.

To come to the general question, there was also, I believe in the past in South Africa, no questioning of the amount Parliament asked for. But with the new democratic Parliament, we voluntarily felt we had to give in to national priorities and national guidelines. To our surprise, this built up such goodwill with State Expenditure. As a result, we have an excellent relationship and we can get extra money when we need it. The problem we had is that Members of Parliament have virtually no support. I suspect your Members don't have support either. But our Members keep expecting a great deal of support and we have consequently had to tell them that, "look it's not as if Parliament has money. You vote for it. It's your political parties that determine budgets. Go back to your parties and tell them to give us more money and we will give you the support you need". That debate has meant that in the forthcoming budgets of

Parliament, both the staff and Members will be involved in actually putting forward the budget.

So we hope by that, after one or two mistakes which we no doubt will make, we will be able to run much more smoothly because it will have been an agreed budget even before we put it forward.

The Conference Chairman (*Honourable Munyenyembe*): Do you want to raise another question or comment rather? .Honourable Mncina?

Honourable Mncina (*Swaziland*): Not exactly, Mr. Chairman. Mr. Chairman, I just wanted to say that the reason why I raised this question is because most of the time when the Controlling Officers in Parliament ask for supplementary funding from the Ministry of Finance, the Minister always says, "I told you, you should control your money and the money I gave to you was enough. Why didn't you tell me at the time when we were funding you".

So what we do now in Swaziland when there is some business coming all the time, business that we had not planned for, we always tell government or the Minister of Finance: "this business has not been budgeted for, Your excellency. So be aware that very soon we will be asking for money and when we ask for money, don't shout at us or don't shout at the Controlling Officer because we will really be needing the money as this is extra work. Then he will give it to us without fighting us when we ask for the money.

So we wanted to share this with you and we wanted you to share with us what you do in your particular country where you come from when the Minister of Finance starts arguing with you, starting to refuse to give the money.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much. It seems we are running short of time. May I simply sum up as follows: While it is absolutely necessary that Parliament must control its own budget, we must also bear in mind that there are other competing needs in the country, national needs. and therefore whatever is spent in Parliament, must be justified.

Having said that, it must also be borne in mind that it is absolutely necessary for Parliament to cultivate friendly relationships with the powers who control money. But if everything else fails, then guerilla tactics must be resorted to. Thank you.

At this point in time, may I introduce the President of the Senate in Lesotho to chair the last topic for the day.

Honourable Tjitendero (Namibia): Sorry Mr. Speaker, Sir, I just wanted to remind you that you did indeed reserve my right of reply. That is a reminder. Please proceed.

The Conference Chairman (Honourable Munyenembe): I am sorry. I am terribly sorry. You know when you are presiding over a meeting of this nature for the first time, you can be excused.

Having said this, let me now introduce the President of the Lesotho Senate whose name I have problems to pronounce. It is a difficult name for me to pronounce. He will chair the next topic. Over to you, Sir.

THIRD PLENARY SESSION

Separation of Powers Between Parliament, Judiciary and Executive

Opener : Zimbabwe

Secunder : Zambia

Honourable Ntlhakana (Lesotho)(In the Chair): Thank you, of course. Honourable Speakers and Presidents, the next topic - Separation of Powers between Parliament, Judiciary and Executive, will be introduced by Zimbabwe

Honourable Ndebele (Zimbabwe): Mr. Chairman, Sir, Honourable Presidents of the Senate,

Honourable Speakers, Honourable Deputy Speakers, Presiding Officers, Ladies and Gentlemen. As the newest member of this distinguished club, I am privileged that I will be able to draw on the wisdom of my longer serving colleagues. I have already done so and I am finding it extremely valuable.

Mr. Chairman, Sir, the concept of separation of powers is a legacy inherited from ancient Greece. It would appear that the Honourable Speaker of Namibia and I, seem to have gone to the same school because we have been quoting the same authorities. It was however the French philosopher, Montesquieu who elevated the doctrine to a "universal constitutional principle". Montesquieu was concerned about despotism in France where all power reposed in the king. Admiring the British system he said: "It is the separation of powers of Government to which English owed their liberty".

This subject gives us a wonderful opportunity to remind ourselves of and to reflect upon the three major organs which constitute parliamentary democracy in our respective countries. The Chief Justice of Zimbabwe, Mr. Justice Gubbay once said, "The essence of the doctrine is to provide a good government through power sharing and a system of checks and balances. In theory, the three organs of government are distinct and equal partners".

In this paper, Mr. Chairman, I wish to attempt to examine that proposition with particular reference to the Westminster model of Government of which our legislatures are a historical part. It is true that the separation exists but are these, in fact, powers and how separate and equal are they?

The doctrine espoused by Montesquieu found full expression in the constitution of the United States where there is clear separation of functions between the Presidents, Congress and Supreme Court. The system of "checks and balances" takes the form of a "veto". The development of two strong political parties has helped to cement the doctrine in the United States.

Parliament has the sole constitutional right to establish and alter the laws in the form of

Acts of Parliament. Although some commentators have said the exercise of legislative power cannot be questioned, that is not true to most of our jurisdictions where the legislature is limited in respect of certain types of classes of legislation by their written Constitutions. The law making function is not limited to the legislature alone, both the Executive and Judiciary make laws in the form of delegated legislation or subordinate legislation. Strictly speaking, these are encroachments on the power of the legislature, but these overlapping roles are necessary and indeed desirable for modern government to function harmoniously.

In practice, Parliament allows itself to be controlled by the Executive and this control is obvious and most effective depending on the composition of the different parties in Parliament. This control is achieved through the Executive initiating legislation and piloting it through Parliament by control of its majority in Parliament.

In Zimbabwe, the Leader of the House controls most of the Parliamentary time. Governments have at times asked for suspension of Standing Orders to enable them to rush through Parliament Legislation with far reaching consequences overnight. The question can therefore, be asked, what power do Members of Parliament or Parliament itself have, when, in fact, the Executive controls the Parliament budget through the Treasury Department in the Ministry of Finance.

Although Parliament and the Executive are separate and distinct institutions of government, I submit that they are distinguished rather by their composition and their methods rather than by characteristics of their functions.

Mr. Chairman, Parliament has power but that power is not one of confrontation with the Executive, Parliaments' power lies in the right to criticise, scrutinise and analyse the action of the Executive. The Executive being a committee of Parliament is accountable to Parliament. Through Parliamentary Committees, the Executive is put under strict scrutiny. Ministers can be summoned to give evidence to Committees of Parliament.

One of the ways Parliament calls the Executive to account is through Motions and

Members' questions on the floor of the House. Members of Parliament use this power to quiz the Executive on day to day matters emanating from their constituencies.

Although the power of initiation of a Bill lies with the Executive, the power of Parliament to scrutinize has, in the Zimbabwean context, forced Government to abandon or substantially amend crucial legislation such as the Police Bill and the Citizenship Bills, Bills which have far reaching consequences. Those Bills were withdrawn at the instance of the Parliamentary Legal Committee because some provisions of those Bills were found to be in contravention of the Bill of Rights. The Zimbabwe Investment Centre Bill and the Tobacco Marketing and Levy Amendment Bills were drastically amended on the floor of the House in order to ensure participation of the indigenous people in the control of the Zimbabwe economy.

I now come to the Executive. In discussing the concept of separation of powers in the African context in particular, I want to attempt to examine also the role of the Executive Presidency as it pertains to Zimbabwe and perhaps a few other states. In Zimbabwe, and I believe in most other Parliaments where there is an Executive Presidency, the President as Head of State forms part of the Legislative process in that he gives assent to bills passed by Parliament. In the same role, as head of state, the President has the prerogative to appoint the Judiciary and has the extraordinary powers of pardon. At the same time the President is the Head of the Executive by virtue of being Chairman of Cabinet.

Of interest to this distinguished Conference, I believe, I want to put a proposition. I put the proposition that the Honourable Speaker is also appointed by the President by virtue of his party's control of the majority in Parliament.

The separation of powers finds a more complete expression in the independence of the Judiciary which is generally accepted and applicable to most democracies. The judiciary has the function of interpreting the law and guarding it and ensuring that it is maintained and respected.

In theory, the system is meant to work like a partnership; each organ carrying out its functions in harmony with, but not being encroached upon by the others. In practice, there are

occasional conflicts. I will give examples but before I do so, I want to say quite categorically that some examples are examples which I have gleaned from other countries. If I should be mistaken about my details, I stand to be corrected. I will deal with South Africa. In South Africa, there were certain celebrated cases. There was the case of Harris and Ken Ndlovu. These were constitutional cases in South Africa where a conflict arose when the Legislature sought to remove the non-white voters from the common voters' roll. The courts maintained that the Legislature could not pass such a law without following special mechanisms entrenched in the Constitution. The Legislature in turn, evoked the supremacy of Parliament where it claimed to be the highest court in the land.

In Zimbabwe also, such conflict arose when the speaker of the House sought to challenge the authority of the Supreme Court by refusing to pay the salary and allowances of a suspended Member of Parliament contrary to the court's ruling that Parliament had no power to withhold a Member's salary. Parliament was reminded that the judicial powers of Parliament are limited only in relation to the breach of its own rules under the Privileges and Immunities of Parliament Act.

However, in Zimbabwe, this conflict has never been serious. It was more apparent than real and was never prolonged or sustained. It was nothing more than a misunderstanding which was quickly resolved and the situation returned to a peaceful way of life with mutual respect and harmony restored.

In conclusion, Mr. Chairman, while I have argued in this paper that the separation of powers is not so separate and that power in respect of each organ is not much that of a power than a function, I must admit and admit readily that the system works and sustains the basis of democratic governance.

I thank you.

Honourable Ntlhakana (*Session Chairman*): Thank you very much Speaker of National Assembly of Zimbabwe. That was a very well presented paper. Thank you very much indeed.

You obviously belong to the age of speaking Speakers. May we now go to the next Speaker who will second the topic, and that is Zambia, Honourable Mwila.

Honourable Mwila (Zambia): Thank you, Mr. Chairman. Primarily, I would like to register, on behalf of my colleagues from Zambia, our sincere thanks, appreciation and gratitude for the warm reception accorded to us by the Conference Chairman and at the same time, Speaker of Malawi National Assembly, together with his members of staff. Right from the airport to the hotel, everything has been well arranged including the tours where we were accorded the chances of seeing places of economic interest. I would say in short, our short stay in Malawi has been, in fact, very beneficial and we shall carry with us memories that will stand a test of time. We thank you for this, Mr. Chairman.

Secondly, I would like everybody to know that I am here to represent Dr. Robinson Nabulyato, the Speaker of the National Assembly in the Republic of Zambia. He could not travel to Lilongwe because he was not feeling well and he is still feeling unwell. I am to second a motion that has been ably put forward to us by our colleague from Zimbabwe on the Separation of Powers. If I bog you down with some details that you are very well conversant with, I seek your indulgence. But that is the fact of the game. It is give and take. You take what you don't know and you flush out what you think you know better.

Well, Mr. Chairman, when we talk in terms of separation of powers, we are actually discussing the doctrine of distribution of: Authority, Control among the mutually independent organs of the government. These independent organs of the government are: (a) the Executive, (b) the Legislature, (c) the Judiciary. Detailed analysis of the functions of each of these organs will show clearly whether that particular government is democratic or non-democratic. Government under one party system and those under military rule have got this organ but the analysis of the function do vary in the degree of operation indicating that democracy is quite distant from where they are.

Now what are the characteristics indicating that the organs are democratic and they are independent? These are: (a) each organ exercises its designated power without submitting to the

dictates of the others; (b) none of these organs is superior to the other; (c) none of these organs is answerable to the others by use of its discretionary powers; and (d) functions of these three organs cannot be entrusted in the hands of the same personnel. That is you don't have same people doing the job in legislature, doing the job in judiciary, doing the job in the Executive. They must be separate. The Executive must have its own establishment of personnel and so on.

The essence of the system of separation of powers is only signified by the following: creation and conferment of these powers by a written instrument in form of a constitution that has got to stand the test of time, it must not be tampered with at any will by anybody in the system. Once it is enshrined in the Constitution or in a charter then you are quite sure that things will be alright.

The personnel engaged in executing the functions of these organs must be independent of political interference. They must not be victimised on political grounds and dismissals should not be effected on political reasons.

Each organ must have its own staff establishment and should establish training programmes to ensure that the staff are equipped with the necessary knowledge and still do their job well. All this is necessary in order for this separation of powers to provide checks and balances in the entire mechanism of government operation in order to achieve: (1) good governance; (2) accountability; (3) transparency. In this particular context, in order to achieve all these important ingredients of democracy, it is inevitable for the Judiciary, the Executive and the Legislature to be complementary to one another. In mathematics, we would say they should form a triangle. If one side falls away, it is no longer a triangle.

There are many areas, time is barring, which we can discuss that will illustrate where these organs can work hand in hand, but independently each organ keeping its own image. For instance, the Judiciary and the Executive can do their work well if they have got money approved by Parliament. But if this Parliament says, "no ways, you won't have money", they will come to a standstill. Equally, if the Judiciary says, "Okay you can make laws but we will see who is going to interpret those laws and implement them", the Parliament will experience difficulties.

Now, Mr. Chairman, let me just give a brief scenario of what pertains in Zambia. Articles 62 and 63 of the Republic of Zambia Constitution say that the Legislature consists of the President and the National Assembly. The National Assembly works under the Speaker with his supporting staff. The President is not involved in the daily operations of Parliament. When the President comes in, either by way of Bills or by promulgation of certain things, then it becomes Parliament. Now let's look at it.

The National Assembly in Zambia consists of two sections. The speaker's Chamber, which is the political wing and then the Clerk's Office, which is in charge of management of administration. The Speaker's Chamber consists of the Speaker himself, the Deputy Speaker, the Deputy Chairman of Committees for the Whole House and hundred and fifty (150) elected members of Parliament plus eight (8) nominated Members.

I am not going to bog you down with the functions of Parliament because you are all parliamentarians and you know what goes on there but it is quite pertinent for me just to give you certain divisions.

The political angle is responsible for the enactment of laws, approving of estimates, the ratification of presidential appointments and also deals with Private Members motions. And through Committees, the National Assembly provides checks and balances in the operations of all government organs, that's ministries, departments and so on, in order to ensure good governance.

Now, the Office of the Clerk. Let me make this point very clear. The Office of the Clerk is not divorced or is not distinct from that of the speaker. For clarity's sake, I have said the Speaker's Chamber is the political wing, and he is the ultimate authority on top of the National Assembly. For management purposes we have got the Clerk who is answerable to the Speaker. The Clerk is construed as the ball of knowledge and wisdom in all parliamentary practices and procedures. He is the chief advisor to the Speaker and to the National Assembly including the Members of Parliament. Not only that, by virtue of his responsibility, he also has access to the Office of the Leader of the House who is the Vice President and also to the President. On all

matters pertaining to the functions of Parliament, he advises the Speaker and the Speaker can advise the President accordingly.

For the Clerk to do his job properly, he is assisted. He has got two Clerk Assistants under him and below this two people. There are heads of departments. I will just mention the most important ones. I will not bog you down with details of their functions. Some of you have been to the Zambian Parliament and you know what goes on there. One of them is the man in charge of Legal Affairs and that is the young man who is with me here. He is answerable to the Clerk on all legal matters. When a Bill, for instance, comes to Parliament, before it appears on the Order Paper for deliberation in the Chamber, he will have to go through it for two reasons:

1. To ensure that the Bill is in conformity with the constitutional requirement. If he finds that it strays itself into the legal requirements, he will bring it to the attention of the Clerk who will equally bring it to the attention of the Speaker and then to the Minister concerned and then that Bill will not even come before the House.
2. He assists Members of Parliament when debating Bills at Committee Stage when they feel that amendments must be effected. He has to assist them with the legal jargon in framing up the amendments, and many other functions.

We have also got another head of department answerable to the Clerk who is in charge of all committees. We have got Social Committees and Watchdog Committees. Watchdog Committees are those which probe into the activities of the government ministries, details probably will be given tomorrow but for this purpose, it is a committee that does a lot of work. They take the bulk load of work that was supposed to be done by the National Assembly as a whole and fragment it into smaller units and then by that way they make the job easier and report back to the National Assembly for the Speaker not to direct the Executive, that is through Ministers to act on the recommendations

We also have the Financial Controller who looks after the monies of the National

Assembly and under him are the accounts department, audit department, National Assembly Motel and many others. We also have another head of department who is in charge of administration. This is a very wide spectrum of activities and renders social services both to Members of Parliament and to employees.

There is also an officer who is in charge of research. He has got highly qualified staff under him and in their offices. The set up at the National Assembly is that in every office there is a loud speaker. When a Member stands up to speak, they can hear him audibly and identify his voice. If one Member raises a point of order which you Members are very familiar with, these chaps in the Research Department open up their ears. If the Chair, either the Speaker or the Deputy Speaker or the Deputy Chairman, whoever is chairing that Session, instead of giving a ruling there and then says that he would consider the point of order and make a ruling at a later stage, then these officers immediately begin jumping up and down. They don't have to wait for instructions from either the Clerk who will be in the Chamber at the time or from whoever is in the chair. They have heard it for themselves and they will begin running up and down looking for the information and if it requires writing to certain institutions they will put it in writing and the following morning it will be on the Speaker's table for his signature. That is how they operate. They have the freedom of even going to various Ministries to look for information without hindrance. They are at the disposal of the Members of Parliament who want to contribute on certain issues, who require detailed information.

That is our situation in Zambia. To be exact, at times, you know African countries, have got more or less the same thing, the President is the Head of the Executive, he appoints Ministers, Deputy Ministers and(*Interjection: Time up*).....I am told I must shut up now.

Honourable Ntlhakana (*Session Chairman*): Are you continuing or are you stopping? By Article 33 the.....

Honourable Mrs Kapanda Phiri (*Malawi*): Thank you, Mr. Chairman, mine is a very short contribution on separation of powers between the Legislature, Judiciary and the Executive.

Separation of powers as a doctrine, does not mean that the three organs of the government are in two different places. Rather separation of powers is more in executing constitutional mandates with restraints and in the service of the people where the grading of the human resource in the three organs reflects the value the nation attaches to the powers exercised by the three organs. The three organs of government are interdependent and interdependence is not a shield or otherwise in defence of our status quo, but rather a vision of the world as the community of people who need each other for survival and a commitment to new structures of human relationship which reflect the community of interest.

The Constitution of Malawi does provide for the Judiciary, the Executive and the Legislature. All these institutions are supposed to uphold the Constitution so that any act of government, and any law that is inconsistent with the Constitution shall be invalid.

In Malawi, Parliament confirms the appointments of the Chief Justice after the Executive has made the appointment. The decision passed by the National Assembly can be reviewed by the Judiciary. The National Assembly confirms appointments of senior public officials, for example, Ambassadors, the Auditor General, the Inspector General of Police, etc., etc. Parliament enquires into the competence of public officials. Parliament discusses views of the Executive which can be accepted or rejected. These relationships though established under the Constitution, need to be given flexibility not only to cater for cultural and political situations, but also the changing times.

Mr. Chairman, this is my little contribution which I wanted to make. I thank you very much.

Honourable Ntlhakana ((Session Chairman): Thank you very much Malawi. Honourable Ginwala, South Africa.

Honourable Dr. Ginwala (South Africa): I suppose I should start by saying South Africa goes to the extent of having a physical separation between its three organs of government. We have Pretoria as the seat of the Executive Cape Town of the Legislature and Bloemfontein of the

Judiciary. In our Constitution, it is a constitutional principle to which all future constitutions have to conform. But there is very little debate and understanding as to the degree of separation because, I think, as the previous speakers have indicated, there is no sharp dividing line and each one of us has to work out exactly where the separation between the three lies. How does it apply in our particular country. Because of the interference of the previous Executive in the Judiciary, there is some understanding of that, but the separation between the Executive and the Legislature is something we are trying to work out.

Previously the Legislature was a rubber stamp so there was no real separation. And certainly the majority party came into Parliament with a commitment to tilt the balance away from the Executive. That was something we were quite determined we were going to do before elections. And this has manifested itself through building up a committee system. But there again you end up with problems because our committees have the power to initiate legislation. They have the powers of scrutiny and monitoring but they also approve presidential proclamations so you begin to get a committee of Parliament and Head of State effectively legislate without any reference to the broad legislature.

In practice, the problem has been exactly how to relate to the Executive. And we see this works out, in particular, because we have a government of national unity. By constitution, parties with a certain percentage are entitled to the Party Cabinet for a five year term. So you have three parties in the government of national unity. There was a suggestion that this had implications with the legislature and the lengthy debate saying we never agreed to a legislature of national unity; that while you have a government, and a cabinet of three parties in parliament, they operate not as a coalition, they operate totally separately. This raises a number of very practical problems. For example, some Members of Parliament say, "well if the Government has agreed to a compromise, our job as MPs is to put back our policies into whatever that compromise is". In other words, to undo the compromises that have been made in the government of national unity.

There are other parties who feel they are not an effective opposition because they are part of the Government of National Unity and then feel it incumbent on themselves to be particularly

vocal in terms of opposition, and all along you end up with some kind of tension. In South Africa we have the G.N.U., the Government of National Unity; we also have a sense, a view that goes to the other extreme where the President appoints the Judicial Services Commission, for example, based on recommendations from parliament, and that is seen as a violation of the separation of powers.

We have at the moment in Parliament, legislation setting up a committee to oversee intelligence and that provides that the Speaker in consultation with the President will appoint the Members of that Committee. Once again, the argument comes up that is an interference by the Executive in the legislation. Essentially, as far as we are concerned, the abstract we have been debating is becoming a day to day issue on a number of issues we are going to have to resolve. We have lots of questions and hoping that with the input from others, may be some of us may learn something.

We are also writing a new constitution where we are going to try to define some of possible questions. Thank you.

Honourable Ntlhakana (*Session Chairman*): Thank you very much Honourable Dr. Ginwala. We now hear from Speaker from Namibia.

Honourable Tjitendero (*Namibia*): Thank you, Mr. Chairman. Let me start by commending the two presenters for very excellent presentations and well detailed and researched papers they have presented. This was a clear demonstration for us to appreciate the realities in the operational life of a parliamentary democracy.

I appreciate very much the contribution by the Honourable Speaker from Zimbabwe. I could agree that there can be true separation of powers particularly between the Executive and the Legislature and if that was so, could that be democracy? I am sure we all represent Parliaments that are based on the Westminster model with some modifications, and if we look at how our Ministers are appointed, or the source from which the Executive draws the Ministers. One sees the necessary overlap, hence the question of separation. I am talking here in terms of

Ministers being appointed from elected Members of Parliament. And if we don't do that, the other side of that is to come in with a team of people who are not elected and to whom will they be accountable. We have two cases in point with the United States and France, where there is a total separation. Those are systems which have developed in over two hundred years. So there are lots of other invisible checks and balances linkages.

In our case, the reality that we live with is that we link the Executive through the Legislature by telling the President, "yes, you may be elected by direct suffrage, but your team must come from the elected representatives of the people" which again raises the question of the accountability and supremacy of Parliament. I think the Speaker also told us in terms of limits of these powers that each institution and each organ has. I appreciate very much that the Parliamentary supremacy has its own limits as illustrated in the cases of Zimbabwe, that you can only go that far in terms of your power; you know when you have judicial power beyond which point, you cannot move, it is not your domain.

The need to separate powers as I see it, I think, is very important. The responsibilities separate though, I think scrutiny holds the executive checked. The fundamental responsibility of the Legislative Assembly is that of overseeing the work of the Executive. But I think in reality, with examples that my colleagues from Swaziland were giving, I would like to know whether we have a tendency to pass pieces of legislation as they come or whether we, as parliamentarians, fully and consciously fulfill our functions of scrutiny. Do we have serious scrutiny of the legislative programmes before us?

I think there might be an election there and passage of legislation seems to be a dominant function, and we are only reminding ourselves that there are certain things that we are overlooking. And may be this is the form that we have to improve upon but the total separation may not be applicable in our situation where we are trying to create a democratic dispensation out of the whole diversity of ethnic tribal or linguistic and racial diversity. Therefore, I thank the presenter for the very detailed submission of the functions and separation of the various institutions within a parliament that we have heard from the seconder of this motion.

All I could say in conclusion Mr. Chairman is that the need for representative government demands separation of functions between the executive and the legislature. The Judiciary function, I think by and large, is that it is independent and can be seen to be independent in terms of its functions. You can scare them and try to do what ever. But, I think as professionals, they do function independently. So, this separation between the Executive and the Legislature, I believe is, a necessary condition particularly for representative forms of Government.

Thank you, Mr. Chairman.

Honourable Ntlhakana (*Session Chairman*): Thank you very much, thank you, Speaker of Malawi.

Honourable Munyenembe (*Malawi*): Mr. Chairman, thank you very much for giving me this opportunity. I tend to agree with what the Speaker from Namibia has said, because amongst the three branches of Government, namely: Executive, Legislature and Judiciary, everyone is clear in his mind that the work performed by the Judiciary is very distinct. You can't make any mistake about it. But when it comes to Parliament and the Executive, the line of demarcation is very broad somehow. In Malawi, for instance, the President is part of Parliament in the sense that he assents to Bills. He can delay the Bills for a week or so without attending to them. He is also called to Parliament to answer questions.

There is a provision in the Malawi Constitution and that one is very difficult indeed to draw a line of demarcation. Where does he begin? Where does parliament begin? I think there is that interdependence. So long as that relationship is healthy that interdependence, in my view, must be encouraged.

But then, I was interested in the South African scenario and that is where committees can initiate legislation. Now, in our constitution, for instance, no one other than the Minister of Finance can initiate bills which have got financial implications. Now, do I understand from your representation that your committees can initiate legislation which has got financial implications. Now if that is true, I would be very interested to know how that happens because it would

involve taxation and it would appear that it is the power of the executive to initiate legislation which you know has got that financial implication e.g. taxation and what have you. Thank you.

Honourable Ntlhakana (*Session Chairman*): Thank you very much indeed. Honourable P. Msekwa, Speaker of Tanzania.

Honourable Msekwa (*Tanzania*): Thank you very much Mr. Chairman. Since there is very little time left, I will be very, very brief indeed.

Honourable Ntlhakana (*Session Chairman*): I think you will be the last one.

Honourable Msekwa (*Tanzania*): Thank you. I think there are two ways of discussing this subject of separation of powers. The subject of separation of powers is primarily an American concept. I think it was initiated there. Separation of powers meaning separation of personnel and those who have adopted that approach of separation of powers do not operate as we do. Because, I said, there are two ways of looking at it. The American way and the Westminster way.

The Washington way is complete separation of personnel. Ministers may not be Members of the Legislature. The President is not a Member of the Legislature. So, members of the Executive are completely separated from the legislature and of course the Judiciary is separate. Complete separation of personnel is one way of looking at it. Of course, it follows also that there is separation of functions. That is also one way of looking at it.

But, the Westminster concept of separation of powers is very different and we are operating in the Westminster model. We do not separate personnel that's why the President is part of Parliament. Not necessarily a Member as in Malawi, but part of Parliament. Ministers must come from Parliament you know that kind of thing. And Parliament approves certain appointments made by the President. There is no separation of personnel in the Westminster model of separation of powers. But there is also no separation of functions. If you look at it carefully, there is even no separation of functions especially the Legislative function which

should be the domain of Parliament. There is no separation there because the Executive does make laws and implement laws which are called Subsidiary Legislation. These laws are published in the official Gazette as Government Notices. These are called Subsidiary Legislation made by the Executive, under the authority of Parliament.

And an Act of Parliament says the Minister may make regulations for the better carrying out of the purposes of this Act and he does make regulations and sometimes, they can be far reaching than the original legislation itself. So, the Executive has some legislative functions, so is true with the Judiciary. The Judiciary, in most of our Westminster system, especially those countries with written constitutions, the Judiciary has the power to delete any law which was passed by Parliament on the grounds that it is unconstitutional. The Judiciary has that power. I can say this is unconstitutional therefore they strike it out as null and void. The Judiciary can remove from the Statute Book a law which was passed by Parliament. Judiciary has the law making function if it is looked at from that point of view. So, there is no separation of functions.

The main function of the Judiciary is to punish people who offend the law of the land. They are taken to court and if it is proved that they are guilty of having broken a Section of the Law, they are sent to jail. But, the Executive also sends people to jail even if no President has detention powers. They send people to jail to punish law breakers. Parliament too has some power to punish offenders in relation to the breach of Parliamentary privileges. Parliament can punish people whom it considers to have breached the Privileges Act. so, in our context, there is no separation of personnel and there is no separation of functions. I think we should not wonder why that is so. There is separation, but the system is different from the American system of separation of powers.

Thank you very much.

Honourable Ntlhakana (*Session Chairman*): Thank you very much for that very important contribution. Zimbabwe you have a right to apply.

Honourable Ndebele (*Zimbabwe*): Thank you Mr. Chairman. I am very obliged to contribute

in this debate. But, I think the subject is so thoroughly exhausted that in making a response, I may be repeating what Honourable Speakers have already said. Mr. Chairman, I do not wish to repeat what others have already said because I know that we have very short time remaining. I think the subject has been properly discussed. Thank you very much.

Honourable Ntlhakana (*Session Chairman*): Thank you very much indeed if there are some of you who feel that it has not been sufficiently debated, don't blame the Chairman, blame time. It is one hour for each topic. Remember that we are allocated one hour for each topic. Thank you very much indeed. You don't expect a summary of such a wide ranging subject.

Honourable Munyenyembe (*Conference Chairman*): Thank you very much indeed Mr. President.

One announcement to make, we have circulated the amendments according to Rule 23, I think we don't have the time to discuss this. Now, can you reflect over it tonight and then come with suggestions tomorrow. How does that sound? It will be the first thing to be discussed tomorrow, before we go to the main business of the conference. Is it okay? Now, having said that, unless there is something else you want to raise, I adjourn the meeting. Thank you.

(The Meeting was adjourned at 5.50 p.m.)

SECOND DAY, THURSDAY, 29TH JUNE, 1995

The Conference started at 8.30 a.m.

Conference Chairman (*Honourable Munyenyembe*): Good morning Honourable Speakers, Presiding Officers and Clerks at the Table. I hope you have had a restful night. I call the meeting to order.

**PROPOSED AMENDMENT TO RULES
OF THE CONFERENCE : RULE NO. 23**

Conference Chairman (*Honourable Munyenyembe*): Before we start our meeting this morning, let's dispose of one procedural issue and this is amendment to Rule No. 23. As Honourable Speakers may recall, notices of amendments were circulated to you yesterday and you had ample time to study them. Could I therefore, have your proposals please? Yes, Honourable Speaker from Namibia.

Honourable Dr. Tjitendero (*Namibia*): Thank you, Mr. Chairman, assuming that what we are trying to achieve is the wording which is much clearer and distinct in the first definition offered by Kenya, may I move that we adopt that definition. I beg to move.

Conference Chairman (*Honourable Munyenyembe*): Any seconder? Any counter-proposals? Fine. So I take that it is agreed that we adopt Kenya's proposal. Thank you very much. So, that is going to be contained in Rule No. 23.

Having dealt with that we now move to today's business. I now ask the Honourable Speaker from Seychelles Honourable Mac Gregor to Chair the first part of this morning's session. Honourable Mac Gregor, can I invite you to come and sit here please?

FOURTH PLENARY SESSION

THE SPEAKER AND PARTY POLITICS

Opener : **Kenya**
Secunder : **South Africa**

Honourable Mac Gregor (*Seychelles*)(*Session Chairman*): Honourable Colleagues, it is an honour and pleasure to preside among this August group. I hope, I will not let you down.

We are now entering into Party Politics according to today's programme and I hope all

of us are aware of the dynamics of the subject. As far as time is concerned, I am made to understand that we are going to stick to the time as indicated on the programme. Without further ado, I invite the mover, Honourable Speaker from Kenya. The floor is yours.

Honourable Dr. Godana (Kenya): Mr. Chairman, I will try to keep within the time frame. I hope delegates have received copies of my paper which I left with the conference Secretariat. Those who did not receive the paper will be favoured with a copy after my presentation. That is the practice.

The modern Parliamentary scene is dominated by two principle institutions; the Speakership and Political Parties., Both of them are so dominant that it is difficult to conceive a modern Parliament especially multi-party Parliament without the two institutions.

Between the two, the Speakership was the first to evolve. The evolution of the Speakership in the House of Commons, in the United Kingdom, has been repeated everywhere else in the Commonwealth world. In Kenya, the Legislative Council was established in 1907 and the institution of Speakership began to develop from 1948 onwards when the Governor who used to chair the session of the Council, nominated somebody else as the first Speaker.

Political parties on the other hand emerged on the scene only in the last Century. In Kenya, I think it was in the 1950s. This point is a general rule everywhere that the institution of Speakership relates to the institution of politics along the line of political parties.

In the House of Commons, the Speakership took a long time to evolve to its present status. The Speaker was, originally, a loyal servant of the court in the days after the Monarch when the powers of Government or arms of Government were in the arms of the court. And it was understood that the duty of the Speaker in those early days was to ensure that the wishes of the Monarchy prevailed.

But when Parliament began to assert its authority, the speaker emerged as a defender of the Rights and Privileges of Members and Parliament as an institution. In the process, Speakers

often crossed the path of the wishes of the Monarchy and in England, we understand more than half a dozen Speakers lost their lives because they stood in the way of what the monarchy wanted. Many others were subjected to arbitrary arrests and imprisonment. That is why to celebrate the memories of those who suffered in the evolution of the Speakership, when a Speaker is elected in Britain even today, he has to ceremonially be dragged to the Chair. This is a post known to be of danger and Speakers do not want to take it up. The proposer and the seconder have literally to pull an apparently unwilling Speaker to the Chair.

How does the Speaker then become the representative of the House? In Kenya we elect the Speaker. The new Parliament first elects a Speaker before conducting any other business. The manner of election of the Speaker in the House of Commons from where most of our Parliaments have borrowed the institution, is such that he is effectively the winner. Once elected the Speaker is insulated against party politics. He is normally proposed by a senior member, a senior back-bencher on the government side and seconded by a senior member in the opposition. The purpose being to underline the cross-party support that is crucial if he has to discharge his duties effectively.

Today in the rest of the Commonwealth countries in Africa, we have made variations in the election of the Speaker particularly this period. For instance, in my country, during the last election, there was a contest for the position and the opposition parties did give out one candidate against the person who was elected. However, I think what is important is to support the office of the Speaker once the selection has taken place.

Once in office, he chairs all the meetings of the House unless he delegates to his Deputy or some other Deputy Speaker as the case may be. All debates in the House must be addressed to him. He must be calm and fair to ensure that the debates in the House are conducted in an orderly manner. He has to protect the minority by making sure that they have an adequate opportunity to be heard and he must bear in mind that the opposition may at times consist of many parties; that is the case, I understand, here in Malawi. That is the case in our own Parliament where we have five opposition parties, two of them with only one member each. The other three have almost equal representation of numbers.

He has also to ensure that the majority's will has to be respected. After all, the majority has to be elected that is why it forms the government. It is being elected on a certain programme to pass legislation, bring in reforms and so on.

The Speaker has to ensure that the minority, when given adequate opportunity to be heard, does not abuse the procedure and rules of the House to such an extent as to affect the majority.

When electing a Speaker, therefore, parliamentarians have to bear in mind that it is a very sensitive and critical office. It requires somebody who can demonstrate absolutely well in Parliament as an institution. He must be able to demonstrate impartiality and independence. His conduct outside parliament must not be questionable; he should not compromise his status and he has to be seen to be neutral as a referee.

The Speaker needs a high degree of non-partisan posture. He needs to be respected by the leaders of the various political parties. But to get that respect, from the moment he accepts the Speakership, he or she has to demonstrate absolute impartiality between the political parties. He may be a Constituency Member as is the case in the United Kingdom, as is the case in a number of countries, or he may not be a Constituency Member.

In our own case, the Speaker may be appointed from outside or from inside Parliament. But if he is appointed from inside the Chamber, which will mean that he must be a member of a political party, he must resign his parliamentary seat. It becomes vacant. In that regard, upon election as Speaker, he ceases to represent a Constituency. I, personally, think this is a draconian practice. I think we should be able to have a Speaker who has a constituency as in the United Kingdom as in some countries present here, Seychelles, and Tanzania. Such a Speaker is better placed to understand some of the problems that Members of Parliament face in the course of discharging their parliamentary duties.

Now, that is not to say of course that Party politics is not in the House. On the contrary, we are political parties because we have a provision of politics principally on the floor of the

House. Members who are to speak have to catch the Speaker's eye and this is one point where the role of the Speaker as an impartial and neutral person is one area in which it is really crucial. Members will be keen to look for any evidence of favours or bias by the Speaker. He has to balance between the Opposition and Government on the one hand. It is an established practice when choosing speakers, he has to alternate between the opposition and government. It's really a switch from the right and the left side. Some members on the government side think this is unfair because the membership between the government and opposition is not equal. But within the opposition also, we have a number of parties. When you have for example four, five parties, the Speaker has a duty to ensure that he spares all the parties and sometimes he ends up giving an undue opportunity to the very smaller parties, one member parties or two member parties. In that connection he ensures that the minority is heard.

The Speaker also has to take into account that even within one party, the opposition, and the ruling party, there are some members who have special interests in certain government business or issues affecting a particular region. They take a keen interest when such issues are brought before the House for debate.

The Speaker must be in a position to go beyond the general interest of the party to see which member or which function any of the party needs to be heard on any particular matter. Frequently, of course, a member actually goes to indicate to the Speaker : " Mr. Speaker, I have a special interest on this matter and I would want to have an opportunity to be heard". Publicly, we tend to discourage those kinds of interests because it may give the impression that somebody is campaigning for an opportunity to speak. It's really a question of how you view every situation, every speaker for every situation.

As I said, the Speaker needs, I think I am about to conclude, the support and the respect from all the party leaders which, as I said, this depends from the manner in which he discharges his responsibilities to all the members.

The Speaker must always resist any attempt by political parties to either manipulate the rules of the House or manipulate him whilst in the chair. Genuine inter-party problems should

be left for party caucuses and not be brought to the floor of the House.

It happens that from time to time an individual member wants to take a stand which is very different from that of the party. Actually, he takes a stand where the party has taken a clear general stand which doesn't go in line with the member. He will say, this is not the stand I am taking. What should the Speaker do in such a situation? I think the Speaker, in such a situation must stand firmly by the side of that individual member to take his stand even if he is in conflict with party provisions. It is up to the party to deal with its member outside the House but not from the floor. And the reason for this is that a Member's responsibility is primarily to the constituency. That is why parliamentary privileges of Members are really privileges for members not privileges for political parties.

In our case and in a number of countries, I understand the business of the House is decided by the Sessional Committees. In my own case, the Vice President chairs meetings of the Committees. The Speaker is in attendance in these committees, for two main purposes; to advise the Members of the Committees the proper conduct of business and among other things he has to take concern about equitable representation of Members of the committee and equitable allocation of business between the parties concerned. Where the Sessional Committee agrees, often by consensus, the order of business of the House, cases of dissent in the House should be very minimal.

Finally, the Speaker should be able to discharge his responsibility in a multi-party Parliament, he should have a quite clear and open access to Members of the House. The Chamber should be open for Members as well as party leaders to come and make consultations. The Speaker should sometimes take the initiative of trying to find control of party leaders, to know what the initiatives on party leaders are.

Individual Members may be privileged to have an opportunity to visit the Speaker. So frequently the Speaker in the House may advise some Members to see him in his Chamber, not to do anything secret but actually to explain to him the procedures and some of the things he may also want to say in public as to why he has made such a decision in such a manner. This tends

to build the personal relationship between the Speaker and the individual parties in the House and that also makes the work of the Speaker much easier.

I think that is all I wanted to say. Thank you very much, Mr. Chairman.

Honourable Mac Gregor (Seychelles)(Session Chairman): Thank you for that touching presentation. I now call upon the Speaker from South Africa to second the motion.

Honourable Ginwala (South Africa): Mr. Chairperson, the Speaker from Kenya has already, I think, set out what is, perhaps, in the CPA, a classical position for the role of the Speaker. But, I would like to take a slightly different angle today. Perhaps as the newest Member of the Commonwealth, we might be able to say that we don't necessarily accept or agree with everything that has been said about this very hallowed tradition.

There have been various references today and yesterday to the person becoming the Speaker and then having to change their lives. They say and it's been said that they have to shed their political affiliations, distance themselves from colleagues so that they not only become impartial but are seen to be impartial.

I would like to make my observations on this. The only essential point, in my view, is that the Speaker has to be impartial. Everything else is a value judgement or are assumptions of what is necessary for a Speaker to be impartial and these assumptions are further hallowed by something called tradition. I want, today, to challenge and question all this and in particular to deal with this thing called tradition by asking whose tradition? Why and how did it evolve?

I think there are no disputes amongst us of the importance of being impartial. I don't in any way, suggest to challenge that but there is a lot more to being a Speaker than simply sitting on a chair and being impartial. And if the essence of it is impartiality, then is it true to say that political affiliation precludes one from being impartial. What does impartiality mean? It does not mean that people have to be political units. It doesn't mean you have to be mindless or that you don't have views on anything. That's not being impartial. In the context of speakership,

impartiality is to apply the rules of procedure, the customs and the practices of the House in a way that does not favour any particular political party or individual. To me, that is what it means to be impartial.

Now if we accept that Speakers have views, opinions and beliefs, and they must be so because if not, how do they, otherwise get into Parliament in the first place. Why then do we ask them to suddenly shed these beliefs and shed political affiliations? And what does that mean anyway? Sometimes, it is said all Speakers must resign from their political parties. But, is that not a symbolic thing?

There are politicians who take on and change their political affiliations by the day. We call them opportunists. Claiming a political affiliation for gain, shedding one for gain, is opportunism and, we don't want opportunistic Speakers. That is not a character we would want to encourage. Now without wanting to praise ourselves collectively here, the truth is that people are chosen as Speakers because they are persons of integrity and credibility. In whatever way that, in essence, is one of the things that people in our own countries will say about whoever is the Speaker. We are not known to be as people who shed political affiliations or beliefs.

I, myself worked for my political party for 34 years before I became a Speaker and I did so at the conviction and commitment to its policies and its objectives. And all of us here with almost without exception have similar history of many years of political commitment. Do we then get on to that chair and lose those beliefs? Do we change our politics? Do we have any different views? Obviously not. We might, with time, tamper with them as any politician changes his views. But we don't by that simple act of being elected to be any different politically from what we were the day before we were elected. So, to distance oneself in this symbolic way, is a pretence.

In my case at least, nobody would believe in South Africa, that I had left the ANC but if they did believe it, then certainly, I would lose credibility. I think this is the reality and I think everyone has his own position in that context. So, why do we want to pretend? And I think the answer which I am likely to give is I know how important it is to be seen to be impartial. Okay,

let's look at this, unless we are out of this blinkers of the Commonwealth. The Vice President of the United States presides over the US Senate. He is elected in a very tough campaign, in this case, the Democratic Party, I don't really recall many allegations about how the Senate conducts its impartiality on the part of the Presiding Officer. In Belgium, the Speaker remains the leader of his political party and what is even more is that he leaves the chair and takes part in debates. In Norway, the Speaker is a very active Member of the Foreign Affairs Committee of Parliament. In a number of Latin American countries, Presiding Officers are elected because they are leaders of parties. And of course in the US Congress, the offices of the Speaker and Chief Whip are combined. So, this so called tradition is something peculiar to the British. What we have to realise is that there are a lot of Parliaments or legislatures out there over which political office bearers preside and there have been very few complaints about their impartiality. As such the question we have to ask ourselves and particularly us Africans, is what are the qualities we want in a Speaker in our particular circumstances? It doesn't matter what the British did about what they do in their circumstances. We may want those things but let's see whether they survive, is this what we want? And let us look around us and look at the rest of the world and see what is it that we can draw from all of that. What is good about that and what is bad in terms of our own legislatures.

I believe, that democracy is to be consolidated in our Region and if so, then it is necessary to tilt the balance away from the Executive. That means, of course, that legislatures, as we more or less discussed yesterday, have got to be strengthened. We have to build a cooperative relationship with the Executive and have to develop that relationship. It has to be based on recognition and respect for our respective powers and respective functions. Fragile democracies, and all of us who come from those, need to be nurtured and nursed. One of the tasks of the Speaker must be to be that nursemaid, to be, if you like, the custodian of our democratic ethics and values in our society. This is over and above any particular individual party affiliation. How can we do this to be the custodian, to nurse those democracies, to stand up for those democracies and for those ideals if we distance ourselves from political leadership and from our political colleagues? I think it's a question we must seriously address. Do we actually promote what we say or we want to do? If we refrain from speaking out publicly about the very principles which brought us into the political arena and consciously close our minds, then, how do we nurse that

democracy? How do we make sure that those ideals are actually furthered within our society.

Democracy in Africa has suffered, not simply from the military, but from political parties, by omission, by the acts and omission of military and political parties and political leaders. With so much of political leadership in our countries going into the Executive, should we not consider whether it is important for Parliamentary office bearers to have a strong political base? Suppose this is the question, but I am not suggesting it has an easy answer. However, I am suggesting that we owe it to the democratic traditions we want to uphold. We owe it that we ask these questions. And we try and find answers in our particular societies.

What does the above mean for us in South African practice? As I have indicated previously, we have Provincial Parliaments with Speakers and we have a bicameral National Parliament comprising the National Assembly and Senate. Almost everywhere, you begin to see a new approach to Speakers. I can just give you a couple of examples. The Speaker of the Western Cape is promoting a Community Charter which is trying to bring people together. The Speaker of the Eastern Cape goes around the country taking MPs across parties and talks about Parliamentary democracy. He gets into trouble with the ANC. He is an ANC member because they say, "you are taking the National Party into areas which the National Party wouldn't dare go on its own". But he does it. He still remains a Member of the ANC.

In the Northern Cape, there was a time when there was only one member of the Democratic Party. That person is now the Speaker of that legislature. She remains a member of the Democratic Party. She is still the Speaker and no party is challenging her on the basis of her political affiliation and on her rulings. Therefore, we don't have to subscribe to the notion that all politicians are venial and self-satisfying and not gratifying. Why do we accept what is a very common perception? Why do we assume that if you are a politician you're something nasty, self-seeking? There are other kinds of politicians, committed politicians. We don't have to assume that people have to be one or the other. At least we, in South Africa, although we battle it out on the political arena and accuse everybody else and ourselves of being self-seeking, by and large, we recognise that there are commitments that politicians have. The criteria we try and ask for is that we be judged by what happens in the House. What is it that we do in

Parliament that is seen to be favouring one party? And this, if anything, makes us more conspicuous than ever before. I know in my case, the ANC claims it has had a very hard time in Parliament because, if there is the slightest doubt, they say, I never give them the benefit of the doubt because I am so anxious to prove that I am impartial. Also in our system we've inherited, the whips exercise a fair measure of control over who speaks and the debate itself so that one is not put in the position of having to choose one Speaker over the other. This is determined by agreement amongst the whips before we open up the debate. But in addition to this, the thing which we should try to do is to make sure that the minority parties have a meaningful function in Parliament. We have in the National Assembly, the smallest party which has two members and the largest has 252.

We have ensured that regardless of the size of the party, they get recognition for purposes of having a Chief Whip, for getting resources, and for getting some share of the debating time. Not only that, we insist they have a Front Bench so that we move the parties around in a way that it creates a strange configuration, because, you will have people on the Front Bench and the people sitting behind them are not necessarily of the same party. But, we thought it was an important recognition of these parties by putting their leaders in the front where they are visible and they are seen as the articulate spokes-people of their particular ideas. And, we don't necessarily, agree with what they all have to say. So, the minority have been given a very special and a very deliberate place and enjoy special protection from the Speaker.

There is one thing on which I declared that there is no neutrality and this does victimise any particular party. This is the question of women. I said I will not, be neutral. I will not be impartial on this issue. We have one party which has no women. In the various fora organised by the whips, there is an automatic requirement that parties, in turns, have to nominate women. And the party that doesn't have lady members, loses its opportunity. So, that is the one area in which a particular party may claim it is being discriminated against and I make no apology for it.

Again, since my election, I stood for the National Executive of the ANC, at times, there are some comments in the Press but I have not publicly been attacked, because I'm supposed to

have taken a decision by being part of the ANC leadership. The issue on which I was attacked and this one, which I can be sure, took the evolution of thinking, was when I apologised to President Chissano of Mozambique. I think a number of you are aware of it because there was a play back. I chose my words with care. I apologised to him as the Speaker before the elected representatives of the people of South Africa, and on behalf of the people of South Africa, for what was done to Mozambique by my countrymen. This was the wording. This was the wording. It was not a particular political party. What I said was about furthering the ideals which I believe, the new South Africa stands for. Not only my party. At that time, there was a great deal of criticism and noise from the National Party and the Democratic Party as a result of my apology.

There were public outcries for my resignation. But when the parties came to see me, nobody asked me to resign. In fact, the Democratic Party wrote to me saying, "since we are sure you are neither going to apologise nor resign, please can we meet to discuss the issue". And we met. And what was very interesting was the outcome of those discussion. As for the National Party, they came with a very prepared perception of the Speaker, and I found this strange and I was given the history of the previous Parliament and I had these lectures of all these people about the democratic tradition - impartiality. But I did not respond or react about this sudden concern. And at the end of it, I said, I agree with everything you say only that, that's your tradition and that it is not mine.

That is the tradition straight out of the Westminster textbook which people who had run an undemocratic Parliament for 90 years put forward to me. And it made one realise just what this tradition is without context, without a clear committed concept, a political concept that this tradition has no meaning.

We came out of that meeting with a joint statement which said "that we in South Africa have to develop a new perception of what sort of Speaker a democratic Parliament needs". Consequently in South Africa, we have formed a Speaker's forum of all the Speakers and Deputy Speakers from the Provinces and National Assembly. And one of our tasks is to simply define the role of a Speaker, what kind of Speaker do we want. So this in a sense is what I wanted to

put forward yesterday for you to consider. It comes out of our experience. I am not saying any other society can duplicate that experience, but I believe, because of our experience, we have to ask ourselves very fundamental questions, which I believe, are also questions that all Speakers need to be asking. You may in your society say that the answers you come up with are the ones you had before you asked the questions, but as I said earlier, I believe we owe it to the things we claim to uphold to ask those questions. Thank you.

Honourable Mac Gregor (Seychelles)(Session Chairman): Thank you for that very challenging presentation. I remind delegates there are some tasking questions before you and the floor is now open.

Honourable Speaker from Zimbabwe.

Honourable Ndebele (Zimbabwe): Thank you, Mr. Chairman. I wish to thank the speaker for his very clear paper on the subject and I am also very indebted to my friend from South Africa.

As the newest member of this club, I had many agonising nights thinking about what would be my role as Speaker and how was I going to conduct myself. I went through several books on the subject but I had not had the privilege of meeting members of this club. Therefore, I had nobody to turn to. So it was very agonising indeed. But I think that my experience here, particularly what I have gained from this debate, will, I think, help me a great deal in my new office.

I think I totally agree that it is unfair that the Speaker should be asked to shed his political affiliation. There are two schools of thought on this matter and this has been shown by the mover and the seconder of the topic. The Speaker in almost all cases owes his election to a political party whether he is elected from outside or within the House. In that regard it would be unfair to ask him to shed party loyalty. I also believe, Mr. Chairman, Sir, that the Speaker because of the role that he holds, should have a constituency. I know that in the Westminster they have a constituency though they do nothing there, except perhaps dealing with constituents, letters, and problems. In my opinion, I think that really is not a very useful thing for the Speaker

to do.

Having said that, it is my conviction and my own experience that a Speaker has no business whatsoever to take part in active politics. I am member of the Central Committee of my Party, I am Deputy Secretary of Legal Affairs in my party and I am also Secretary and Legal Adviser to the National Disciplinary Committee of my party. I serve all these roles, but I don't think that I would go and address rallies, I have declined, for instance to go to a political party celebrations of the victory of my party at elections. I said, "no, I cannot go there", but I attend the Central Committee meeting. I refrain from taking part in anything that may be controversial. The Speaker therefore must be above party political controversy and must be seen to be completely impartial in all public matters.

Unlike the Speaker, other political leaders such as the backbenchers and Leaders of the House take an active role in political controversies but in so far as the Speakers are concerned, they are like judges, they distance themselves from controversial political matters.

Mr. Chairman, I entirely agree with the Speaker from South Africa. We have to look at the issues at hand from a different angle. For example, whose values are these? It is necessary to ask this. Finally, I think that if the Speaker takes a dual role of being a participant in the game which is generally termed "dirty game" of politics, he cannot really be able to accept or to prevent from being considered impartial or from being considered anything which politicians think about one another.

Honourable Dr. Tjitendero (Namibia): Thank you Mr. Chairman, I would also like to thank the mover of the motion, the Deputy Speaker from the Kenya, and the seconder, Honourable Madam Speaker from South Africa. I think it is very interesting.

I note that the presentation from Kenya was interesting particularly in explaining the role of the speaker and party politics. South Africa too raised a number of challenging questions. For South Africa, I think, this is appropriate since the nation is in the process of transition and as such it is searching for appropriate institutions. Madam Speaker, you are not alone in this game

having been elected in 1990 I had similar questions to ask. I took the same role that you took to look at the number of Legislative Assemblies in the world and noted the differences. Having been educated and taught in the United States, I was naturally very attracted with the US model.

As you rightly said, as a product of liberation struggle, I have been very partisan and it is the partisanship that has brought us into power. So you are not alone in this. However, even considering a number of factors, some of which the Honourable Speaker from Zimbabwe touched on, then we question the role of the Speaker in the context of Namibia. I concluded, personally, that one can take part in the debate as it is in the United States or may be somewhere else and I also realised that your structure is very different from ours in Namibia because, in the first place, parties do not only exist but are also there to mobilise people and they think democratic party and public party remain with the National Chairman. That's the only unit we meant over the four-year period. In Latin America, the Carribean, Europe and Africa there are more parties with functional party politics within the contents of the Parliamentary activity.

I think there is a difference also between us in South Africa and those in Namibia. It is that we chose this model and did not impose it on the people. There were circumstances which influenced that situation. I think we still have a choice. The choice is ours and I do believe in that case it is also our neighbours' choice. The final choice is also going to be yours naturally and I think the questions are very, very simple to ask and to answer in the context of the stark reality of the subjective and objective conditions that are obtained in South African policy.

Having said that, in Namibia, I was actually holding a position where some of you coming from African partisan politics and then, you sit there, and sometimes here someone strikes the poll and we are given a very clear situation of those who have maintained a party affiliation. In this way, the Spcaker used some democratic rights and stands up and says "You guys, in a party striding always tolerate" and there was a very careful support burning inside.

Initially, I wanted to say that Honourable Members, you are out of order but because this is our entire nation of the Namibian people. I was tempted almost to want to say that but I have to have all backing in the influence of national unity, national reconciliation and then, I

concluded that in the context of Namibia, a Speaker cannot and should not be playing partisan politics, because he or she, in fact, plays a unified role. The National Assembly, the Assembly of the people were the cultivation of National Unity. One national monument is being posted in our divided society, therefore, the Speaker plays a political role because, definitely, he or she plays a non-partisan political role, unifying, and bringing the diverse interests and different ideological stands together.

In the context of Namibia again, we too are influential. You know, I indicated that I have looked at the model and the Speaker from Zimbabwe said that it does not mean that you are becoming a political functionary in the House. You accept it to play, because it's just like a job description. If you walked into a Ford motor company or whatever, you are going to do, you would be given a job description. You look at it and say, "No! that's not part of it, I will not be part of it". Today in terms of the election and, in terms of holding the House together to bring unity in diversity, political diversity. That's in the context of Namibia because as I have said, we are sharing and I think, this is a better school because there couldn't be a better class organised anyway as the University that will be like a practitioner or like an electrician sharing the experience in that sense. I think that while we cannot discuss our political membership, it is through the political membership that we are elected.

The role of the Speaker must be differentiated in the House. It is the Speaker of the Nation mostly in the similar role as that of the President or a King plays in bringing the nation together. Madam Speaker, I was very impressed by your careful choice of words when you presented your apology for the people of Mozambique on behalf of the Nation not on behalf of the Party. That again is the role you didn't speak on behalf of the ANC, you spoke on behalf of people of South Africa and for the country of South Africa. So these are the models that we are talking about.

The Commonwealth model is the evil that we think is willing to leave with diversity. Someone told me that you go to India, you go to Pakistan, you go to Sri Lanka, you go to Jamaica, you go to Australia, come to Africa and these people will tell you what it means by the Parliamentary system. But, if you look at the differences, you will know the valuation of the

emblem and I think the Indians push this model to the farthest so that they look alike in order to meet the security culture and historic condition.

I didn't intend to answer that, but I wanted to come to your aid by saying that we are together. I think we should ask these questions. It will be more, but I think, this generation should lay the foundation for the practical operation, realisation of system in our Parliament, because we cannot have instructions we inherited if they are irrelevant to our inner thoughts in our ways of life. That is an important question, as the established institution we refined them, we modified them to reflect our true social, political level.

Thank you, Mr. Chairman.

Hon. Mac Gregor (Seychelles)(Session Chairman): Honourable colleagues, although time is running out, I feel greatly honoured to debate with you, if debate on this topic is to be controlled in terms of management of time, I would therefore like to use my discretion to determine the time allocated to each Speaker. You may see me looking at my watch, in order to economise on time.

Let me briefly put in a few words in case I don't get the chance to speak since speakers often don't get a chance to take part in debates in their very own Houses. I was very touched when I heard the experience from my colleague from Zimbabwe. I myself, come from the Central Committee of my ruling party, have and played the roles of a presiding officer in the one party set up before we moved to the multi-party set up. Although I was not prepared to take the Chair, I spent a lot of time asking myself "Is it appropriate for me to accept the offer to become the Speaker in a multi-party state? Will I be able to adjust, will our country accept me." I also played a role in the party congress which decided that we change to multi-party politics. I also form part of the Constitutional Commission which drafted the Constitution.

Recently, there was a comment in the House that there was no democracy in my country. My response was that if there was no democracy, then the Member would not have been in the House. This provoked some controversy amongst the Members. As a result of this controversy,

I convinced myself that what I did was felt by the House. I was also convinced that with the advent of democracy, people had the freedom to speak. That is my experience which I wanted to share with you. I now call upon the Speaker from Swaziland.

Honourable Mncina (Swaziland): Thank you, Mr. Chairman. Mr. Chairman, first of all, I would like to thank the mover like other speakers have done, who have moved the important topic we are discussing now and also the seconder from South Africa. In fact I have been in politics since 1972, and I have found the role of the Speaker to be a very difficult one because a Speaker cannot just come from nowhere. He should come from somewhere. When I say from somewhere, he should come from a Party, a certain Party. Once he in this position, he should be seen to be impartial all the time. To be impartial doesn't mean that particular Speaker should resign from his party for people to say he is impartial. He can resign from his party but still if he cannot play impartiality as a Speaker, people will just see that he is still doing what he was doing while in his party.

The most important thing is that this man should have a special gift of working with the parliamentarians, the leaders of the country and people outside politics, who are seen not to be politicians yet they are politicians. He should talk to everyone freely without being afraid of anybody in his party because he has now been put in a position of trust, in a position where he should be seen being a member of that particular organisation though he has got his own party. This is where I see the job of the Speaker being so important. But for him to resign from his party, yet the ticket that brought him into Parliament was that ticket of his party, would be very difficult because when he finishes his term of office, he will have to go to his party to stand for elections. He cannot look left and right for someone to just put him as the Head of State cannot put him in all the time as a Speaker because he has to be elected by the people to be in that position of Speaker.

So this is where the position of the Speaker is very difficult. Even inside the Chamber the MPs who raise their hands from time to time but not seen, will say he is not good because he has not been looking left and right to point at these people who want to speak. So he has to be alert all the time and be very clever. Sometimes there are some people who are too sharp on

fast to raise their hands and others are too slow. He should not only look at those people who raise their hands fast and choose them to speak. He must, maybe, start with the one who was too slow and ask him to speak to avoid the others thinking he is favouring particular persons. So these are the things a Speaker has to do.

Again, a Speaker has to do exactly what the South African Speaker said. She had the feeling that she had to apologise, on behalf of the country, for what happened in the past. And she did that. Nobody said she should do it, but as a leader in the House, she had to do it because her conscious was pushing her to say that. And because of that, at the end, the people of South Africa even inside the chamber and outside have got more confidence in her because she showed her leadership without anyone ever telling to do it.

So these are the things that if you are a Speaker you must do even if you know that tomorrow you might be pushed by your people out of the chamber. They could pass a vote of no confidence on you. She was almost pushed out of Parliament before she could start a job. But you don't have to do a thing to please everybody, just do your job.

This is all I wanted to say. I am not answering anybody's question, but I am just sharing my ideas as I have been in Parliament for some time and I had never thought I would become a Speaker but now I am a Speaker.

I also did exactly what the Speaker from Seychelles said. I tried to run around, I didn't want to be a speaker, but I was forced and I am happy to be a Speaker and I could come out tomorrow and I would be happy if I do so.

Thank you, Mr. Chairman.

Honourable Ntlhakana (Lesotho): How can I crystallise my thoughts on this very important topic, the Speaker and Party Politics, in the very few minutes that are left. It has been said that the impartiality of the Speaker is the key requirement, that his attitude to detach himself from party membership is a desirable feature. However, whether a presiding officer can remain a party

member and yet still behave with total impartiality when performing the duties of the Chair, depends on the strength of the individual's character or personality. Experience has shown that some succeed while others fail dismally in discharging their duties with total impartiality.

Now let me give you Lesotho's experience as briefly as I can. A Presiding Officer who did not resign or suspend his leadership of the political party on being elected senator, rather, president of the senate, dismally failed to be impartial on the chair, lost the confidence of the majority of the senate that Presiding Officer was subsequently voted out of office on a vote of 'no confidence'. His deputy too who happened to be his deputy in a political party too, and who behaved like him on the chair in the senate, was also voted out of office in a similar vote of 'no confidence'. Their replacements did better. They suspended their party membership, endeavoured to be impartial and thus won the confidence of the majority of senate.

Members of both Houses, however, decided that there is less risk in electing to the Chair, persons who are not active politicians or members of certain political parties and who are therefore in a position better to serve members on a complete impartial, fair and non-partisan basis. For, as with pace finders or scouts who say their honour is to be trusted, so is the case with presiding officers. A Speaker's honour is to be trusted and a Speaker can do everything in his power not to compromise his position.

Honourable Mac Gregor (Seychelles)(Session Chairman): Honourable colleague from Tanzania.

Honourable Msekwa (Tanzania): Thank you, Mr. Chairman for giving me the opportunity to congratulate the mover and the seconder of the topic. I must say that Madam Speaker Ginwala's statement is the most powerful argument in favour of the Speaker taking part in politics that I have heard so far. This is not the first time this topic is being discussed, but I think this is a very powerful argument that we heard today. I have always belonged to that school of thought, Mr. Chairman, and for obvious reasons as has been stated this morning. Some of us, the Speakers present here, are members of the Executive Committees of our parties, Zimbabwe, myself, Seychelles, South Africa, we belong to the Executive Committees or Central Committees of our

parties. So in arguing this topic, listeners might tend to think that we are defending our positions. But we should look at it from the point of principle rather than position and the principle here in my opinion, Mr. Chairman, is that this is a question of perception, how you perceive yourself, it is a question of impartiality, fine. We are talking about impartiality of the Speaker, but that impartiality is a question of perception how do you perceive yourself? Are you impartial? That's one side of it. But the other side is how do other people perceive you? Are they satisfied that you are impartial? So it is a question of perception and I think that has been emphasised by what Madam Speaker from South Africa said, the example given by Madam Speaker of one of the provincial Speakers, who was accused by the ANC, or taking National Party members to places where they wouldn't dare go on their own. This is how the Speaker was perceived by his colleagues.

So, it is a question of perception and this is no small matter because this is what brings us to the question of being seen to be impartial. You can be impartial yourself, you can convince yourself you are impartial, you act impartially but it is a question of being seen by other people, it is a confidence building exercise. But we know that in very many cases there will be suspicious and I think it is in an attempt to ward off these suspicions that you get decisions like the Kenya decision, the Kenya requirement, that the Speaker must resign his constituency and the British requirement that the Speaker resigns from her party. It is how you are perceived by other people, confidence building, otherwise there will be suspicion. So some have warded off this suspicion by legislation saying, "we have to resign in order to be seen that we are impartial". This can be compared to the impartiality of the Civil Service.

You know, in many countries, Civil Servants are supposed to be impartial, therefore, they are prevented from being active members of political parties. They can be members, but they must not be seen to be active. So we must not rule that out, Mr. Chairman. Our behaviour as Speakers must be regulated by that objective, we must be seen to be impartial and that can only be judged on the basis of performance on the floor of the House. Are you impartial in the chair? And that I think is the litmus test. And Speakers of course are guided by Standing Orders and rules and if the rules are biased in favour of a particular group, the Speaker will be seen to be biased.

In our one party Parliament, our rules were biased in favour of the government. Government business must come first and private members must be sidelined and so on. In such circumstances, the Speaker who applies such biased rules will be seen to be biased. He cannot possibly be seen to be impartial because he is applying rules which are biased. So the first thing to do is to make sure that the rules are not biased, that the rules are impartial, they give a fair opportunity to everybody. The rules must be based on the principle that the minority must not be oppressed but the majority must not be obstructed. The minority must not be oppressed, they must be given a chance to air their views but the majority must not be obstructed. The government must have its legislation passed and so on. Government business must be done. Our behaviour as Speakers, must demonstrate that we are impartial. Thank you.

The Conference Chairman (Honourable Munyenyembe) (Malawi): Mr. Chairman, I think having listened to what has been said so far, I don't have anything new to contribute except to say that each country has got its own history and the position of the Speakership has evolved from that historical background. I wish I was in a position of South Africa and Namibia because they are charting something new. But for those countries which have inherited a colonial system which had the Speakership position in place, it is absolutely difficult for them to run away completely and suddenly from the Westminster's style.

But having said this, Mr. Chairman, and having listened to what other Speakers have said here, I think the position of a speaker is safeguarded depending upon what he or she does. Because what one does speaks louder than what one says and this involves the question of perception like what the Speaker from Tanzania has been saying. If the Speaker is indeed impartial, he has to be seen to be impartial and this has to be reflected in his acts and activities. His acts and activities must be impartial. Then indeed you will be respected for that. However if because of his party membership, he is favouring one political party, then definitely he is running the risk of being called names. This is something which as Speakers, we must avoid as much as possible.

In the Malawian situation for instance, a Speaker can participate in debates. But I personally hesitate to participate in the debates for the simple reason that what I might think is

safe may not be safe, whatever I say may be wrongly construed. I could be associated with the political party from which I come and therefore, as much as possible, I try to avoid participating in debates in the House. But there is that provision in the Constitution. I am a Member of Parliament myself. I don't resign my position. My position is that of a Member of Parliament but I think it is a very delicate situation. It is a very delicate situation especially in the multi-party situation in which we are now. It is a game which we must play, in my view, very, very carefully indeed. But I think it will depend upon how the public will view your position as a Speaker. Some of the issues on which a Speaker is asked to comment on, are very controversial and one as a Speaker, if one makes a comment on these controversial issues, I think he or she is compromising his position.

I think this is an issue, Mr. Chairman, which should be left on the agenda for further discussion during the next conferences because I can see that we will not do it any justice here. It is a very, very controversial issue. I wished we had devoted two hours to this particular issue so that we hear a cross-section of views from all the countries which have come to this Conference.

I thank you.

Honourable Mac Gregor (Seychelles) (Session Chairman): I share the last comment of my colleague and I think at this juncture I would like to invite the mover if he wishes to reply to issues raised in the discussion.

Honourable Godana (Kenya): I must confess I have been very impressed with the obviously very deeply heard views about the subject and I think this is the topic for the Clerks.

I, in particular, must single out my seconder and offer my congratulations to her for expressing such strong views. It is quite interesting to know that South Africa is really determined to chart it alone from kings list but the Honourable Speaker from South Africa said in her own words that she has spent 34 years as an active fighter, participant fighter, in her political party. That is about three quarters of my life time. I understand it is not easy at this

point to shed the values for which she must have gone through across the globe.

I also share the opinion expressed up by other commentators including the Honourable host Speaker, that ultimately these things will depend on each country's local conditions.

It is really, as Honourable Msekwa said, a questions of how we can demonstrate to the world and in particular the Members of our respective House that we are impartial and indeed independent. We can control and influence, and perception, therefore, becomes very important. It is really for that reason that Honourable Msekwa has said that countries like ours have the provision which I have said I don't agree with.

I think, perhaps, I should put the Speaker on a safer ground by saying, "can you keep the position of being a Member of the constituency and discharge your functions in the Chair as an impartial person?"

Obviously there are many matters which are debated on the floors of Parliament which are very partial to MPs and which provoke emotions. We have known of Parliaments where Members have ended up exchanging fists. For example, in Latin America and the Philippines, I have heard of situations where Members of Parliament sometimes carry guns because the subject matters which they are discussing are very emotive. In such situations, it is important that the Speaker is not tempted to contribute to that fire by making his deeply felt political commitment against those of the opposing side.

This is why I think the Speaker has to suppress. It is not a question of being an opportunist in my view. It is a necessity for the effective functioning of his office. The Speaker is a human being. He definitely has values. Politicians whom we tell not to take part in active politics, have very strong views. They definitely support political parties and exercise their right to vote. But we tell them, look, if you accept this responsibility, the price is you do not participate in active politics. So the Speaker is also being told, we have given you this honour and if you accept, the price you pay is that you will keep quiet about some of your political commitments to be able to balance the two sides.

I would wish at this point to give an example of why perception is important from my own recent experience. I am the Deputy Speaker of the Kenya Parliament. I was elected unopposed after the last multi-party General Elections. Many of the contestants were people of my generation. We were at the same University, so there was a question of public relations. But once you start on the job, you will start displeasing, your rules will definitely displease somebody. I said in my presentation, the business of the House is decided by the Special Committee chaired by the Vice President. The Speaker is in attendance to advise them, to remind them on the need for equity between the party members and so on. When the Honourable Speaker was in the Chair, the Motion for Adjournment came one month before the budget. It is a tradition, it is a custom, it is a practice for good reason to give the Government, in particular the Minister responsible for Finance time to prepare the budget undisturbed by Parliamentary interruptions, and it was unanimously agreed upon by the Committee. So the Whips were not effective because they didn't expect any vote. This is the usual procedure for an Adjournment Motion at the end and they were relaxed. Many of the Ministers from the Government side took it that they were through, so after some time they left. The Motion later was out again. I was in the Chair.

Many of the Speakers, including members of the Social Committee from the Opposition, supported the motion in their contributions. But some young guys in the opposition looked around and found that, in fact, many Members from the Government side were not around. So somebody said, "we are going to oppose this Motion today". It was too late for the Government side to go and look for the Ministers who had gone to their own constituencies. It was six o'clock, Parliament rises at 6.30 p.m.

So when I put the question, Members around the premises had come to the Chamber. I couldn't decide on the oral questions. I put it for a second time, I said, "look, I cannot decide". I voted for the Motion. The entire Opposition opposed the Motion including the Members who not only recently supported the idea. So I think it was very unprincipled. But they opposed the motion. Now when they brought the figures there was a tie.

As a Deputy Speaker, I belonged to a party. When they realised, these Opposition

Members, became very jittery. Some of them did not know the Standing Orders properly, they wondered why I had voted. I have an original vote as a Constituency Member. So I drew out the Standing Orders and showed them that I did not only have an original vote, I even had a casting vote. The Speaker normally has only a casting vote. But the Deputy Speaker has also an original vote and if he is on the Chair, a casting vote and they were mad at this because they thought they were going to win the second vote against the ruling party.

So I drew the attention of the House to the provisions of the law and I said this is where traditions are important and in accordance with the traditions in practice of exercising the casting vote of our Parliament as well as other Commonwealth Parliaments, I have decided to abstain from voting. So I had to give another chance for the House to reconsider the matter. Now I said voting "Yes" will be closing the chapter. Voting "No" would not close the chapter. We will always come back with another motion. But I felt it would be ridiculous for me to vote "Yes" and to vote "No" to balance on the second instance.

So I decided to abstain which gave the House another chance. As a result Members of the Opposition were happy and for once they sang praises for the Speaker. And I think it was one of those circumstances that the Speaker has to be seen to demonstrate that he is impartial. So it is not that we are saying we are not capable of being impartial. It is very important that we take into account what others perceive our roles to be, particularly what the other Members perceive the Speakers role to be.

I wished I had time to respond to some of the very interesting issues which the Honourable Speaker of South Africa raised. But, I think even South Africa will realise that practice is really what makes the tradition, not just to their country, but to other countries where your country may have had no precedence. It is very important.

We have had occasion to appeal to the provisions of Standing Orders applicable in Canada, Africa and in the United Kingdom where our own is silent because you have to convince others why you have decided in that particular manner and that you are not just taking Legislation from nowhere; that you are trying to follow certain logics, certain reasons, which

have been found to be useful elsewhere.

Thank you very much, Sir.

Session Chairman (*Honourable Mac Gregor*): Honourable Speakers, without repeating what has already been said, this has been a dynamic and sensitive topic. I don't believe all questions have been answered. But reflections have started and I am sure if you are still thinking about points or questions that have been raised and we should not feel too discouraged about having not thrashed out everything. Don't forget, for those who are able to make it, there is a Commonwealth Speakers' Conference in Cyprus in early January and I hope the Secretariat has records of this Conference so that we can make use of them. I am not saying we should lobby. We can make use of the reflections we have carried out today and don't forget although we are a regional set up, many of these questions are peculiar to the historical and regional set-up of our area. Other countries in the Commonwealth may also want to share our experience with them.

So with that, I thank you very much for your indulgence.

Thank you very much.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much, Speaker Mc Gregor.

We now come to the Fifth Plenary Session.

FIFTH PLENARY SESSION

Conditions of Service for Members

The Conference Chairman (*Honourable Munyenyembe*): May I call upon the Deputy Speaker from Botswana, Honourable Masisi to present his topic.

Honourable Masisi (Botswana): Thank you, Mr. Chairman and the Speaker of National Assembly of the Republic of Malawi. Honourable Speakers and Presiding Officers, I would like to seize this opportunity to express our profound gratitude to you, Mr. Speaker and all Members of the Malawi Parliament and the great people of Malawi for the tremendous hospitality accorded to us on our arrival in the country and, particularly to you, Mr. Speaker, because yesterday when we passed our vote of thanks, you had not assumed to the position as Chairman.

I would like to add, Mr. Chairman, that the arrangements for this function have been very good indeed and we are enjoying ourselves in this City of Lilongwe and the beautiful country of Malawi.

Mr. Chairman, it is indeed a great honour and challenge to Botswana as one of the oldest democracies in the Southern African Region to have been given the duty to move this important topic, "Conditions of Service for Members of Parliament". It is important and difficult, and in my presentation, I will only briefly touch on the issues and allow you, Honourable Speakers and Presiding Officers, to share experiences with us.

Honourable Members of Parliament are expected to put on their best as they go about performing their duties which they have been elected to perform. Parliament, Mr. Chairman, is a most important organ of Government in any country and play the most central pivotal role in making the laws of the country as well as scrutinizing the entire budget of the Government. It is logical, therefore, in view of this important role, Government attaches great importance to the conditions of service and welfare of Members of Parliament.

Indeed Mr. Chairman, Conditions of Service for Parliamentarians are meant to ensure that they discharge their duties efficiently with undue financial worry and also live and maintain themselves in their families at a modest but honourable level. That is the intention. Conditions of Service comprises among other things, salaries, allowances like responsibility allowance, constituency allowance, secretarial allowance, telephone allowance and in certain countries, other allowances.

I would now like to confine my remarks to what pertains in Botswana. In Botswana, Mr. Chairman, there is a Parliamentary Select Committee called the House Committee which, according to Standing Orders for Botswana Parliament, [Standing Order number 83(2)] is charged with the responsibility of considering all matters connected to the comfort and convenience of Members in the performance of their duties as Members of the Assembly and shall assist the Speaker with advice. The House Committee also assists the Speaker with its advice on matters connected with the administration of Parliament, the production of Hansard and the administration of the library and all other facilities related to the Chamber.

Apart from salaries and allowances, Members are also entitled to accommodation. In our case, Members are also entitled to official transport when the House or some of the Committees are sitting. Entitlements differ according to responsibilities. For example, Honourable Ministers are entitled to three trips outside the country accompanied by their spouses during the life of Parliament. Back-benchers, on the other hand, are entitled to one trip accompanied by their spouses during the life of Parliament. Other Members are also entitled to free accommodation in the form of flats, that is in our case, Mr. Chairman, those who are not resident in the Capital where Parliament normally meets.

Those who are staying in their own houses are paid a housing allowance equivalent to the Botswana Housing Corporation flats rentals, or value of the place where they are expected to pay any rentals.

It should be noted that in Botswana, conditions of service are uniform to all Honourable Members irrespective of the party they represent in the House. For instance, the Leader of the Opposition is entitled to a Type 1 house which is rent-free, garden allowance, security officer, and is provided with a Government Chauffeur for official business, just like the Deputy Speaker of Parliament who is a Member of the ruling Party.

Mr. Chairman, the subject of the debate which normally arises is whether or not there is need for Government to continue giving attention to the welfare of Members of Parliament on retirement. This question has been raised on a number of occasions. As you may be aware, Mr.

Chairman, this is my seventh term in Parliament and up to now, the decision has not been taken on whether at the time of retirement Members of Parliament will be entitled to a pension.

The argument is basically that when they retire, it is difficult for them to go back to their former occupations. Moreover, they gave up their professions, sacrificed their lives for the welfare of the society and hardly could afford time for their private lives. Therefore, providing them with facilities necessary to maintain their standards of living could be consistent with their honourable status. This is the basis of the argument.

Some Commonwealth countries, Mr. Chairman, have, in view of this and other supporting opinions, introduced superannuation schemes for retired Members of Parliament based on their length of service. Some countries have pension schemes for Parliamentarians, but in Botswana, we have not yet achieved that goal. Instead, Members are encouraged to join pension schemes provided by the private institutions.

As I said at the beginning, I have deliberately decided not to cover a lot of grounds so as to give the other Speakers a chance to voice out their experiences. But, basically, this is the experience in Botswana.

Thank you.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much, Honourable Masisi. I am glad that this is being said here where Members of Parliament are not present. Some of the conditions you have spelt out are very attractive, I wish I were in your position where Government offers all those conditions; they are very attractive indeed.

I call upon Honourable Speaker from Swaziland to second the topic.

Honourable Mncina (*Swaziland*): Thank you, Mr. Chairman. First of all, I wonder if you could allow me to divert a little bit into what my Members of Parliament try to do and I don't allow. But I was highly attracted by the earlier topic. In fact, there were two things I wanted to raise

in the earlier topic, the question of tradition and Speakership.

I think it is important that while there is tradition of a Speaker shading off political association, it is important that we should be innovative and allow some flexibility because if we do not, the institutions will remain as they were and I think that will not be developmental.

It is, therefore, essential to accommodate the new thought and see how this can contribute to democracy.

I also felt the questions raised, in particular, by South Africa, are food for thought. Government and political parties should continue seeking ways of how we could improve the institution for the better, because all we are doing in Parliament is to make our situations better than we have found them.

Mr. Chairman, coming to the topic, I think if we talk of Conditions of Service for MPs and allowances they get, we are usually tied up with the economic set up in each of our countries. If we look at the position in Swaziland, you will find that our GNP as set up by the Minister of Economic Planning and Development has shown some steady growth and as a result, one would have thought this would allow us to have much better conditions of service. The problem is that the GNP is usually related to the population growth and if you try to balance up these two, you might find that although there might be an improvement in the GNP, if the equilibrium is disturbed, the result is a tail in income per capita.

Mr. Chairman, having looked at our economic situation in Swaziland, we have tried to improve the conditions of Members of Parliament especially those of the Presiding Officers. The problem we are faced with is that the separation that we have been talking about between the Executive and the Legislature is not quite clear. There is dependence on the Executive.

We have, in Swaziland, a joint committee that is a constitutional requirement or in terms of Standing Orders, is supposed to look into the conditions and allowances that are given to Members of Parliament. The present situation is that the presiding officers, that is the President

and Speaker in the House or Assembly, are paid on an equal level with the Ministers, but the Deputies and others still fall far below the expectations and this is not what we would like to have. The result is that we are continually trying to improve the situation, hoping that it would be improved in the near future.

In our efforts, we have tried to engage consultants, but the difficulty has been in coming up with a job description of a politician. It is difficult, for example, to say the working hours of a politician are from five in the morning to about six in the evening, because even in the middle of a night, a politician is still at work.

So, it is difficult to do these things scientifically, but we have tried and the consultant is going to evaluate some of the hardships and difficulties that politicians face as Members of parliament and also as members of Local Government.

Having said that, for the Ministers and Presiding Officers, we also have a car allowance. This car allowance is given to Ministers and also to Members of Parliament, but there is a difference on the level of petrol allowances. The Minister gets 100 percent while the Presiding Officers get about 40 percent of that allowance. Members of Parliament get a monthly allowance of the petrol that they have to use.

In addition to this, there is of course what is called "the constituency allowance" for travelling purposes. The allowance is also given to Ministers and Presiding Officers. There is also a pension scheme that is applicable to all Members. Since 1968 when we got independence, there has been no pension scheme given to Parliamentarians. But it became clear that some of the Parliamentarians spend most of their time in Parliament and for them to leave Parliament with no kind of pension scheme appears to be very inhuman.

Like my colleague here, Senator Mncina, the President of the Senate, has spent almost 15 years of his life in Parliament and he is young enough to continue for another 10 years so that if re-elected, it means at the end he will have spent 25 years in Parliament. In that case, if you do not provide pension, it means we are not appreciative of the work that he does in contributing

to the development of the country.

There is also a housing allowance which takes two forms: if you live in a Government house, you do not get the allowance, but if you live in your own house, you get some kind of allowance. Members of Parliament generally get an allowance whenever Parliament is in session for their stay at Lobambo where Parliament sits.

In addition to this, Ministers and Presiding Officers have a medical aid scheme. This scheme covers the Presiding Officer and his wife and children under 18. The medical aid scheme is contributory. Members of Parliament and Ministers pay five percent of their basic salary in order to cover this expenditure.

Having said that, Mr. Chairman, one might think we have covered most issues under conditions of service for Members, but you can see from the outline that there is still room for improvement in a number of issues.

As I said earlier, we will set up a committee to look into all political related posts and see how best they can be compensated in terms of allowances. It is true, Mr. Chairman, that in most countries, salaries for MPs and Presiding Officers are regarded as allowances. To a greater extent, if you join Parliament, you tend to lose compared to what you would get in say, private sector. But for the sake of development and improvement of lives of the people in your country, you make a sacrifice of joining the Parliament, and the result is that you have to be somewhat rewarded. This is so in both one-party and multi-party systems and in the countries where there are non-party organizations. The need to improve the quality of life of the people becomes paramount and those joining Parliament have this conscience.

Mr. Chairman, it has been our honour and pleasure to present the view side of the conditions of service in Swaziland.

I would like to thank you very much. Thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*) : I make it 10.30 a.m., Malawi time. I don't know what it is on your watches. 10.30 Malawi local time. We, therefore, break for tea and then we will comment on the topic later on.

Thank you.

The Conference was suspended at 10.30 a.m.

The Conference resumed at 10.50 a.m.

The Conference Chairman (*Honourable Munyenyembe*): We have had two important presentations on the Conditions of Service for Members. The presenter was the Deputy Speaker from Botswana, Honourable Masisi, and it was seconded by the Speaker from Swaziland.

This topic is now open for discussion. Can I have comments, please?

Yes, the Honourable Speaker from South Africa.

Honourable Dr. Ginwala (*South Africa*): I think the two Honourable Speakers have said a lot about problems and the needs of Members of Parliament. I don't think there is any doubt about the importance of the types of allowances: the pension schemes and security. The difficulty has been in how we reconcile providing for the needs of Parliamentarians when there are so many needs in the country. Public perception might naturally be that we are looking after ourselves by paying ourselves money while the country is still in poverty. I think that is the kind of challenge.

Now, the essential task in overcoming that, I believe is that Parliamentarians must not decide to pay themselves. I think it is absolutely false. We need to leave such tasks to an outside commission. I think we should maintain that principle.

I would argue for a public body like a commission or a committee, with clean guidelines and amongst the guidelines, the most important, of which would be to educate the public on what

people don't know. They think it means going to Parliament sitting on the benches and making speeches. They do not see what else is involved.

The second aspect is to clarify whether this is a job or a vocation. In other words, are we saying people must be paid less because they have a commitment, or are we paid for doing a particular job.

"What is the comparison, are we going to compare ourselves with the private sector, or are we going to compare ourselves with the Civil Service?" People may have different answers, but I believe it is very important that the public is engaged in that debate when we put forward the criteria that the commission has taken into account, and less political parties and other parties make submission on how they see that. I think there is another important aspect and that is to come back to that first point, that is the work of a Parliamentarian.

In South Africa, it seems that in the past, being a Member of Parliament was a part-time job. Parliament met for a few months a year only. Now, I believe that what we need to do is to actually look at what is the job of a Parliamentarian and in it, your responsibilities to the constituency. In addition, we should define the task of a Parliamentarian to include servicing a constituency and consulting. All of this, should be there as part and parcel of the process. So, when we look at a package, the job description already provides for a lot of things as part and parcel that first thing.

The second one is the public transparency, not simply in the setting, but in the public awareness of what one is actually getting. Now, here again, the past experience of South Africa reveals that in the past, there was a salary but there was so many hidden perks that one really didn't know what was being done and what people were getting. And even today in Parliament, we have Members who served in the previous Parliament are drawing two or three pensions. But they are now in the new Parliament and they qualify for whatever everybody gets. Now, this is a sort of thing that give Parliamentarians a bad name. It is the kind of thing we have to move away from.

So again, before the elections, a decision which one would support as in the negotiation that the new commission that will be set up, would take all allowances and package them into a salary, so if the public knew that they were getting 196,000 Rand a year, you couldn't pretend you were getting 120,000 Rand. Then there was a little allowance there. There was a little 30,000 Rand. There was a little something else

So, this was a very, very important principle. It hasn't removed the accusation of the politicians being on the grazing trail, but it does help us confront an open debate.

I think there is another aspect which we should not overlook and that is the support that we give to Parliamentarians. A lot of things which were referred to as a secretarial allowance and things of this kind, should be part and parcel of the facility that Parliament provides. To this extent, we are able to do that.

I understand the US Congress provides eight members of staff to every person who is elected. I mean I don't imagine any of us are going to have facilities of that kind with a quarter of a million dollars being cash allowance. We have to cut our coat according to our cloth. We should distinguish between the salary package of the MP and what Parliament provides by way of facility. When you go into a company and you have a job, you don't get a secretarial allowance, a computer allowance or a telephone allowance, it is part of your job. That's the facility the company provides. But sadly for Members of Parliament, they say, "Parliament doesn't provide them". And it looked like it's something personal to you as Members of Parliament, but I think we are being unfair to them. We may not be able to afford it, if we can afford, let it be as a job equipment just as you get equipment in whatever job you do and not seen as something that is personal to Members of Parliament.

I think those are more general principles which I think we need to bear in mind when we actually apply and look at the conditions of service of Members of Parliament.

The last point I want to endorse is the importance of pension. I think what is important is the kind of security which will retain people in the political main stream. I think it is important

again for our country that people of ability, quality and integrity remain in politics since they will enhance development in our countries. We should be seen to encourage people and not to make them feel like they are outside the society or outcasts.

So, these are the principles that I wanted to put forward. Thank you.

The Conference Chairman (*Honourable Munyenyebe*): Thank you very much. Any further contributions?

Yes, Honourable Godana.

Honourable Godana (*Kenya*): I really don't have contributions or any critical comments on what has already been said, but to give Kenya's own experience.

As the Honourable Speaker from Botswana was making his speech, I thought to myself that Botswana must be a very wealthy country, because I thought they have quite generous package for their Members.

In our country, the Members, of course, have a salary which is far below the private sector, but is slightly higher than that in the public sector when you add what is called the constituency allowance, the travelling allowance and so on. The only other two allowances which are outside that package of total emoluments is what they call a mileage allowance. This is for visit back to the constituency every weekend. You make the visits, you are paid some rate per kilometre.

Just before I left about two weeks ago, there was a meeting of the Sessional Committee where I represented the Speaker and Members were urgently urged by the long time Members of Parliament, who is now Member of the Opposition, to approve an increase in the mileage allowance because petrol prices have gone up.

It seems to me the original package of emoluments at the time of independence,

considering the economy then, the salary structure was very good for Members, but as time went by, the Government has not been responsive to all the demands from MPs.

On the telephones, we have a very meagre telephone allowance of 1,000 shillings a month and any bill above that, we have to settle it ourselves. There is no car allowance, we get a car loan from a Commercial Bank, that is guaranteed by Parliament so that your application is not turned down.

The prices of cars have gone up several times during the past year especially after the introduction of the one-party state, so much so that it is not really feasible that a Member can take a loan and buy a new car unless you have other sources of income. So, the Government decided to exempt the Members from paying duty on their cars.

Recently, a Parliamentary Members' emoluments review was carried out by what we call - a Top Review Body which was appointed on the recommendation of the Sessional Committee.

The body was composed of former Members of Parliament who went around interviewing Members, people in the private sector and the Public Servants Commission and came up with a scale. The MPs were very dissatisfied and the Members of the Opposition even thought of opposing the recommended package and demanded to have it doubled.

Unfortunately for them, they had not understood that there are some technicalities in the procedure. A Bill of Finance and some emoluments for Members is considered. A Finance Bill can be resolved amicably, of course, if the Government knows what it has done is proper. So, the next thing when they realise that they cannot present this Amendment Bill without the consent of the Treasury, they accepted what was there but the Members were not satisfied.

At the same time, the members of the public made an outcry. They thought Parliament should be the last to have salaries increased. They felt Parliament should first look at the needs of the workers, the ordinary people, that if Members have gone into Parliament, they have gone on a vacation, they have not gone to Parliament for benefit. They must be prepared to sacrifice.

"How can you claim to represent us when you give yourselves huge salaries when the ordinary worker is suffering especially in view of the structural adjustments?" They ask.

These are of course extreme views, but I think the best way to proceed would be to say, "give us as many facilities as possible", than think of emoluments purely in terms of cash.

We now provide for housing allowance for Members of Parliament. Again, members of the public are very generous. In fact, they have just made it possible for Members of Parliament to acquire flats in Nairobi for those who come from far away, to be able to keep their families there or live there when Parliament is in Session.

I think this is a very difficult subject. The Treasury too has not been forthcoming and as a result, there are no offices for an MP. If you are a Minister, you use your office or if you have the means, you rent an office block in town.

Personally, I think this is a very important priority because we have seen some MPs who cannot afford office space outside end up using a lounge in Parliament as their constituency offices, making the place very crowded. So, MPs themselves began complaining about too many visitors in the place and in turn, we said, "okay, you pressurize the Treasury to get the money because now we have the place available, but we don't have the money". Parliament has acquired the building, but the money is not there.

So, these are some of the elements in our own experience.

Thank you.

The Conference Chairman (*Honourable Munyenyembe*): Thank you, very much indeed, Honourable Godana.

I now recognise Honourable Mac Gregor from Seychelles.

Honourable Mac Gregor (Seychelles): Mr. Chairman, in general, I have no problems with principles raised though I do have one or two thoughts. One of them has been constantly coming up.

May be, I can put it this way, how does one evaluate the value of an MP, the value of a Speaker? Let's start with the MP. It is based, like in some countries, on the economic ability, or strength of that country or what priority should be put on a Parliamentarian's responsibilities, or is it how troublesome or turbulent the area is, or the countries that he comes from, or the area covered, or the population covered, or the deprivation that he has to endure. We all know there are so many factors and some of them we cannot even mention. And now often, you have heard the saying that "Speaker's job is not an enviable one". We have often heard people saying, "I don't envy you. I don't envy your job". Yet somebody has to do it.

How does one evaluate all of these things when you look at the conditions of service that you give to a Speaker, and compare his post to many other high posts which in the eyes of many others, are lucrative posts. People envy those posts. This one has those special characteristics. Thank you.

The Conference Chairman (Honourable Munyenyembe): Thank you very much, Honourable Mac Gregor.

Any further comments? There are no further comments. That marks the end of that topic.

Now, I think if anyone of you did have any prepared paper, it wouldn't be a bad idea to have it photocopied so that we can read your thinking. We would benefit quite a lot.

I am most grateful to all the presenters and those who have contributed to the last topic.

We now move to the next topic. We have moved very fast and I think we will catch up with time.

The next topic is the Role of Parliamentary Committees in Legislative Process: Their Strength and Weakness.

The opener is South Africa. Can, I therefore, no?

Honourable Dr. Ginwala (South Africa): No. Originally, it had to be done by the President of the Senate, but we changed it in the Standing Committees.

The Conference Chairman (Honourable Munyenyembe): Yes. I can't remember who will do it now.

Honourable Dr. Ginwala (South Africa): Zambia is to open.

The Conference Chairman (Honourable Munyenyembe): Yes, Zambia is to open that topic and Seychelles is seconding.

SIXTH PLENARY SESSION

The Role of Parliamentary Committees in Legislative Process: Their Strength and Weaknesses

Opener : **Zambia**
Second : **Seychelles**

The Conference Chairman (Honourable Munyenyembe): May I call upon Honourable Mwila to introduce the topic.

Honourable Mwila (Zambia): Thank you, Mr. Chairman. One morning in a particular country, the entire Civil Service had gone on strike. Now, their Chief Steward, getting worried, ran as fast as he could to the State House to see the President on the issue. When he got to the gate, he found nobody. He got to the main house building, he did not see anybody, went roaming from

office and eventually he bumped into a house-keeper who asked him, "what are you doing here?" "I am looking for the President. The entire Civil Service is on strike. I want to discuss something serious with him", he said.

The house-keeper replied, "the entire staff in State House, including the President are on strike against the outcry from the public for more democratic ideals".

Mr. Chairman, this subject is very important. It is a test case in the field of democracy. It's a test case in a sense that it is the only instrument the nation, through Parliament, can use to probe into the activities of the Executive.

Now, the big question is, what is a Parliamentary Committee? Is it another Court of Law which will use its judgement on an individual without accommodating his side of the story? What is it?

Well, some people say Parliamentary Committees are working for business groups of Parliamentarians appointed by the Speaker in accordance with the Standing Orders and in conformity with the constitutional requirements to perform certain functions conferred upon them. These Committees oversee the Government administration and subject its activities to detailed scrutiny. They have the authority to control the Executive and see to it that Government policies, accountability, transparency and checks and balances, are in consonance with aspirations of the nations. This notion is based on the principle that it is not Parliament alone that represents all the people in the country, and the Executive, not Parliament, rules the country.

Mr. Chairman, I would like to share my feelings with Honourable Speakers here on this situation by giving them the Zambian situation. The Zambian Parliament is based procedurally as we have discussed here, on the Westminster model. From its first session at independence in 1964, the Zambian Legislature has employed a system of Committees. As such, procedures that are followed in Committees are basically being derived from the Westminster style.

These Committees are instruments of the House to oversee the activities of the Executive.

Like in most Commonwealth Parliaments, the Zambian Parliament has provision for two types of Committees:-

1. Sessional Committees; and
2. Select Committees.

Select Committees in Zambia are Committees appointed to deal with specific issues as need arises within a short period. Upon completion of their assignments, these Committees are dissolved after reporting their findings to the main Committee.

I have asked a question. Can this Committee look at themselves as a small court which will pass judgement on certain individuals?

Now, in our own situation, Mr. Chairman, these Select Committees are sometimes appointed in order to look into the appointments by the President and after their findings, they can make final recommendations to the entire House on who should be appointed and who should not.

Now, I am coming back to the same question. If they find that according to the evidence available either from anti-corruption section or from the intelligence network, that one of the nominees from the President has had some problems with this organ, then they don't recommend him bearing in mind that such an individual has not made himself available to state his side of the story, but they just go ahead and drop him.

Now, is it in conformity with democratic ideals for a Committee of this nature to drop somebody and possibly curtail his future, his career, and spoil his future without reasons for it? That remains for us to discuss.

Under the Sessional Committees, there are two sub-groups, namely: House-keeping Committees and Watchdog Committees.

House-keeping Committees:

This group consists Committees concerned with matters associated with the powers, privileges, procedures and welfare of the Members of Parliament and administration of the Parliament itself. There are five of them and these are:-

1. The Standing Orders Committee;
2. House Committee;
3. Library Committee;
4. The Parliamentary Procedures, Customs and Traditions Committees; and
5. The Committee on Absence of Members on Sittings of the House and Sessional Committees.

All these Committees are chaired by the Honourable Mr. Speaker and the meetings are determined by him and depend on the amount of work that has been generated by his office and the office of the Clerk of the National Assembly.

Watchdog Committees:

This group consists of Committees whose membership is composed of back-benchers and have the mandate to elect their own Chairman. The Speaker does not appoint chairmen. His role is to appoint Members to each Committee and then each Committee, under the auspices of the Deputy Speaker, will elect its own Chairman. And then these Chairmen will represent, in all their deliberations, the Speaker.

The Committees perform the role of watchdog over the affairs and activities of the Executive and are empowered by the House to carry out investigations and report their findings to the House within their own terms of reference. Their supervisory role is crucial and fundamental in Zambia's political, economical, social and cultural development.

Consequently, Committees of Parliament are regarded as miniature Parliaments assigned to scrutinize individual matters that the House cannot undertake due to lack of adequate time. The watchdog Committees are nine. These are:-

1. Public Accounts Committee;
2. Committee on Parastatal Bodies;
3. Committee on Local Administration;
4. Committee on Government Assurances;
5. Committee on Foreign Affairs;
6. Committee on Agriculture, Lands and Cooperatives;
7. Committee on Social Services;
8. Committee on Delegated Legislature; and
9. Committee on Women, Youth and Child Development.

Though this system works very well, there are uphill. There are strengths and weaknesses. Now, in Zambia, most people do not perceive the Committee to have any strength because of the fact that under the present set up, the Executive is not obliged to accept to implement recommendations from a Committee report no matter how workable or appealing the recommendations appear to be.

However, the Executive should give reasons in their "Action Taken Reports". Now, when each Committee at the end of the Session, reports to the House, that report is taken by the Minister concerned. But the Minister is supposed to take action on the recommendation and he is under obligation to report back to the House under Action Taken Report, to give reasons why they cannot carry out certain recommendations. In other words, they give reasons why they cannot take action on certain recommendations and then certain recommendations are carried out and what are the effects.

Now, to a certain extent, even though the committee's recommendation seem not to have any impact on the general policies of the government immediately, the impact is seen when the Government policy is changed due to the recommendations that have already been made by the Committee. Now, since Committee reports are made public, the Executive feels duty bound to effect some recommendations because the same complaints come up more often. That entails some serious lapses on the Executive in the eyes of the public.

The other strength is that Committees have, at least, instilled a sense of responsibility and accountability in the Controlling Officers in various Government Departments and organizations. Now, because of the aspect of making these reports of the Committees public, the public officers, Controlling Officers, are now conscious of their duty to ensure that they respond favourably to these recommendations because by doing so, they will be exhibiting their ineffectiveness and inefficiency of the departments and ministries that they run and this will not augur well in the public eye.

Committees have also enabled back-benchers participate in the running of Government affairs and activities by being part of the decision making bodies. The back-benchers have also learnt a lot from Committees in various topics, for example, in the running of local councils, running of parastatal companies and so on.

Weaknesses: Like anything else, Committee systems do have weaknesses. The holding of proceedings of the meeting in camera denies Committees of information, evidence and new ideas which could come from the volunteering public such as individuals as well as organizations. Lack of legal backing on the Committee to ensure that the Executive complies with the Committee's recommendations once the House approves, has also rendered the Committee system ineffective. When the Committee is summoned, the House is in recess, this is now a time factor. It becomes very expensive for Members' upkeep. Funds are limited. So, you find that most of the Members, instead of going to visit their constituencies, they are under obligation now to be called and attend Parliamentary Select Committees. So, they find it extremely difficult to accommodate those and funds are not adequate enough to let Members of Parliament do their job in constituencies and at the same time attend to these Committees.

However, it should be mentioned that the effectiveness of Parliamentary Committee system is ensuring that its recommendations are implemented, is dependent on the ability of the Executive to implement specific recommendations. This is a problem as I said in my introductory remarks.

The test case of any effectiveness of the democratic system in a country is the way a

Committee system works through Parliament because it is these instruments which Parliament will use in probing the activities of the Executive and the Executive on the other hand will endeavour, at all times, and in every aspect, to go on harnessing the atmosphere of superiority over the legislature.

So, it is a battle. How do we solve this problem?

I thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much. I now call upon the Honourable Speaker from Seychelles to second the Motion.

Honourable Mac Gregor (*Seychelles*): Mr. Chairman, from the outset, I must confess, I was approached at a very late stage to second this topic as the seconder should have been Mauritius, and because he has not turned up. I had to fill in and in the spirit of making our group work, I am prepared to do what I can. It is going to be a very short thing.

First of all, I formally second this topic and secondly, very briefly. I would prefer to concentrate on what I consider the weakness or short-comings in our present context which is a very young Parliament less than two years old, and I must emphasise a Multi-party Parliament, because we had about sixteen years of one party Parliaments. Two thirds of the MPs have never been MPs and only two of them have ever experienced a Multi-party Parliament in operation.

In that context the present experience shows, may be I won't use the word "weakness", but I feel they are not effective enough. And I have to ask myself, is it because they are not open to the public, or because they are not televised? I say televised because all our sittings are fully televised. But, the Parliamentary Committees are not. Is it because they are not appropriately remunerated, in other words, separate from the MPs salary and allowances? And is it because they are not appropriately recognised or appreciated or they are simply considered as troublesome structures? Or is it because they do not have experience and not educated enough in the proper workings of a Parliamentary Committee? These are my thoughts that I could gather

at this very short notice. Thank you.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much indeed, Honourable Mac Gregor. It is true that you were given very short notice, but all the same, I am most grateful to you for your participation and for having accepted to second this topic.

Honourable Msekwa.

Honourable Msekwa (*Tanzania*): Thank you, Mr. Chairman. I think, in future, people should be given very short notices, because then they make better contributions, as the Speaker from Seychelles has just done.

I thank you for giving me the opportunity to make a contribution on this topic in the sense that the work of Parliament, any Parliament for that matter, is considerably enhanced by the work of the Committees for the following reason that unlike in the plenary sessions of Parliament, in Committees the opportunity is provided for a real dialogue. I say so because in a Committee, the rules of the House which require a person to speak only once to a topic does not apply at least in our Committees in Tanzania.

In Committees, there is real dialogue. People can discuss a topic, so that's one advantage. You can give real treatment to a topic in Committee which you cannot do on the floor of the House. There is opportunity for dialogue.

Secondly, in Committees, Government Ministers and officials are invited to attend, a second opportunity for dialogue because if the work of Parliament is to scrutinise the activities of the Government, then there should be an opportunity to ask questions, to really subject a particular item of Government business to a proper scrutiny. This opportunity is provided in Committees more so than in the plenary sessions of the House. The Government officials in attendance help the Minister to answer questions from Members of Parliament, they can answer as many questions as they are asked. It becomes a real dialogue.

Thirdly, the work done in Committees is more useful because Members do not address an external audience as they tend to do in the House itself. In the House because of microphones and the public media, Members of Parliament do indeed address the issue under discussion, but they tend to address their constituencies more than addressing the issues under discussion. In Committee, this does not happen. People do address the issues because there are no microphones. It's real business in Committee.

So, these are the three opportunities which make Committee work thorough on behalf of Parliament - there is opportunity of dialogues and there is no chance of addressing an external audience. For this reason, we have found it very useful in Tanzania to make provision in our Standing Orders that all legislative measures, all Bills, go through a Standing Committee first before going to the House. And when they come to the House, eventually, they go to the Committee of the Whole House for scrutiny of each Clause of the Bill separately.

So there are two Committee Stages in our case. Any Government Bill or any Bill for that matter, first is referred by the Speaker to a relevant Standing Committee. They have all the time they need to discuss the Bill with the Minister present and the officials of the Ministry responsible for that Bill. It is a thorough discussion and in many cases, they have succeeded in having the Bill extensively amended at that stage when they tell the Minister what they think is lacking in the Bill or what should be added or what should be taken away from the Bill. And because it is a dialogue, the Minister normally accepts that and brings in when the Bill comes to the House, brings a Schedule of amendment arising out of the discussions of the Committee. Very, very useful indeed.

As I said yesterday, we have a Standing Finance Committee which is given two weeks before budget day to scrutinise the estimates, the government estimates of expenditure, revenue and expenditure. They have two weeks to themselves. They discuss the proposals of each Ministry. At that time, the Minister responsible or his officials, permanent secretary and others, are invited to the Committee to answer questions and to help the Parliamentarians to understand the logic behind these figures.

It is a very useful, two weeks of hard work, but it produces a very good budget in the end, so that when the budget comes to the whole plenary session of Parliament, it is really a discussion of the philosophy, of the policies behind the ministerial proposals rather than the actual figures. The actual figures would have satisfied the Parliamentary Committee in advance. So that again is very, very useful.

So, I just want to emphasise that the work of the Committee is very useful in facilitating the work of Parliament for the reasons that I have stated. But there is only one danger and that is, you can have Committees stated in your Standing Orders, but those Committees may not be functioning. I am referring to the danger of non-functioning Committees. I think we had an example yesterday of the Kenyan Budget Committee which doesn't function. That can be a real danger. We have made provision in our case of avoiding that danger by saying, "that the Committee meetings shall be called by the Chairman of the relevant Committee, or by the Speaker". Which means, if there is negligence on the part of the Chairman, the Speaker can direct that Committee so and so shall meet to discuss x, y subject.

I want to say that the Speaker in our case has a role in facilitating the work of the Committees of the House and especially if this is done through the Standing Orders, every Member of Parliament knows that he will be able to function properly because if the Chairman does not call a Committee, the Speaker will call the Committee.

I think we should address that aspect of non-functioning committees because, otherwise, committees have been performing a very good function on behalf of Parliament to make the work of Parliament meaningful.

Thank you, Mr. Chairman.

The Conference Chairman (*Honourable Munyenyembe*): Thank you very much, Honourable Msekwa. I can see that Members' minds are divided. Any further contributions? Well, silence means that all the topics have been exhausted and this marks the end of our discussions on the topic.

Oh, sorry. I am terribly sorry. I will give you the right to reply, Honourable Mwila.

Honourable Mwila (Zambia): Thank you, Mr. Chairman. I would like to thank all those who have contributed on this topic, it seems it is quite clear to everybody. What should be born in my mind is that it is through the Committees that the nation is made to see the inside operations of the Executive and because of this, it would appear to me that it is imperative to have this process continued and it is also important that for this to continue, rapport and good understanding should exist within the Legislature and the Executive. Both organs are important in their respective roles and should therefore work in harmony for the good of the country.

Thank you, Mr. Chairman.

The Conference Chairman (Honourable Munyenyembe): Thank you very much indeed.

ELECTION OF STANDING COMMITTEE

The Conference Chairman (Honourable Munyenyembe): Now, before we formally close, there are two or three items to be disposed of. One is the "Election of New Standing Committee". We have to do this now simply to give time to our friends who will be leaving very shortly. It is something we have to do very quickly.

At the meeting held on Tuesday, 27th June, 1995, the Standing Committee considered nominations of candidates for election to the New Standing Committee and the Committee is submitting, through the Conference, the following candidates for consideration and approval:-

Ghana, Lesotho, Malawi and Tanzania. Can I have your comment on the proposal?

Yes, Speaker from Swaziland.

Honourable Mncina (Swaziland): The four names are okay.

The Conference Chairman (Honourable Munyenyembe): There is a proposal from Swaziland that the four names are okay.

Any seconder?

Honourable Mac Gregor (Seychelles): I second.

The Conference Chairman (Honourable Munyenyembe): Do you have any other views or opinion?

So, I take it that it is consensus of this Conference that Ghana, Lesotho, Malawi and Tanzania will be members of the Standing Committee.

VENUE OF THE NEXT CONFERENCE

The Conference Chairman (Honourable Munyenyembe): Any offers for the venue for the next conference?

Honourable Msekwa (Tanzania): Mr. Chairman, there is no offer at the moment.

Well, in that case, Mr. Chairman, in my capacity as the Chairman of Africa Region of the Parliamentary Association, having been elected only last month, I would like to invite the next Speakers and Presiding Officers Conference to Tanzania. *(Applause)*

The Conference Chairman (Honourable Munyenyembe): We are most grateful to you, Honourable Msekwa, for that invitation, otherwise the Committee was going to meet and consult and ask neighbouring countries to find out who can host the Conference, but with that offer, we are most grateful indeed.

CLOSING REMARKS

The Conference Chairman (Honourable Munyenyembe): Now, we come to the last topic and

that is the formal closing of the Conference. Honourable Speakers and Presiding Officers, in the first place, I would like to say how grateful we are, on behalf of Malawi Parliament, for you to accept our invitation to come and attend this Conference in Malawi, especially when you come at a time when the situation has drastically changed in Malawi. Some of the things we have been saying here I wouldn't have said them two or three years ago. You are probably all familiar with what the situation was in Malawi. It is indeed now a changed situation and, therefore, I am very grateful indeed that you are able to accept our invitation to come and attend this Conference in Malawi.

When I attended the IPU Conference in Copenhagen, and I met the Minister of Health from Zambia, Honourable Michael Satha, I did promise him that Malawi will from now be a regular attendance at these International Conferences and will not just seat, but will talk.

In the past, our delegations to any of these Conference, were not able to talk for obvious reasons. You never knew who was accompanying you, and you never knew what he was reporting back home. The situation has now drastically changed.

I am most grateful that at least the attendance to this Conference has been very high indeed. It is unfortunate that our friends from Mauritius and Ghana have not been able to come to this Conference. We hope we will meet them next time in Dar-es-Salaam. Next time we want this Conference to be held at the Lake so that you can have ample time to swim and also look at the waters of Lake Malawi. If you have got any flair for writing, you can sit and write some four words about the waters of Lake Malawi.

I hope you have enjoyed your stay here in Malawi, and definitely, when you feel you can come here and visit us, please do come in your individual capacity. Just give me a ring, if I am around, I would take you to any part of Malawi so that you can see Malawi. It is unfortunate that since you came, you have only visited Lilongwe and Blantyre and the Lake. This is not the whole of Malawi. I would have loved to take you, Honourable Msekwa, to Chitipa, where I come from, so that I can show you that Tanzania-Malawi Border.

Malawi goes as far as Tanzania on the Northern end of it and then Zambia on the Western part of it. The time is not on your side, we were all very busy indeed, you are all rushing to attend to very important business. But, this is beside the point. The most important point I wanted to make is that I am most grateful to you that you were able to come to attend this Conference.

Most importantly, the contributions that have been made at this Conference are very revealing indeed. I am sure that Conferences of this nature afford us an opportunity to exchange ideas. There is a lot that we can learn from each other and from one another. I am sure if we continue at this pace, there is a lot that can be done in order to improve our systems wherever we come from.

Once again, I thank you for having accepted the invitation to come to Malawi. Thank you very much indeed.

The problem we have experienced as Parliamentarians, is that you watch your words. When I declared the meeting closed yesterday, the Honourable Speaker from Tanzania said, "I am going to pack my bag and go because the meeting has been closed", and I said, "no, but my brother, you must know that I am only one year old within the system and therefore, I am not very much familiar with the procedures". But now, I formally close this Conference. The Conference is formally closed. (*Applause*)

The Conference closed at 11.55 a.m.