



## PARLIAMENT OF MALAWI



NATIONAL ASSEMBLY

49<sup>TH</sup> SESSION

REPORT OF THE  
LEGAL AFFAIRS COMMITTEE ON ITS CONSIDERATION OF THE  
OPERATIONALISATION OF SECTION 89(3) AND (4) OF THE CONSTITUTION OF  
THE REPUBLIC OF MALAWI DEALING WITH QUESTIONS TO THE PRESIDENT

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ADOPTED BY THE COMMITTEE ON: 5<sup>TH</sup> SEPTEMBER, 2020

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REPORT NO: 1

SEPTEMBER, 2020



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This is a report of the report of the Legal Affairs Committee on its consideration of the operationalization of Section 89(3) and (4) of the Constitution of the Republic of Malawi dealing with questions to the President.

I, **Hon Yusufu Witness Nthenda, MP**, Chairperson of the Legal Affairs Committee, present this report containing the findings and recommendations to the House for consideration and adoption.

A handwritten signature in blue ink, appearing to read 'Yusufu Witness Nthenda', is centered on the page.

Hon Yusufu Witness Nthenda, MP

**CHAIRPERSON**



## ACKNOWLEDGEMENTS

The Committee wishes to express its appreciation to the office of the Right Honourable Speaker and the Business Committee for referring this matter to the Legal Affairs Committee for review.

I wish to express the Committee's sincere appreciation to the work done by the previous Legal Affairs Committee of 2014 to 2019 Parliament which did the initial work of reviewing the Standing Orders that have informed the current Committee's work. Let me point out that all the work contained in this report has been done by the Committee with special guidance from the secretariat which reviewed the report of the previous Legal Affairs Committee without relying on any external support which is very commendable.

Finally, the Committee wishes to thank the Right Honourable Speaker through the Clerk of Parliament for providing the necessary technical services for the Committee to finalize its work.



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## Membership

1.	Hon. Yusufu Witness Nthenda, MP	-	<i>Chairperson</i>
2.	Hon. Peter Dimba, MP	-	<i>Vice- Chairperson</i>
3.	Hon. Bright Msaka, MP	-	Member
4.	Hon. Bester Awali, MP	-	Member
5.	Hon. Damson Chimalira, MP	-	Member
6.	Hon. Sameer Suleman, MP	-	Member
7.	Hon. Hon Jappie Mhango, MP	-	Member
8.	Hon. Noel Lipipa, MP	-	Member
9.	Hon. Clement Claude Mlombwa, MP	-	Member
10.	Hon. Ezekiel Ching'oma, MP	-	Member
11.	Hon. Gerald Kapiseni Phiri, MP	-	Member
12.	Hon. Ishmael Onani, MP	-	Member
13.	Hon. Jacqueline Chikuta, MP	-	Member
14.	Hon. McDowell Chidumba Mkandawire, MP	-	Member
15.	Hon. Dr. Abel Ephraim Kayembe, MP	-	Member
16.	Hon. Ireen Mambala, MP	-	Member
17.	Hon. Billy Kaunda, MP	-	Member
18.	Hon. Mussa Misolo Kapichila, MP	-	Member
19.	Hon Rodrick Sam Khumbanyiwa, MP	-	Member
20.	Hon. Chrispin Chanju Mphande, MP	-	Member
21.	Hon. John Alfred Chikalimba, MP	-	Member

## Secretariat

1.	Moffat Makande	-	Principal Clerk Assistant (TO)
2.	Wongani Nyirenda	-	Committee Clerk



## **Terms of Reference of the Legal Affairs Committee**

*S.O. 159 - A Legal Affairs Committee shall be appointed to, inter alia, perform the following functions: -*

- (d) Inquire into and report on the practices and procedures of the Assembly and its Committees on an ongoing basis and recommend such amendments, modifications or improvements as the Committee sees fit;*
- (h) make a comprehensive review of the Standing Orders at the expiry of each parliamentary term and make proposals for changes to be considered by the next Parliament.*

*S.O 212 (1) The Assembly may, on a motion by the Legal Affairs Committee, amend these rules.*



## **1.0 Methodology**

The Legal Affairs Committee in coming up with this report held meetings with technical guidance from the secretariat after reviewing work done by the previous Legal Affairs Committee of 2014 to 2019 Parliament. The Committee received directions from the Business Committee that it should, as a matter of urgency review the procedure for operationalizing Section 89(3) and (4) of the Constitution of the Republic of Malawi dealing with questions to the President.

The Committee did its work in line with Standing Order 159(d) and (h) plus Standing Order 212 and proposed amendments to Standing Orders 70 and 201 which are contained in this report.

## **2.0 Introduction**

- a. The Legal Affairs Committee exercised its mandate under Standing Order 159 and 212, when it received directions from the Business Committee after its meeting on Friday 14<sup>th</sup> August, 2020.
- b. This followed an undertaking and willingness, made by His Excellency the State President, Dr. Lazarus McCarthy Chakwera to abide by the Constitutional provision of Section 89(3) (c) as well as Section 89 (4). After the realization of the inadequacy in the current Standing Orders 70 and 201 which attempts to provide procedures to be followed when the President comes to Parliament to respond to questions.
- c. The 2014/19 Legal Affairs Committee in the exercise of its mandate as espoused in Standing Order 159 (h) undertook *a general overview* of the current Standing Orders, and one area which that Committee reviewed was the procedure to operationalize Sections 89(3)(c) and 89 (4).
- d. The Report by that Committee was rejected by the House prior to the May 2019 annulled Elections.
- e. The matter was, therefore, referred to the Legal Affairs Committee to exercise its mandate under Standing Order 212 (1) as read with Standing Order 159(e). Standing Order 212 (1) allows the Committee to review any particular Standing Order and recommend a proposal to the House.
- f. This report is going to highlight proposals by the 2014 to 2019 Legal Affairs Committee and the basis for such proposals as well as draft Standing Orders, the current Committee's observations and recommendations.

## **3.0 Proposals by the 2014 to 2019 Parliament Legal Affairs Committee.**

- a. The previous Legal Affairs Committee noted then and still is the challenge that the current Standing Order 70 does not provide a detailed procedure for the Presidential question time in Parliament.
- b. Standing Order 70 does not take into account the two different scenarios being envisaged by Section 89 (3c) and 89 (4), hence lacks clarity on how the House should proceed on questions to the President.

- c. The Committee noted that these two constitutional provisions do not have corresponding provisions in the Standing Order to operationalise them as is normally the practice.
- d. It was observed that neither Standing Order 70 nor 201, have indicated where the President would sit when he comes to Parliament to answer questions and how those questions will be handled when Members submit them.
- e. The Committee strongly felt the need to precisely fill in those gaps therefore, it made recommendations for the consideration of the House.

### 3.1 Questions under Section 89 (4) of the Constitution of the Republic of Malawi

- a. An Order was proposed in order to deal with questions to the President under Section 89 (4) which reads:

*“The President shall be called to Parliament to answer questions at such times as may be prescribed by the Standing Orders of Parliament or a motion of the National Assembly”.*

- b. It is important to note that key to this provision is the “calling” of the President to come to Parliament.
- c. This Constitutional provision has given 2 options to Parliament on how the House can call the President and these are:

(i) *The First option* is when written notices in the form of questions to the President have been submitted by Members.

The Standing Orders should state clearly how those questions are going to be processed and sent to the President in advance before he appears in person, on a Wednesday, to answer them. However, the Standing Order in question, 70 and 201 do not provide for these procedures hence the need to include them.

(ii) *The Second option* is through a motion, resolved in the affirmative by the House. On this one, should a Member or Members think there are urgent issues for the President to come and answer questions on, then a motion can be presented in the House, clearly stating the matter for which the House is calling the President to Parliament and the day on which the President would be expected to come to Parliament.

- d. It should be noted that both Standing Orders 70 and 201, have not addressed these procedures.

### **3.2 Questions under Section 89 (3) (c) of the Constitution of the Republic of Malawi.**

- a. An order was proposed to provide for questions to the President under Section 89 (3) (c) which reads as follows:

*"The President shall each year, immediately before the consideration of the official budget, attend parliament and shall-*

*(a) Address Parliament on the state of the nation and on the future policies of the Government at that time;*

*(b) Report on the policies of the previous year;*

*(c) Respond to questions."*

- b. Unlike 89 (4) of the Constitution, it is mandatory for the President to answer questions from Members after the President has officially delivered a State of the Nation Address prior to the consideration of the National Budget as stipulated in Section 89 (3) (c) of the Constitution.
- c. In the history of the Malawi Presidency, no President has responded to questions under Standing Order 89 (3) (c) of the Constitution.
- d. The reason is that until 2014, there were no rules in the Standing Orders to guide the House on how this business item would be managed on the floor of the House by the Speaker.
- e. This is why the 2014/19 Legal Affairs Committee came up with recommendations to fill the procedural gap on this very important business item. However, the process was derailed by the previous Parliament which rejected the report of the previous Legal Affairs Committee of that time containing the recommendations.

### **3.3 Seating Plan when the President comes to Parliament.**

- a. The current Standing Orders and, indeed, the 2014/19 Legal Affairs Committee did not consider the seating arrangements if and when the President comes to Parliament to answer questions in his capacity as Head of Government.
- c. The current Committee has proposed the procedures to take care of this seating arrangement. This includes even when the President will be accompanied by the Vice President for the sake of convenience.

### **4.0 Proposed Standing Orders for the President's Question Time in Parliament**

- a. The following are the draft rules considered by the Legal Affairs Committee following its meetings held on 20th August, and 3<sup>rd</sup> September 2020.
- b. *It is proposed that the current Standing Order 70 and 201 be deleted completely but that Standing Order 70 be replaced with the following provisions numbered accordingly:*

#### **4.1 70.A Questions under Section 89 (4) of the Constitution.**

(1) *The President may be asked questions about matters of national and international importance by Members of the Assembly. These may include matters for which the Government is responsible, excluding matters for which a line Minister is directly responsible.*

(2) *The President shall be called to Parliament either*

*(a) when written notices of 5 questions or more, directed to the President, have been received by the Speaker and submitted to the Office of the President and Cabinet;*

*(b) when a motion is moved and resolved in the affirmative by a majority of all the Members of the Assembly, to call the President to come and answer questions on a specific matter clearly stated in the motion.*

(3) *Notice of the questions to the President under rule 70 (2)(a), shall be submitted by a member to the Speaker and a minimum of 6 working days shall be allowed before the President answers the question.*

(4) *The Business Committee shall examine the notices of the questions before they are forwarded to the President.*

(5) *Questions on written notice to the President shall be taken on a Wednesday at least twice in each Meeting of the Assembly.*

(6) *The motion, under Rule 70 (2) (b) shall state clearly when questions on a specific matter shall be taken by the President but in any case on a **Wednesday** after the expiry of six working days following the adoption of the motion.*

(7) *Question Time for the President shall last for **one hour thirty minutes**. Extension of the President Question time shall only be permitted to allow the President to answer any remaining questions from the scheduled five at the expiry of one hour thirty minutes.*

(8) *A maximum of five questions, shall be taken on each sitting day for the President's Question Time.*

(9) *A maximum of five supplementary questions shall be allowed on any of the five original question to the President.*

(10) *Any supplementary question under (9):*

*(a) shall arise directly from the answer to the original question;*

*(b) shall not be used to introduce matters not*

*included in the original answer to the question;*

*(c) shall not purport to raise a new matter on the floor of the Assembly, notice of which has not been given.*

(11) *Immediately after question time for the President, the House shall stand adjourned to the next sitting day.*

#### **4.2 70B. Questions under Section 89 (3) (c) of the Constitution.**

*(1.) During a Budget Meeting of the Assembly, and immediately before consideration of the Budget Estimates, the President shall attend Parliament to respond to questions asked and raised during debate on the State of the Nation Address as required by Section 89(3)(c) of the Constitution.*

*(2) The Clerk shall submit a record of the proceedings of debate on State of the Nation Address and any written notice of questions based on the State Address by Members, to the Office of the President and Cabinet to prepare the President's responses.*

*(3) The Business Committee shall determine the date and time for the President to come and deliver responses under this rule.*

*(4) Rules 70A (7-11) shall apply to Question Time for the President under this Rule.*

#### **4.3 70C. Seating Arrangements for the President during Question time.**

*(1) The President shall be seated on the Government side on a seat specially reserved for that purpose by the Speaker during President's Question time.*

*(2) Where the Vice President wishes to be present during Question time for the President, the Vice President shall have a seat reserved for him or her next to the President.*

*(3) The President shall be seated 5 minutes before the Speaker's Procession enters the Chamber for Question time for the President.*

*(4) All rules of decorum in the House shall apply during the President's Question Time and the Speaker shall preside.*

#### **5.0 Observations by the Committee.**

- a. The Committee observed that for purposes of promoting modern parliamentary democracy, where the Head of Government is required to be accountable to the people of his country, Malawi cannot be an exception whose President should be deprived of this opportunity to appear before Parliament to answer questions. It is worth noting that other Commonwealth Parliaments like the Republic of South Africa here in Africa and the United Kingdom's House of Commons where we have borrowed our systems, they started long time ago and are far ahead of us in this area. It is high time that we emulate this practice which will nurture our democracy. The proposal to have these Standing Orders will facilitate this process.

- b. It is worth mentioning that the current Legal Affairs Committee has agreed with proposals from the previous Legal Affairs Committee to make a provision of allowing the President to appear before Parliament during question time on Wednesdays to answer a maximum of five questions a day and that the time limit should be one and half hours. This function shall not be delegated by the President.
- c. Since this is the first time for the Parliament of Malawi to introduce these procedures, the Legal Affairs Committee will monitor their effectiveness and make recommendations on any challenges that will be encountered in the operationalization of these Standing Orders.

## **5.0 Recommendation**

The Committee wishes to recommend to the House that the proposed Standing Orders indicated as *70A, B and C* contained in this report should be adopted and that, thereafter, our Standing Orders should be amended accordingly to reflect these new procedures containing Questions to the President in order to operationalize Section 89 (3) and (4) of the Constitution of the Republic of Malawi.

Similarly, *Standing Order 201* will be deleted and the rest of the document shall be re-numbered accordingly.

## **6.0 Conclusion**

This report contains the analysis done by the Legal Affairs Committee on the work produced by the 2014 to 2019 Parliament Legal Affairs Committee whose report was reject by the House before the May, 2019 Tripartite Elections. The current Legal Affairs Committee has revised this work and made recommendations to the House.

This report is submitted to the House for consideration and adoption. I beg to move.







