



EXTENDING THE REACH OF DEMOCRACY

# **SEPARATION OF POWERS IN A CONSTITUTIONAL DEMOCRACY**

Discussions and Papers on  
Southern Africa

Mount Soche Hotel  
Blanytre, Malawi  
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## **Foreword:**

On behalf of the Office of the Chief Justice of Malawi, I am pleased to provide you a copy of the report on the Separation of Powers conference in Blantyre, Malawi, January 28-31, 2003. The report analyzes the numerous topics under discussion at the conference, including a detail of the proceedings and outcome of the meeting, with recommendations for next steps.

For those of you who were unable to participate in the conference, please know that you were missed. I hope that you will accept this report as having been generated by your colleagues for your information. We have crafted a number of solutions, including the closing communiqué that we believe are applicable to all of us in the SADC region. As we move forward with the next steps envisioned in this report and forthcoming conversations, I look forward to your participation as well.

I would like to dedicate this report to Judge Sandra Oxner and to the memory of her husband, who unexpectedly passed away during our conference. Judge Oxner provided a unique perspective on threats to judicial independence, and added her considerable experience to a number of enriching discussions under very trying circumstances.

## **I. EXECUTIVE SUMMARY**

From January 28-31, 2003, approximately 40 members of the executive, legislative and judicial branches of 8 SADC countries met in Blantyre, Malawi to participate in a conference entitled "Separation of Powers in a Constitutional Democracy." The meeting was co-hosted by the Office of the Chief Justice of Malawi and the International Foundation for Election Systems (IFES). The conference was funded by the Rule of Law section at the United States Agency for International Development (USAID); USAID/Malawi; and the British and South Africa High Commissions resident in Malawi.

Malawi Vice President Justin Malewezi opened the meeting by noting that: "There is no room for any of the three branches of government to believe that it is superior to the others and therefore cannot be censured by the law." Chief Justice of Malawi Leonard Unyolo added, "The future course of democracy in Africa will be determined, at least in part, on our collective ability to make the words constitutional democracy and judicial independence ring true to the African people."

The Blantyre Conference was unique in several ways. First, although the issues of separation of powers, and specifically the independence of the judiciary, are universal issues discussed among the primary stakeholders, it is rare that representatives from all of the branches of government have the opportunity to discuss the issues in a relaxed, nonconfrontational format. The Blantyre conference provided this opportunity, a propitious one given recent political developments in Malawi. Second, participants were able to discuss the concept of separation of powers as it crosses linguistic and organic barriers. Finally, the conference participants made a commitment to explore the possibility of the eventual creation of a body that would monitor separation of powers in their respective countries. Participants agreed that the secretariat function of such a body should be taken up on a regional level, either within the SADC or NEPAD framework.

This report includes a brief summary of the context, framework and proceedings of the conference, with reference to the papers presented throughout the meeting, and the events leading to the production of the Blantyre Communiqué. The key recommendations listed in the communiqué are listed below:

### **Communiqué Recommendations**

1. **The Rule of Law.** Governmental and Non-Governmental groups must vigilantly safeguard the independence of the judiciary and the rule of the law. The three branches of government, individually and collectively, all have a solemn and legal responsibility to respect and uphold a state's constitution.
2. **Implementation and Monitoring.** Implementing these goals and giving real meaning to the concept of the rule of law and judicial independence will require on-going monitoring and oversight by individuals, governmental and non-governmental institutions and groups, as well as an independent media.
3. **Collective Societal Responsibility.** Therefore, participants of this conference call upon the leadership of each country's three branches of government, as well as civil society and the media, to make every effort to ensure these constitutional principles are respected and implemented in practice.
4. **Country Working Groups.** Each country should support the creation of Country Rule of Law Working Groups that bring together well respected representatives of all three branches of government, as well as civil society, to promote, monitor and annually publicly report on each country's progress in implementing these principles.

5. **Regional Working Groups.** SADC is also respectfully but urgently requested to create a Rule of Law Working Group that has sufficient resources to undertake this important regional task, as well as to promote other fundamental rule of law reforms throughout the SADC region. Regional support, including country and comparative public reporting and monitoring, would further promote the implementation of these principles.
6. **Inter-Related Reform Agenda.** In this regard, select committees of the Blantyre conference made a number of additional legal and policy recommendations related to the implementation of the rule of law and judicial independence. They are included as an important part of the Blantyre Conference Report and should be given serious consideration by Country and SADC Working Groups, reformers and policymakers and the people of the SADC region.
7. **Open Government.** The Blantyre Conference Report recommendations highlight the need to promote open government laws and policies, such as those related to access to information, open meeting laws and whistle-blowing that are necessary to enable meaningful public participation and informed oversight of the fair and effective implementation of all reforms.
8. **Universally Accepted Constitutional Norms.** While the judicial independence principles and recommended reforms are not exhaustive by any means, the consensus was that these were all fundamental, universally accepted and relatively non-controversial. Further, participants believed their implementation would serve as a catalyst and useful strategic guidepost for moving a rule of law agenda forward in the SADC region.
9. **Political and Financial Support.** The donor community at-large is called upon to respond to this important need throughout the SADC region. Governmental and International political and financial support for Country and Regional working groups, other reform initiatives, and meaningful civil society engagement will be necessary in the current environment.
10. **Sustainable Political, Economic and Legal Reform.** Country and regional support for the practical implementation of these constitutional and international principles will promote country and regional sustainable economic and political reform, stability, trade and investment, a democratic system of checks-and-balances and anti-corruption efforts through-out the SADC region. In addition to the papers presented at the conference (please see the Appendix section), the report includes a final section on recommendations for the way forward for participants and organizers alike.

## **II. Framework of the Conference**

The concept of separation of powers is nothing new to the constitutions written in the post-colonial period. Indeed, the recognition that a political system that is based on representation, on the decentralization of power from a single individual, is usually the first element in a new constitution. However, the inclusion of a principle in a constitution is no guarantee that it will be carried out in practice. For many emerging democracies, the short-term interests of individuals elected or appointed in a multiparty system are in direct conflict with the constitutional mandate of separation of powers. As a result, it is not unusual to witness (or experience) the interpretation of "separation of powers" less along the lines of "separate but equal," and more along the line of one branch of government that exerts power at the expense of the others.

The Blantyre conference drew participants from all three branches of government, throughout the SADC region. This enabled them to consider the role of the judiciary in the larger context of separation of powers. For the region, a few examples from 2002 highlight the constraints under which many jurists carry out their duties:

### **A. Country Examples**

#### **Swaziland**

- November 2002 - Swaziland's King Mswati III ordered a court to stop proceeding a case that accused him of abducting a young girl for potential marriage. The King's agents ordered the Chief Justice and two other High Court judges to drop the case, indicating that if they continued hearing the case, they must "resign immediately" after issuing their judgement. The two lawyers appointed by the court to interview the girl who was allegedly abducted by the King have been repeatedly blocked by government officials.
- December 2002 - The Court of Appeal ruled in favor of two criminal suspects accused of rape, who challenged a royal decree which denies bail to rape suspects. The government announced that it would ignore the Appeal Court ruling. Six South African judges who sat on Swaziland's Court of Appeal resigned in protest, and the country's lawyers went on strike.

#### **Zimbabwe**

- September 2002 - A retired white Zimbabwean judge, Fergus Blackie was arrested and charged with obstructing justice and corruption. Fergus Blackie was arrested for alleged misconduct in office related to a case in which he overturned

the conviction of a white woman on fraud charges without consulting the black judge who sat with him in the case. Also earlier in the year, Mr Blackie had sentenced Justice Minister Patrick Chinamasa to three months in prison and fined him 50,000 Zimbabwe dollars for contempt of court. Blackie was accused of being a racist after the verdict against Mr. Chinamasa, which was later overturned on appeal.

- March 2002 - Chief Justice Anthony Gubbay was accused of not supporting the Zimbabwean government in their land reform policy by aligning with the white farmers. After heavy pressure from "war veterans" and the government, including threats to his personal security, the Chief Justice originally had agreed to resign from his post. He agreed to a compromise with the government, trying to dismiss him from his post. Chief Justice Gubbay agreed to take his immediate pre-retirement leave but remain as chief justice for the remaining 4 months. In return for his departure, the government acknowledged "the importance of the independence of the judiciary."

- **Malawi**

The High Court of Malawi declared unconstitutional President Muluzi's ban on demonstrations for or against the amendment of the Constitution to extend the presidential term of office. President Muluzi declared that he would ignore the ruling, arguing that he had outlawed all demonstrations relating to his bid to amend the constitution, which imposes a limit of two presidential terms, for the sake of "peace and stability." The presidential decree was unconstitutional since the constitution guarantees every person in Malawi the right to freedom of assembly and demonstration.

- Parliament passed resolutions calling for the removal of three High Court judges for alleged incompetence and misconduct. In December 2002, the President declined to remove from office Judge Anaclet Chipeta but referred the cases of the other two, Judge George Chimasula Phiri and Judge Dunstain Mwangulu, to the Judicial Service Commission although there was no constitutional provision for such a development. The case attracted international interest and concern. The Geneva based International Commission of Jurists reported at the end of January 2003 that, on the basis of a fact finding mission by three of its members the previous month, the parliamentary motions to remove the judges were baseless. Within Malawi, fears have been expressed that this attempt to undermine the

judiciary is not unrelated to anticipated moves to change the constitution to allow the President to run for more than the present limit of two terms.

Despite these setbacks, the region (and the continent) offers some potentially precedent-setting examples of increased respect for and adherence to separation of powers principles and judicial independence such as the access to HIV medication case in South Africa.

The difficulty of enforcement of the principles of separation of powers is compounded by the relative isolation in which institutions such as the judiciary work. International institutions such as the Commonwealth Judges and Magistrates Association provide an opportunity for members to exchange information, analyze the situations of others, and raise the profile of incidents that undermine the rule of law. This international awareness reduces the jurists' vulnerability at home. One of the disadvantages of a large network is that while it may be able to call attention to the problems in a particular country, it is often difficult to gain sufficient support to mount a concerted campaign to resolve the problem or at least keep the issue alive in the media. A regional-level network based on a common methodology can monitor events more closely, issue reports that are more relevant, and perhaps reduce the incidence of one branch of government ignoring the mandate of the others. This initiative was recently proposed informally at the SADC executive level. The Blantyre workshop participants were (and remain) eager to see the work in January contribute to the establishment of a formal monitoring network. IFES supports this initiative and commits to working with concerned individuals to develop a regional framework for monitoring, reporting and exchanging information.

## **B. Organization of the Meeting**

The selection of Malawi as the site for the conference was made in the context of the ongoing controversy in the country over whether the elected President should be able to stand for a third term, in violation of the current Constitution. The Namibian Constitution was amended in 1999, apparently with the consent of the people, to enable the President to run for a third term. Having recently amended the constitution, eliminating the post of President for Life, the moves by supporters of the current President are eerily reminiscent of a less democratic era in Malawi's political history. With the executive exerting pressure on the legislature as well as the judiciary, local stakeholders considered that a network of judges, not only in Malawi but also in the region, would break down historic barriers to sharing information.

In addition, a network of judges would eventually be able to highlight judicial independence issues on behalf of their colleagues who would not be in a position to raise those issues. A number of persons in key positions would be well-placed to carry forward the proceedings and initiatives arising from the conference: during the initial planning period for the meeting, the President of Malawi served as the chair of SADC; the Speaker of Parliament served as chair of the SADC Parliamentary Forum, and former Chief Justice Richard Banda was the Chair of the Commonwealth Judges and Magistrates Association.

The conference topic of "Separation of Powers" is actually not a new one for Malawi; the first such conference took place in 1997, and it provided an opportunity for all three branches of government to discuss the effects and implementation of the new Constitution (1995).

Malawi's former Chief Justice, Richard Banda, and the current Chief Justice, Leonard Unyolo, were both instrumental in developing a list of participants for the workshop. IFES took responsibility for the identification and invitations to regional participants, based on its local connections and on recommendations from USAID Democracy and Governance representatives in the missions that make up the SADC. IFES worked with Dr. Fidelis Edge Kanyongolo, a Senior Lecturer in Law at Chancellor College in Zomba, Malawi, to develop topics for the research papers and small group discussions. The conference date happened to coincide with the President of Malawi convening an emergency session of Parliament, ostensibly to review the budget for the upcoming fiscal year, but widely understood as an opportunity to introduce the "open term" bill. This bill would remove the constitutional prohibition against a President standing for more than two terms of office. The workshop participants, many of whom were visiting Malawi for the first time, thus found themselves at a major turning point in the country's history - in a unique position to witness and discuss the application of the principles of separation of powers and whether constitutions should be amended to allow Presidents to possibly serve for life.

Addendum - since the conference, Malawi President Bakili Muluzi has indicated that he would not compete for a third term of office in the 2004 elections and has suggested someone else to be his successor as leader of the United Democratic Front party. The Bill to amend the constitution was formally withdrawn in May 2003. Some of the participants in the conference studying the events served to highlight, particularly to the public, the international community and donors, many of the political and legal problems with

constitutional amendments that are designed to extend an elected president's term indefinitely.

### **III. Proceedings**

Workshop participants arrived during the afternoon of January 27 and 28. During the evening of January 28, participants were formally welcomed to Malawi by US Ambassador Roger Meece. They were also greeted by the outgoing Chief Justice, Richard Banda.

#### **A. Opening**

On the morning of January 28, Malawi Vice President Justin Malewezi formally opened the workshop at the Hotel Mount Soche in Blantyre, amid fanfare and hundreds of ruling party members crowding the parking lot of the hotel. Having turned out in support of the Vice President, the songs of women dancing in the parking lot were audible in the back rows of the workshop throughout the Vice President's speech.

Vice President Malewezi greeted the local and international participants to the conference, expressing the importance of regional cooperation in the development of democracy and the protection of its institutions. During the one-party era in Malawi, a small group of persons closest to the then Life President made all of the significant decisions regarding political, economic and even social development. Human rights abuses were common. The legislature functioned mostly as a rubber stamp for the Executive. The judiciary in Malawi was challenged by the introduction of a parallel, traditional courts system, through which the executive could ensure favorable opinions in either of the two systems.

The 1994 referendum and 1995 constitution represented a radical change in Malawi's political landscape. The constitution explicitly includes the separation of powers doctrine. The Vice President added, "The lesson from the past has to be that there is no good enough reason for giving one branch of government too much power." Expounding on the salient aspects of the 1995 Constitution, Vice President Malewezi spoke of the constitutionally and statutorily created institutions that were responsible for governance, in conjunction with the three branches of government. He named the Anti-Corruption Bureau, the Office of the Ombudsman, the National Compensation Tribunal and the Human Rights Commission as four such institutions.

Moving on to a discussion of the importance of Malawi's continued development under the international world order, he stated that "If Malawi is to take full advantage of NEPAD, for instance, our governance record should be beyond reproach. Let us be proactive to ensure that our house is in order." The Vice President highlighted the steps Malawi has made (and has yet to make) in the development of its relatively young democracy. In addition, he recognized the challenge that the creation and maintenance of democratic institutions is occasionally beyond the resource capacity of many countries. Such institutions need to find ways of generating additional income to supplement the funds that the Treasury may provide.

Vice President Malewezi concluded his remarks with a firm reminder of the challenge that all democratic governments face. "For the principle of Separation of Powers to work in our democracy in Malawi, all institutions and individuals alike need to respect the rule of law...Let us not sacrifice democratic principles on the altar of our personal ambitions. There is no room for any of the three branches of government to believe that it is superior to the other and therefore cannot be censured by the law."

Professor Keith Henderson, IFES' Senior Rule of Law Advisor, welcomed the participants and focused his remarks on the base-line judicial norms that are relevant to the SADC region. He noted that in the past, most judicial reforms have been too technical and exclusively focused on a few high-level government officials. Most of these ambitious reforms have not taken root because little or no effort was made to engage society, traditions. Thus, many reforms have been of a formalistic, policy-oriented nature that have never been accepted by society or successfully implemented in practice.

Other key factors that have not been properly factored into reform strategies and programs include systemic corruption, judicial and law enforcement corruption and judicial enforcement. Examples of donor-scripted, elitist-oriented macro-economic and judicial reforms that have failed to achieve their stated objectives span the globe.

Professor Henderson introduced the 'Guide to Promoting Judicial Independence and Impartiality', an independent research that IFES has undertaken illustrate some key comparative findings and lessons learned. First, this Guide was long overdue and it along with IFES' own analysis presents the latest cutting-edge on a global topic of vital importance. No global research project or ambitious comparative analysis of this nature had ever been undertaken before issuance of this report. Thus, most of what we knew before the Guide was purely anecdotal in nature. Likewise, it was not clear to many that

support for an independent judiciary was critical to deepening both democratic and economic reforms.

Second, the Guide was done to promote deeper understanding of the full range of inter-related issues surrounding judicial independence, including but not limited to those relating to case management, court administration and judicial training -- which are less political and less controversial in nature. It is a sad commentary only a few brave jurists like Judge Sandra Oxner and Professor John Blackton had ever attempted to identify and organize the range of issues related to judicial independence before, particularly within a comparative context.

Third, while the Guide's primary focus, as envisioned by USAID, was to assist donors and reformers in designing and implementing strategically focused programs, the unique research in this Guide, especially when coupled with IFES' Tool Kit and research, can be used for myriad purposes by multiple audiences.

One of the most useful outcomes of the two years worth of work that went into the production of the Guide was that it has resulted in a well-organized and thoughtful approach to examining and strategically thinking about judicial independence. IFES also believes an on-going analysis of the information and research in the Guide will serve to further our knowledge-base in ways that we can not clearly see at the moment -- including how to develop, implement and monitor minimal judicial independence standards within different developmental contexts. Indeed, IFES has analyzed all of the research submitted by each country expert and then developed comparative country, regional and global data that could lead to the development of a global judicial independence baseline upon which to measure future progress. We have now coupled that qualitative analysis with an analysis of how judicial independence is now being defined within the context of current governmental and non-governmental instruments and cases.

IFES' main conclusion from this two-part analysis is that despite claims that no minimal regional or global judicial independence standards exist, a closer look at the principles found in virtually all of these legal and political instruments and cases that relate to this subject illustrates there is an emerging consensus on a number of key definitional issues. While the concept of judicial independence is admittedly still in an embryonic stage, economic globalization, regionalization and democratization trends, coupled with new regional and international obligations and case law, are beginning to give it real meaning.

However, most reformers and donors, including those in the business, human rights and academic communities do not fully realize or appreciate either this fact or the actual state of international and regional legal and judicial independence norms.

With the opening remarks completed, Chief Justice Unyolo welcomed participants, reminding the group that this meeting was in essence a follow-up to a 1997 gathering to discuss the separation of powers in a constitutional democracy in Malawi. That conference discussed the roles of the executive, the legislature, and the judiciary, plus the role of the legal profession and the media. For some time, he stated, it had been the intent of the judiciary to organize a meeting to review the recommendations and action agenda from the 1997 conference; this workshop would provide a great deal of data to facilitate such a review.

### **1. Keynote Address - Chief Justice Unyolo**

Chief Justice Unyolo opened his keynote address looking at the history of the separation of powers doctrine, first articulated by Montesquieu and echoed in most of the countries that today are described as constitutional democracies. Separation of powers, with its attendant system of checks and balances, is an essential feature of the distribution of government power that characterizes the spirit of democracy. Although throughout modern political history, different countries have expressed their own nuanced forms of democratic government, all such countries necessarily adhere to the separation of powers doctrine.

The Chief Justice expressed confidence that the workshop would enable participants to examine the theory as well as the practice of separation of powers. "There will be scope for examining the doctrine from [Malawi's] historical and constitutional development...a vast amount of information from practitioners and theorists alike, from recent history, will make the deliberations here useful, productive and determinative."

In addition, the Chief Justice asked the participants to consider separation of powers issues that go beyond the purview of the three branches of the government. These include the creation, monitoring and effectiveness of institutions such as human rights commissions, ombudsman and similar positions. Finally, the Chief Justice reminded the participants that the power any constitution gives the courts to review the constitutionality of the powers of the executive or legislative branches is a direct determinant of the degree to which those branches are compelled to follow the rulings of the courts.

## **B. Plenary Sessions**

The workshop was divided into a series of plenary sessions and small-group discussions. Each person who spoke during a plenary session was asked to prepare a research paper in advance. Plenary speakers were asked to summarize the points made in the papers and then open the floor for discussion. A brief summary of each paper follows.

### **1. The Constitutional Perspective: Theoretical and Philosophical Background**

#### **Professor Anthony Bradley**

Professor Anthony Bradley opened his exposition by looking at the fundamental descriptions and practice of separation of powers. As Justice Unyolo mentioned earlier, any government committed to the rule of law must provide for a separation of the key functions involved in the administration of power. In practice, the lines between these functions are blurry. For example, many Commonwealth constitutions refer to the ministers in Cabinet as members of Parliament and therefore subordinate to the will of Parliament. In Malawi, however, Cabinet ministers are regarded as part of the executive and answerable to the President. In any case, most governments recognize that the primary check on the executive and legislative branches is the judiciary – in that any decision or legislation approved by either branch is subject to review by the courts to determine whether the decision or legislation are in accordance with the constitution.

The role of the courts in resolving disputes, specifically those that arise in response to the abuse of public authority, is one of the threads that runs through this workshop. When these types of cases are brought before civil or constitutional courts, the outcomes have a significant impact on the future life of the community. This effect is magnified if the dispute is between an individual (or class of individuals) and a public body over the exercise of its power.

Participants in the workshop were asked to define the term “judicial independence.” Professor Bradley suggested that the broad definitions could be complemented by understanding also that a truly independent judge is one who recuses him/herself from any case in which there is a danger that he/she might act in a biased manner. Once the judge is certain that he/she can hear the case impartially, the process should be begun and completed as expeditiously as possible – bearing in mind that that all opportunities to hear evidence should be taken. The same principle of follow-through applies to the period between the trial and the decision, as well as to the appeals process.

The requirement that a government committed to the rule of law also commit to protecting the independence of the judiciary does not exclude the need for some measure of accountability on the part of the judiciary. Nor does it preclude the possibility (and occasionally, the necessity) for consultation between the judiciary, the legislative and the executive branches.

Moving on to the question of the costs involved in facilitating the court system in the exercise of its primary function – providing access to justice – Professor Bradley noted that this is a problem in nearly every country. Like other sectors – i.e., health, education, commerce – the judiciary is dependent upon the government to finance its infrastructure. Unlike some of these sectors, however, it is difficult for judicial actors to advocate openly for additional funds without appearing to be biased. One possible solution to this problem lies with the involvement of representatives from several levels on a Judicial Service Commission. Input from the Commission would be transmitted from the Chief Justice to the Minister of Justice, and from the Minister to the executive and legislature.

Access to justice, and more specifically factors that impede access to justice, are universal problems as well. Lack of legal aid, the complexity of legal procedures, outdated rules of procedure and the cost of litigation are some of the factors that reform in the judicial sector must seek to address. In addition to the judiciary, civil society organizations working in the area of legal advocacy are on the front lines in improving access to justice. Such organizations may implement projects or activities designed to increase public understanding of new legislation or a verdict in a case that deals with societal issues.

Professor Bradley concluded his remarks by emphasizing the importance of creating a legal system and infrastructure that significantly if not fully meets the public's need for legal service, advice and representation, at the lowest common denominator. All personnel involved in the judiciary are encouraged to continue their education, participate in training, and increase their knowledge of international treaties and instruments that address human rights issues.

## **2. The Malawian Perspective: Key Challenges Confronting the Executive, Legislative and Judicial Branches of Government**

**Speaker of the Parliament, Sam Mpasu**

Sam Mpasu, Malawi Speaker of Parliament, addressed the issue of separation of powers from his perspective by calling attention to the number of occasions that political parties (and individual politicians) take political differences to court. The court is then faced with the probability of future accusations of bias, no matter what its ruling. Part of the origin of the confusion about the roles of the executive, legislature and judiciary comes from Malawi's previous experiences, which maximized the role of the executive over the other branches. The 1995 constitution reflected the incoming Malawi government's desire to move away from the traditional perceptions and actions. "We wanted a Legislature that would stand up to the Executive and the Judiciary; a Judiciary that would stand up to the Legislature and the Executive, and an Executive that would find it dangerous to turn both the Legislature and the Judiciary into rubber-stamp institutions."

Next, the Speaker discussed, as did many participants, the working definition (based on practical experience) of judicial independence. Again, since the outcome of a proceeding (especially in a dispute over a matter that has a political origin or effect) is usually in favor of one of the two sides, the side that is not favored by the ruling will believe that the court is biased.

The Malawi Constitution, like many others in the modern age, creates powers for its organs based on the principle of checks and balances. This principle underscores the practical implications of implementing a separation of powers philosophy. If each branch of government is accountable to another on some level, then it is very difficult for one branch to elevate itself and separate its powers from the remaining state organs.

Speaker Mpasu noted that up to 1994 (the beginning of the end of the one-party state in Malawi), the National Assembly was never challenged in court. Since 1994, some of the litigation naming the National Assembly has ended up in the Supreme Court, because the plaintiffs have themselves been members of the National Assembly. This implies that the lines between the two branches are constantly tested. Similarly, the conflicts between political parties in the National Assembly are played out in the courtroom, requiring the Speaker to appear occasionally as a defendant.

If the current National Assembly appears overly litigious, perhaps it is because democracy and new governance principles are taking an increasing hold in Malawi. It is to be hoped that having tested the powers of the National Assembly and the Judiciary respectively, political disputes will be more regularly resolved internally in the future.

The Speaker left participants with several recommendations for the resolution of disputes involving the National Assembly:

- In the absence of a Constitutional Court, cases involving the National Assembly should, as a rule, be assigned to senior judges familiar with the constitutional implications of their decisions.
- The Judicial Service Commission should take an active role in reviewing and dealing with complaints about judicial officers, lest the National Assembly be compelled to play that role.
- Political parties should be more diligent in resolving their disputes internally, rather than seeking redress from the National Assembly or the High Court.

### **The Malawi Supreme Court, Justice Duncan Tambala**

Justice Duncan Tambala of the Malawi Supreme Court of Appeal began his remarks with a review of the separation of powers doctrine and origin. He then described the practice of separation of powers as it applies to the United Kingdom and in Malawi in some cases. For example, some cabinet ministers are elected members of Parliament who are appointed from that body by the President. Cabinet members therefore may introduce legislation (as representative of the Executive) and then participate in the debate on the floor of the National Assembly. The executive branch also has some leeway to enact regulations with the force of law. The administrative tribunals (within the Executive branch) that carry out the interpretation of those regulations function in a manner similar to the court system, and their decisions carry considerable weight. It appears from the previous two examples that complete separation of powers is neither practical nor desirable as a starting point for the establishment of a constitutional democracy.

Within the Malawi judiciary, it is unclear whether there is appropriate protection of the judiciary's interests at the executive or legislative level. Justice Tambala suggested three options: (1) the Attorney General could represent the judiciary in the National Assembly and the Cabinet; (2) the Vice President could also represent the judiciary in both branches; (3) one of these officeholders could represent the judiciary at the executive level, while the Chair of the Legal Affairs Committee could represent the judiciary in the National Assembly. In any case, this is a matter for constitutional review and possible amendment.

Moving on to determinants of judicial independence, Justice Tambala highlighted the appointments process, the tenure of office and conditions of service, use of judges for extrajudicial purposes, parliamentary criticism of the judiciary, and judicial immunity from civil action as the most salient factors. In the case of appointments, judicial independence may be protected by a ratification process that involves the executive and legislature. The method of appointment must also be transparent, whatever formula is used.

Conditions of service for the judiciary, while having improved significantly towards the end of the 1990's, still leaves much to be desired. Although judges are provided with housing and transport, the salary is insufficient in many cases to cover the cost of maintenance and utilities. Financial gain is the primary reason that members of the judiciary violate their ethical standards.

### **Judicial Immunity/ Criticism**

Finally, members of the judiciary (as well as the legislative and executive branch) should recognize that immunity from civil prosecution does not connote immunity from criticism. As mentioned earlier, a case's outcome is always controversial for the party that believes itself to be at a disadvantage. The public is free to comment on the outcome of a case or express disagreement with a particular decision. As members of the public, elected officials in the executive and legislative branch are also permitted to comment on the actions taken by the judiciary. However, the separation of powers principle necessarily includes the right to criticize except in the most egregious situations. Coming full circle, the onus is on judicial officers to carry out their duties in such a way as to avoid generating this type of criticism.

## **3. The Regional Perspective: The Role of Judicial Review in Strengthening Constitutional Democracy and Promoting Economic Growth**

### **Constitutional Court of South Africa, Justice Tholakele Hope Madala**

Justice Madala opened with a discussion of how the implementation of constitutional democracy can fundamentally change the governance relationships by subordinating everyone in the nation to the guidance of the country's constitution. Most countries in the SADC region, as has been noted before, were trained in the pre-multiparty era in the Westminster style of government, with the attendant respect for the supremacy of the Parliament.

As the constitutional democracy is both relatively new and continuously evolving, tensions between branches of government are inevitable. The examples of Malawi, Swaziland and Zimbabwe are reflective of that tension. Some experiences in South Africa, however, demonstrate that a commitment to the rule of law and the supremacy of the constitution is found at the highest levels of government. Justice Madala cited former President Nelson Mandela's response to a court ruling that went against him in 1995. Rather than attacking the judiciary as biased, President Mandela took to the airwaves to announce that while he might not be satisfied with the outcome, the Constitutional Court was responsible for making a decision about his actions, and that the constitution was the supreme law of the land.

The primary purpose of a constitution is not merely to allocate power; in modern times, newly emerging democracies develop constitutions to "organize political institutions so that bad or incompetent rulers can be prevented from doing too much damage." Reflecting further on the remarks made by Speaker Mpasu, Justice Madala suggested that citizens of African countries need more education on the supremacy of the constitution, and perhaps less personality-based information about the officeholders whose job it is to carry out the constitution.

### **The South African Constitutional Court Experience**

Looking at the role of South African institutions beyond the traditional three branches, Justice Madala highlighted the Constitutional Court (South Africa is the only SADC member state that currently has a separate Constitutional Court), the office of the Public Protector, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Gender Commission, the Auditor-General and the Electoral Commission. South Africa's constitution also makes provision for the creation of other bodies as this becomes necessary.

In a further definition of judicial independence, or specifically the independence of the courts, three characteristics are essential: (1) professional training and ethical conduct sufficient to keep judges from being influenced by pressures beyond the constitution; (2) financial security and conducive working conditions to attract and retain judicial officers fulfilling the qualifications listed above; (3) constitutional protection of judicial officers'

independence, so that no other institution may interfere with the officers' implementation of their duties.

The pre-1994 judiciary in South Africa could not have been characterized as independent. It had no ability to review or reverse laws, particularly apartheid's legal infrastructure. Under the Westminster tradition, the Parliament was in control of legislation, as well as the administration of the justice system. Less than ten years later, the need for education and understanding of the rule of law is essential to South Africans who lived during as well as having survived the end of the apartheid era.

Justice Madala concluded his remarks with a brief discussion of the Promotion of Administrative Justice Act. As noted before, the responsibility of judicial review is one of the essential duties of a constitutional court. The gradual dismantling of the apartheid structure began with the use of the Promotion of Administrative Justice act; courts and counsel invoked this statute to protect or reinstate civil and political rights. The act "advances the principle of fairness by imposing a particular procedural technique on all organs of state, statutory bodies, and public service institutions [which ensures that they will] be mindful in the application and execution of policies affecting the public." Remembering Professor Bradley's definition of the role of the higher courts in protection of citizens from arbitrary and unconstitutional policies, the South African Constitution enshrines this concept as a way to redress some of the imbalances of the past.

#### **4. The International Perspective: Judicial Independence – Best Practices, Regional Issues, Challenges**

##### **Judge Sandra Oxner**

Judge Sandra Oxner characterized the independent judiciary as an institution that "bridges the gap between law and justice." Several factors mentioned by earlier speakers contribute favorably to the independence of the judiciary. In addition, she highlighted the role of independent media, continuing judicial education, an independent bar, and an educated public in promoting "the impartial judicial mind." While they sound quite agreeable, however, the judiciary is under nearly constant threat of influence. As the weakest of the three branches, both financially and in implementation, the judiciary relies to a certain extent on the good will of the legislature and the executive in order to survive, and to work in conditions that are appropriate to the seriousness of the duties.

The goodwill of the executive and legislative branches may be sorely tested in cases where the courts determine that proposed (or enacted) legislation is unconstitutional, or make other decisions that go against the desires of the sitting government. Tension is also created in situations where the three branches of government are relatively new institutions with a tradition of acceding to the demands of the National Assembly or the executive branch. Ironically, the lack of financial independence makes the judiciary subject to criticism, influence and sometimes control by the very entities that would ideally contribute to independence – such as the legislature, the executive branch, the wealthy, and the public. Some of these controls can take place in the areas of appointment, promotion and dismissal of judges; control of salary or overall conditions of service; selection and assignment of cases, or the implementation of judgments.

Looking more closely at the appointment process, Judge Oxner suggested that the international best practices for the appointment process are based on separation of the selection body from the appointment body. The selection body is responsible for identification of potential appointees, consultation with appropriate stakeholders, and dealing with public opinion as appropriate. In this way, the selection body shields the appointment body from potential outside influences, and enables the appointment body to concentrate on its job of presenting the candidates to the executive. Here, however, the politicization of this process – whether in the appointment, review or renewal stage, and for whatever reasons (tradition, cultural mores) – can easily destroy public confidence in the institution.

## **5. Media Role and Responsibilities in Promoting, Protecting and Monitoring Separation of Powers Principles in a Constitutional Democracy**

### **Media Institute of Southern Africa (MISA), Dickson Jere**

Dickson Jere, a member of the Executive Committee of MISA, spoke briefly yet succinctly about the role of the media in the protection of the independence of the judiciary. Although the media does not appear in most constitutions' listing of institutions, it is regarded as the "fourth branch" responsible for bringing information about the government and its policies to the public. This topic was highlighted in several previous presentations, in that an informed, educated public is essential to the preservation of the independence of the judiciary – as well as a check on public policy excesses.

Mr. Jere suggested that the media and the judiciary, because they do not represent a person per se, are the weakest policy entities. The courts represent the law and the constitution; independent media represent policy and political thought. This makes both entities an easy target for the executive and the legislature. Nevertheless, both estates can support each other in the course of their day-to-day work without compromising the principles of either. The courts are bound to uphold the freedom of speech and of the press; every decision made against a government entity that attempts to curtail these freedoms is regarded as a victory by the media. Conversely, the media can support the judiciary by providing context and useful information to the public (including the legislature and the executive) regarding court proceedings and rulings that government entities might find unfavorable.

In order for this support to work, both the media and judiciary must have a deeper understanding of the way that their respective processes are carried out. Journalists are guaranteed the opportunity to cover most legislative and court proceedings. This opportunity should not be squandered by repeatedly producing articles that fall short of accepted journalistic standards. In terms of covering court proceedings, it is important that assigned journalists have some experience in this area in order to provide the appropriate context for the articles they prepare. If they do not, the journalist needs to be able to have sufficient lead time to gather background information from a number of sources in order to write a comprehensive article. Many of the decisions regarding politically controversial cases are not clear cut; having a reporter who understands the particular court process, the nuances of the law that is being applied and the possible outcomes of the case is essential to furthering public education about the issues.

Members of the judiciary are trained as experts in their field. As such, they are the primary sources for factual information as well as opinions about judicial matters. As stated above, they have some responsibility to provide context to their remarks, tailored to the "lay person," or a journalist who may not have a legal background. Most media staff in the region work on commission and are not necessarily recruited as specialty writers. Where possible and practical, members of the judiciary should make themselves available to journalists who need training in coverage of legal issues.

## **C. Small Group Discussions**

At the conclusion of each day, the participants formed small groups to discuss topics related to the plenary presentations as well as to identify some of the group goals and recommendations for the way forward. The outcomes of those discussions are summarized in bullet form below:

### **1. Consensus on Judicial Independence?**

- The group examined international instruments and regional documents for the discussion, as well as the ten principles of judicial independence that were outlined in the paper by Professor Keith Henderson. These principles were adopted and incorporated in the Blantyre Communiqué. In addition, the small group suggested an eleventh principle: Judicial independence is measured by the degree to which decisions are enforced.

The group then focused its discussion specifically on the relationship between the judiciary and the executive. The group's view was that, in general, the executive does not wish to have a judiciary that is empowered to provide a constitutional check on the Executive's actions. The group resolved that in order to protect the judiciary from executive interference and to make it truly independent, judges should be protected from arbitrary removal from office, and the judiciary should develop its own budget and be funded directly from the treasury. The group also suggested that the principles of separation of powers and judicial independence would be further secured if the law did not permit ministers, who are part of the executive branch, to simultaneously hold seats in parliament.

The group recognized that exercising the power of judicial review meant that courts have to demonstrate judicial independence. Participants noted that in some SADC countries, the judicial has the power to invalidate any decision and any law if the decision or law contravenes the constitution. The group was, however, of the view that the actual system of judicial review was not yet effective and or officially accepted and that some reforms, including those in the following proposals were needed:

- Bills that are before parliament should be tested for constitutionality before they are approved by the President. Such review should be by way of a reference to the court.

- The Malawi Supreme Court of Appeal should be converted into a Constitutional Court, although it was noted that this would necessitate an amendment of the constitution which might require the holding of a nation referendum.
- The High Court should continue exercising its powers of judicial review in terms of s.108 (2) of the Constitution. However, it was recommended that when the review is of a constitutional nature, three experienced judges should be empanelled to preside.
- The President should exercise the power refer disputes of a constitutional nature to the High Court for determination in terms of s.89(1)(h) of the Constitution.
- The Chief Justice should be given discretionary powers of assigning experienced judges to the cases that involve substantial constitutional issues within the existing judicial framework.

## **2. How to Monitor**

### **The State of the Judiciary Report**

Participants agreed that it is important to monitor the extent to which separation of powers and judicial independence are upheld in SADC. Ombudsman, anti-corruption institutions have a vital role to play in monitoring. However, participants concluded that the effectiveness of any institution that monitors separation of powers and judicial independence ultimately depends on the political will of political and other public authorities. People working in those institutions must also be afforded good condition of services of employment. The group also suggested that a developed civil society was also essential to monitoring.

Civil society and the media can also make a very important contribution to monitoring of separation of powers and judicial independence. Civil society and the media are effective not only in monitoring the extent to which separation of powers and judicial independence are upheld, but also in raising the awareness of the issue by the general public. However, in order for the media to work most effectively in monitoring, it needs a conducive environment in which the media is not controlled by the state. In addition, participants highlighted the potential of labor and religious institutions to play a monitoring role.

The group recognized the need for some indicators for some indicators that would facilitate proper evaluation of separation of powers and judicial independence by monitoring institutions. The institutions would know what they were monitoring and would be able to measure it. The group noted that the usefulness of indicators depends on the availability of information. The group agreed that information, particularly which held by public officials, is likely to be more accessible if there is freedom of information legislation.

Participants recommended that judges in the region should establish a SADC judicial forum which would, among other things, monitor separation of powers and judicial independence in the various countries in the region. The tool that would be used in this purpose would be a country by country state of the judiciary report that would be developed into a regional report.

### **3. Corruption**

It was acknowledged that some judicial officers in SADC countries have had to confront the issue of corruption. Regardless of its scale, corruption was said by the participants to be motivated by the sheer greed for money and power. In the judicial process, evidence of corruption might be favoritism in case management and allocation. Corruption is considered a constraint on the realization of separation of powers and judicial independence not least because corrupt judicial officers abdicate their independence from vested interests.

Participants agreed that corruption in the judicial can be addressed by a number of measures, including:

- (1) promoting a transparent selection process;
- (2) instituting a transparent case management system;
- (3) raising the public's awareness of the existence and effects of judicial corruption;
- (4) guaranteeing adequate protection of whistleblowers;
- (5) development of investigative journalism; and
- (6) strengthening of enforcement mechanisms to make them effective.

### **4. Promoting transparency in appointments**

Participants agreed that separation of powers and judicial independence require that the judiciary be composed of well-qualified people of integrity. In order to achieve this, the

process of appointing people to the bench should be transparent and accountable. Transparent appointment procedures ensure that there is public confidence in the judiciary and that it is safe from the accusation that its composition is loaded in favor of particular ethnic, regional or other sectarian groups.

The group acknowledged the merits of the international best practices for an appointment process introduced by Judge Oxner. The practice was based on the separation of the selection body from the appointment body, with the former being responsible for identification of potential appointees, consultation with appropriate stakeholders, and dealing with public opinion as appropriate. In this way, the selection body shields the appointment body from potential outside influences, and enables the appointment body to concentrate on its job of presenting the candidates to the executive.

## **5. Case Management/Allocation**

The group shared experiences of case management systems that are currently in use in Malawi and Namibia. It was agreed that, in Malawi, the Registries play an important role in case management because they can determine the allocation of cases. In order to prevent the corruption of a case management and allocation systems, its method of allocating cases must not be open to favoritism and judge will hear their case.

Where a judge is allocated to a case in which he or she faces a conflict of interest, the judge is expected to rescue himself from the case.

It was also suggested that the system of case management and allocation will benefit from ensuring that cases were allocated on the basis of the specialist knowledge of individual judges. It was, however, noted that this had the potential of overburdening those judges whose areas of specialization had more cases than others.

## **D. Development of Communiqué**

During the workshop breakout sessions and during the closing plenary, the Blantyre Communiqué (previously outlined in the Executive Summary and included as an attachment) was developed through a participatory, priority-setting process. The framework for country and regional state of the judiciary reports, which are effective monitoring tools, was unanimously adopted.

## **APPENDIX A**

### **THE BLANTYRE RULE OF LAW/SEPARATION OF POWERS COMMUNIQUÉ**

#### ***TO THE LEADERSHIP AND PEOPLE OF THE SADC REGION***

##### ***Preamble***

11. There is a universal need in every constitutional democracy for the structure of the state to consist of three main institutions, or branches:
  - (a) A government with executive powers
  - (b) An elected legislature to represent the people in making laws and in exercising oversight over the policies and decisions of the government
  - (c) A system of courts and judges to administer civil and criminal justice and ensure adherence to the constitution.
12. The participants at the Rule of Law/Separation of Powers Conference, held at Blantyre, Malawi, from 28 to 31 January 2003, have examined in depth the extent to which good governance and the rule of law depends upon certain fundamental norms, in particular the separation of powers and the independence of the judiciary.
13. What renders the conference of particular significance is that it was attended by members of the executive, legislative and judicial branches, as well as many representatives of civil society, not only of the Republic of Malawi, but also of many countries in the SADC region, including Namibia, Zambia, Democratic Republic of Congo, South Africa and Angola. Civil society representatives included representatives of the media, of human rights organizations, law societies and of other non-governmental bodies. The conference was also attended by experts from Canada, the USA and the United Kingdom, with African and global experience in government and international legal development.<sup>1</sup>
14. After extensive discussion, both in plenary sessions and after sharing experiences and lessons and best practices around the region and beyond, participants at the Blantyre conference have reached a clear consensus on a number of key separation of powers issues confronting many countries in the SADC region.

##### **Underlying Principles**

15. The foundation of any democratic form of governance is citizen participation, observance of the constitution and the rule of law.

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<sup>1</sup> Conference participants would like to acknowledge the important contributions of Professors Keith Henderson and Anthony Bradley, from the USA and the United Kingdom, as well as Judge Sandra Oxner, from Canada.

16. The three branches of a state exercise different functions, but they exist within a single state and they share common goals in promoting the rule of law, peace, security, stability and welfare of the population whom they all serve.
17. Through their interaction, these three branches of the state enable democracy to be exercised under the rule of law.
18. There is no single accepted division of powers, personnel and responsibilities governance model as between the legislative and the executive branches of the state, as can be seen by the differing constitutions of many democracies. But within a democratic society founded upon the rule of law, these two branches must respect the independence of the judiciary, and provide adequate resources to enable it to perform its constitutional duties as the final arbiter of the constitution.
19. For its part, the judiciary must consciously respect the constitutional roles of the legislative and executive and make every effort to be accountable to the public and true to its own constitutional role.
20. These distinct branches of the state function within a system of mutual checks and balances. It is inevitable that healthy tensions develop between the three branches of state government, but these tensions must not develop into a dangerous struggle for power as this would never be for the benefit of the whole people.
21. Such tensions particularly run the risk of exceeding acceptable limits where a state's constitution and democratic institutions are relatively new, where there are profound economic difficulties, or where there are deep-rooted transitional divisions within a state that make it difficult to achieve the goal of sustainable development within a modern democratic society.
22. If the relations between the executive and the judiciary break down, it is likely that the administration of justice in accordance with the rule of law will be impeded. The cause of justice itself is threatened if the executive or legislative branches seek to erode the essential independence of the judiciary, for example, by impugning the legitimacy of decisions that the judiciary have made within the proper sphere of the courts. Such erosion threatens the underlying principle that government ought to be conducted according to law.
23. After extensive discussion, both in plenary sessions and in smaller workshop groups, participants at the Blantyre Conference have reached a clear consensus on a number of key separation of powers issues confronting the SADC region.

### **Key Consensus Findings**

24. The foundation of any democratic form of governance is citizen participation and observance of the constitution and the rule of law.
25. In many countries in the SADC region, the judicial branch remains relatively weak, compared to the executive and legislative branches, which hampers it from fulfilling its constitutional responsibilities to the people. Much of this is due to a lack of basic resources and a lack of sufficient political support.

## **Universal Principles of Judicial Independence for the SADC Region**

26. With the aim of strengthening the ability of the judiciary to perform its constitutional duties, conference participants reached a consensus on a set of universally accepted international and constitutional judicial independence norms that should be implemented in countries throughout the SADC region:
- (a) There shall not be any inappropriate interference with the judicial process by either public officials of other branches of government or private individuals or entities. Nor shall judicial decisions be subject to revision, except upon appellate review.
  - (b) Judges shall perform their duties free from improper influences and without undue delay. They shall ensure that judicial proceedings are conducted fairly and that the rights of parties are respected.
  - (c) Not only must judges be impartial, they must be seen by all to be impartial. Accordingly, in the exercise of their rights to freedom of expression, belief, association and assembly, judges shall conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
  - (d) Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction of the ordinary courts.
  - (e) Governments are obliged to provide adequate resources to enable the judiciary to perform its functions properly. Resources and career incentives at present, including salaries, benefits and court facilities, are not adequate and they should never be reduced.
  - (f) Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection or promotion shall be based on objective factors, in particular, ability, integrity and experience, and shall include safeguards against improper influences.
  - (g) Judges shall have guaranteed tenure until retirement or the expiration of their term of office, where such exists.
  - (h) Judges should enjoy personal immunity from civil suits for acts or omissions in the exercise of their judicial functions.
  - (i) Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that render them unfit to discharge their duties. Judges have the right to a fair and expeditious hearing concerning complaints or charges against them. All disciplinary, suspension and removal proceedings shall be determined in accordance with established standards of judicial conduct.
  - (j) Legislation, judicial information and court decisions shall be made available to the public.
  - (k) Decisions of the courts shall be enforced fairly and effectively.

## Key Recommendations

27. **The Rule of Law.** Governmental and Non-Governmental groups must vigilantly safeguard the independence of the judiciary and the rule of the law. The three branches of government, individually and collectively, all have a solemn and legal responsibility to respect and uphold a state's constitution.
28. **Implementation and Monitoring.** Implementing these goals and giving real meaning to the concept of the rule of law and judicial independence will require on-going attention and oversight by individuals, governmental and non-governmental groups, as well as an independent media.
29. **Collective Societal Responsibility.** Therefore, participants of this conference call upon the leadership of each country's three branches of government, as well as civil society and the media, to make every effort to ensure these constitutional principles are respected and implemented in practice.
30. **Country Working Groups.** Each country should support the creation of Country Rule of Law Working Groups that bring together well respected representatives of all three branches of government, as well as civil society, to promote, monitor and annually publicly report on each country's progress in implementing these principles.
31. **Regional Working Groups.** SADC is also respectfully but urgently requested to create a Rule of Law Working Group that has sufficient resources to undertake this important regional task, as well as to promote other fundamental rule of law reforms throughout the SADC region. Regional support, including country and comparative public reporting and monitoring, would further promote the implementation of these principles.
32. **Inter-Related Reform Agenda.** In this regard, select committees of the Blantyre conference made a number of additional legal and policy recommendations related to the implementation of the rule of law and judicial independence. They are included as an important part of the Blantyre Conference Report and should be given serious consideration by Country and SADC Working Groups, reformers and policymakers and the people of the SADC region.
33. **Open Government.** The Blantyre Conference Report recommendations highlight the need to promote open government laws and policies, such as those related to access to information, open meeting laws and whistle-blowing that are necessary to enable meaningful public participation and informed oversight of the fair and effective implementation of all reforms.
34. **Universally Accepted Constitutional Norms.** While the judicial independence principles and recommended reforms are not exhaustive by any means, the consensus was that these were all fundamental, universally accepted and relatively non-controversial. Further, participants believed their implementation would serve as a catalyst and useful strategic guidepost for moving a rule of law agenda forward in the SADC region.
35. **Political and Financial Support.** The donor community at-large is called upon to respond to this important need throughout the SADC region. Governmental and International political and financial support for Country and

Regional working groups, other reform initiatives, and meaningful civil society engagement will be necessary in the current environment.

36. **Sustainable Political, Economic and Legal Reform.** Country and regional support for the practical implementation of these constitutional and international principles will promote country and regional sustainable economic and political reform, stability, trade and investment, a democratic system of checks-and-balances and anti-corruption efforts through-out the SADC region.

**The Blantyre Rule of Law/Separations of Powers Communiqué** was approved for release to the people and leadership of the SADC region by wide acclamation and is hereby publicly submitted for immediate consideration the 31<sup>st</sup> day of January 2003.<sup>2</sup>

***Attested to by: The Honorable Chief Justice Leonard Unyolo  
Malawi Supreme Court of Appeal***

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<sup>2</sup> Blantyre Conference participants urge that these principles be incorporated into any new draft constitutions or constitutional amendments under consideration in the SADC region.

## ANNEX B

### ATTENDEES TO THE SEPARATION OF POWERS REGIONAL CONFERENCE

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