

**Malawi's Process of Democratic Transition:  
An Analysis of Political Developments in  
Malawi between 1990 and 2003**

**Presented by**

**Dr. Heiko Meinhardt  
University of Hamburg**

**and**

**Dr. Nandini Patel  
University of Malawi**

## **1. Introduction**

This study attempts to capture the achievements and challenges, and analyse the issues involved in the process of transition to democracy in Malawi. The study has been commissioned by the Konrad Adenauer Foundation. In the year 2002, the Foundation initiated a series of studies on democratic processes in Sub-Saharan Africa. Countries, such as Nigeria, Zimbabwe, Burkina Faso and Kenya, who were facing serious challenges in their transition to democracy, were specially chosen for the exercise. For 2003, the foundation enlarged the scope of its study and extended it to Malawi, Zambia and Mozambique.

### **1.1. Aims of the study**

- To present a qualitative analysis of political processes;
- to facilitate formulation of cogent donor policies on democracy and good governance.;
- To produce a user-friendly reference guide with special focus on political developments in Malawi.

### **1.2. Methodology**

The research is qualitative and draws on a number of articles and reports pertaining to Malawi. Information gathered from interviews with key stakeholders constitutes an integral part of this study.

### **1.3. Research Programme**

The research has been carried out by Dr. Heiko Meinhardt from the University of Hamburg and Dr. Nandini Patel from the University of Malawi.

The study was conducted in an environment of friendship and cordiality and the rapport between the two researchers was exemplary.

## **2.The Starting Point at 1990: Characteristics of the Banda Regime and Democratic Deficits**

### **2.1 Characteristics of the Political Rule during the Banda Regime**

The poor landlocked Malawi was ruled by one of the most repressive regimes in Africa. Dr. Hastings Kamuzu Banda, a medical doctor, trained in the USA and Great Britain, who had spent more than four decades outside Malawi before he returned home in 1958 to lead the independence struggle, established an autocratic leadership system. He made himself the undisputed leader. After independence in 1964, Malawi installed a Parliamentary system of government following the British Westminster model. Although a multiparty system in principle, there was an overall dominance of the Malawi Congress Party (MCP) in practice, which managed to win all the seats in Parliament in the only free Parliamentary elections in 1961 except those few reserved for the White minority, paved the way for Banda's autocratic leadership. The April 1964 elections had to be cancelled after all members of Parliament returned unopposed. After independence some younger MCP Cabinet ministers – mostly from the Northern Region – rebelled against Banda's increasingly autocratic leadership style and criticised some of his key political decisions. This challenge, though clearly crushed, was perceived by Banda as a potential threat to his power. He consequently consolidated his authoritarian leadership system. As a first step, he introduced a new Constitution in 1966 through which the Parliamentary system as well as the multiparty system were abolished. All Constitutional powers, were vested in him as Executive State President, a position he had held from 1971. until he lost the first multi party general elections in 1994. The MCP, which Banda had led as president for life since 1960, was the only legal political party. Further, he was Commander-in-Chief of the armed forces. The 1966 Republican Constitution gave Banda almost unlimited powers to rule the country like a private estate – as he himself used to put it. This metaphor was not far from the truth since Banda was also by far the largest private commercial farmer and entrepreneur of Malawi. His Press Corporation conglomerate was indisputably the largest private enterprise, controlling about one third of the national economy.

The MCP had an efficient structure down to the grassroots level and was, therefore, present even in the remotest villages as a quasi-state institution. A well organised special branch system supported by the paramilitary movement, Malawi Young Pioneers (MYP) – trained by Israeli Intelligence Service, Mossad, and the police force kept tight control on all parts of society. Even the slightest critical comment about the MCP, the government or the Life President carried serious consequences for the critics if they were discovered. Militant members of the League of Malawi Youth – a wing of the MCP – forced all Malawians to renew their annual party membership. The membership card was used as a quasi identity card (there are no ID-cards in Malawi). It was checked in every market, in buses and hospitals. But not only villagers (more than 85% of the population) suffered under the repressions of the regime. Even top government or party officials were targets of Banda when they, in his eyes, got too popular or too powerful. Whoever showed ambitions – real or imagined – to succeed the ailing president was seen as a threat to Banda and his “royal family”, consisting of his life partner Cecilia Kadzamira and her uncle John Tembo. The position of Secretary General of the MCP – the second highest after the presidency – proved to be a hot seat. The position remained vacant between 1983 and 1993, after one office holder had been killed, another executed, one put in detention and two others had unceremoniously been dismissed.

The information system and the efficient repression system were important backbones of Banda’s power. Another one was his patronage system. Unlike some other authoritarian leaders, who allowed their clients to generate and use their own sources of income (by corruption and theft of public property,) Banda remained in full control of the patronage system. He allocated power and wealth carefully to his loyal supporters and reserved the right to withdraw any privileges whenever it pleased him. Only a handful of top politicians survived in office for more than a few years. There was a permanent rotation of portfolios in Cabinet in order to avoid ministers becoming too powerful. Popular or too powerful politicians in many cases found themselves victims of intrigues and ended up either dismissed or imprisoned or, in worst cases, executed or killed.

The judiciary was tightly controlled by Banda. The Political opponents were prosecuted mostly in the so-called Traditional Courts, which did not provide for legal representation of the accused person. The judges were traditional chiefs without any legal qualifications. This court system did not meet international legal standards. The

Public Security Act enabled the regime to detain any Malawian citizen without trial for an unlimited period of time.

As a reliable friend of the Western world and because of his strict Anti-Communist stance, Banda was generously supported with Western aid during the cold war. Malawi was the only African state, which maintained full and cordial diplomatic relations with the Apartheid government of South Africa.

## **2.2 Political Opposition under Banda's Rule**

The climate of mutual distrust and repression, which was widespread especially among the urban elites, was the main obstacle in the building-up of an opposition movement. After the only serious power struggle happened in September 1964 (the so called Cabinet Crisis) there was no organised open or clandestine opposition movement operating inside Malawi. The six Cabinet ministers who rebelled against Banda fled the country and formed socialistic opposition movements in neighbouring countries where they had been given political asylum. Their political influence remained very limited since the politicians were not able to form a single united movement. Their movements were not much more than family clubs with little or no financial resources. They failed to establish support inside Malawi. Moreover they were targets of Banda's special branch, which managed to kidnap or kill opposition politicians outside Malawi. Up to the end of 1991 there was no organised or effective opposition to the authoritarian rule of Banda.

## **2.3 Violations of Human, Civil and Political Rights**

The human rights record of the Banda regime was appalling. The system of repression exacted a heavy price. Whoever was seen as a threat to the government or aired dissent was suppressed. The MYP and the Police were, under instructions of the political leadership, empowered to detain anyone indefinitely without trial. Others were tried in traditional courts without legal representation, some were even murdered in fabricated "car accidents". Torture and poor prison conditions were the order of the day. A South African executioner was hired twice a year to execute prisoners on the death row. In 1967, the religious denomination of Jehovah's Witnesses was declared an unlawful society. Its members were targets of massive repression - thousands were imprisoned. The main reason was the refusal of the Jehovah's Witnesses to buy party

cards or pay tribute to the power symbols of the regime. They were therefore perceived by Banda as potential opponents.

As stated in 2.1 civil and political rights did not exist. Basic rights such as freedom of expression, freedom of information and the rule of law were violated. The Censorship Act, as well as the information monopoly of the regime (the only daily newspaper was owned by Banda personally, while the broadcasting corporation was state-owned) compromised the right of free access to information. Moreover, the reporting of “false or damaging information” about Malawi was considered a criminal offence punishable with lifetime imprisonment. The one party system compromised the freedoms of association, movement and assembly. After the Cabinet Crisis of 1964, there were ethnic purges, mainly targeting people from the Northern Region. Banda distrusted Northerners because most of the ministers who rebelled against him were from the Northern Region.

#### **2.4 Participation of Society in the Political Process**

There were no democratic elections in Malawi between 1964 and 1994. After the landslide victory of the MCP in the 1961 elections to the Legislative Council, Banda never wanted to allow political participation of the general population. With the introduction of the Republican Constitution in 1966, the lifespan of Parliament was extended for another five years. The same Parliament then elected Banda to the office of State President unanimously. Just before fresh Presidential and Parliamentary Elections were due in 1971, Banda “reluctantly” accepted a resolution passed by the MCP Annual Convention in late 1970 to become State President for life. However, this move was carefully initiated and planned by the Head of State himself. The 1971 and 1976 Parliamentary elections never took place because in his position as head of the MCP, Banda only nominated one candidate in each constituency who was then “elected” unopposed. This practice was slightly changed in 1978 and in the following elections, which took place in 1983, 1987 and 1992. In most of the constituencies, between 2 and 5 candidates competed at the local level. All candidates, however, had to be members of the MCP and needed Banda’s personal approval to stand. In constituencies where unpopular but powerful ministers stood (such as John Tembo in Dedza South in 1992), nobody else dared to stand and the minister returned unopposed. Genuine electoral participation of the population was therefore almost nonexistent and only possible under tight control of the regime.

Further, the right of joining or forming political institutions other than the MCP was not available. Even NGOs were seen as a threat to the authoritarian regime. In 1985 there were only 25 indigenous NGOs in the country. Only in the late 1980s did the government open up the NGO sector under external pressure, but never removed its tight control on them, which was maintained out by the Council of Nongovernmental Organisations of Malawi (CONGOMA). All indigenous and international NGOs working in Malawi had to be members of CONGOMA.

Trade Unions existed on paper but were defunct. Strikes and demonstrations or any kind of open protests were banned.

In summary, there was no meaningful participation in the political process, not even within the MCP, because the party was used by Banda as an instrument to control and repress its active members. It was efficient and well organised, not as a channel for including society in the political process, but only as an executive arm of the regime. Under those circumstances, a strong and independent civil society was not able to develop.

## **2.5 The disintegration of the Authoritarian Regime**

The political and economic conditions in Malawi were highly unfavourable for a successful democratic transition (see table 1). Malawi was one of the poorest countries in the world with an economy based on agriculture. The rural population comprised about 85% of the total population and was economically and politically marginalized while the small and educated urban elite was either repressed or part of the regime. Civil Society activism was almost nonexistent. The regime was, to a large extent, dependant on Western aid, which was mainly used to sponsor Banda's pool of patronage. In 1992, Western aid accounted for 22,6% of the GDP and contributed to at least 40% of the government budget. Malawi was rewarded for its strict anti-communist policy by the Western donors. The Banda regime was regarded by the Western world as a bulwark of peace and political stability in the Southern African region.

The generous flow of aid continued regardless of the well-known gross violations of human rights. The end of the cold war affected the Banda regime when, in 1991, the donors started demanding respect for human rights and democratic reforms as a condition for continued aid. Banda reacted to this blow with an appeasement strategy. He implemented more or less symbolic gestures such as the release of some political

prisoners and a tightly controlled “discussion” on the future of the single party system – which was intended to give a deliberate impression that the single party system was the will of the people.

It is remarkable that one of the two underground opposition groups formed in late 1991, was initiated with the assistance of at least two expatriates working in the country. The two Europeans had important advantages. They had access to information about developments inside and outside Malawi through diplomatic channels, which was not available from the strictly censored media and, perhaps even more importantly, they were not suspected to be agents of the regime. The group, later known as the United Democratic Front, grew slowly – membership was only by personal invitation. Their members were mostly former MCP politicians who had fallen into disgrace with Banda years ago. Many of them came from the Southern region and earned their living as businessmen or entrepreneurs. The small group comprised less than 20 people and was led by Bakili Muluzi. It was aware of its vulnerability. In case of discovery the regime could have imprisoned its members or even killed them. Therefore, a wider platform was needed in order to make it difficult for the regime to suppress the opposition. Since all media and most of the NGOs were tightly controlled by the government and had weak structures it was difficult to find an adequate platform. Only the two biggest churches, the CCAP and the Roman Catholics had an effective nationwide organizational structure but neither were known for being critical of the Banda regime. Through personal contacts between some opposition activists and the Catholic Bishops, the Catholic clergy was approached and encouraged to read a Pastoral Letter in which the regime was criticized for its poor human rights record, lack of democratic rights, and corruption and inefficiency in the education and health sectors. The Catholic Church had several important advantages for challenging the regime, which never had been publicly criticized from within Malawi since 1964. The church was a legal and well-established institution. In the past, it was not seen as being critical of the government and therefore the regime could be taken by surprise. More importantly, the church had worldwide contacts not only to the Holy Seat, but also to other Christian churches in Africa, Europe and North America. Repressions against the clergy would have led to an international outcry and would have put donor countries under pressure to suspend development aid to Banda. The Lenten letter was read in all Catholic churches of Malawi on 8<sup>th</sup> March 1992. The international support for the Bishops saved their lives after the MCP



National Executive Committee had resolved to kill them in an emergency meeting, which was held after the Lenten Letter had been made public. Banda was under enormous external pressure not to persecute the Bishops and, consequently risking suspension of Western aid.

The fact that the Bishops publicly criticized the government and got away with it meant the breaking of a long held taboo. Malawians, for the first time, saw that the Banda regime was not unassailable. Although the government tried to control the situation and suppress dissidents by repression, it was not able to succeed. For the first time in the country's history, strikes and violent demonstrations took place in Blantyre and Lilongwe in May 1992, which were violently crushed by the police force. This action further compromised the international reputation of Banda.

At about the same time as the UDF movement was founded in late 1991, another underground opposition group was formed, which later came to be known as Alliance for Democracy (AFORD). This group was dominated by professionals and intellectuals - mostly from the Northern Region. The movement was founded by Chakufwa Chihana, the then Secretary General of SATUCC based in Lilongwe. He was almost unknown in Malawi at that time.

Although there were sporadic contacts between the two opposition groups, efforts to unite them in order to strengthen their position against the regime proved futile. Chihana and his colleagues distrusted the UDF, as most of the latter's activists had once served Banda in prominent positions. Another reason was the deep distrust which people from the Northern Region felt towards people of the Southern Region. The Northern Region had been neglected and sidelined under Banda regime. Attempts by the UDF to unite or at least cooperate with the AFORD were turned down because these groups were not able to solve the leadership issue. Both claimed leadership. Chihana instead tried to win the support of the veteran opposition groups in exile, but in vain because the exile groups were neither willing to accept Chihana as their leader nor were they prepared to go back to Malawi and challenge the Banda regime openly. Most of them never wanted to take the risk of getting imprisoned or killed in Malawi. Chihana recognized that the regime could only be effectively challenged from within Malawi. He wanted to use the international publicity, which Malawi enjoyed after the publication of the Pastoral Letter, for establishing a democratisation movement inside the country. Despite clear warnings of the regime that he would be arrested on his return to Malawi, Chihana flew back to Lilongwe where he was detained on his

arrival at the airport on 6<sup>th</sup> April 1992 when he began to read his speech calling for democratic reforms. The detention of Chihana and his trial for sedition was closely monitored by the International Community. Because of the intense international interest in Chihana, the Banda regime was not able to deal with him in the usual way. Neither detention without trial nor an unfair trial before a traditional court were possible ways to eliminate him. Therefore, for the first time in Malawi's history, an opposition politician was tried in a Court of Law. He was sentenced to two years imprisonment, which was later reduced to nine months. Chihana was released in June 1993. His imprisonment gave him the image of a martyr and made him known throughout the whole country, as well as to the donors and human rights NGOs in Europe and North America.

The pressure on Banda was increased in July 1992 when the CCAP publicly called for a dialogue with the regime in order to liberalise the political system. Surprisingly, Banda took up the demand and, in October 1992, formed a platform for discussions with the churches about their grievances. He pursued two objectives: Firstly, he wanted to demonstrate to the donors that he was willing to introduce serious democratic reforms in the hope that the suspension of development aid – partly introduced in May 1992 – would be lifted, and, secondly, he wanted to include the opposition in formal negotiations in order to maintain control over the reform process. While the regime wanted to restrict participation in those discussions only to the churches, it finally had to accept the inclusion of other groups such as the Chamber of Commerce and the Law Society. The underground movements AFORD and UDF came out in the open in September and October 1992 respectively and joined the discussion forum as pressure groups. Banda saw no other way than calling for a referendum on the question of whether a multiparty system of government should be introduced or not. Banda's calculation was obvious: He thought that he could easily win the support of the rural population (about 85% of the Malawians live in villages) because the pressure groups were urban movements, which were still quite unknown to the villagers. Unlike the pressure groups, the MCP had a well-organized party structure, which included grassroots levels. Contrary to the situation in some other African countries, the MCP did not just exist on paper, but was an effective arm of the regime, facilitating its main tasks, namely controlling the people and enforcing the four cornerstones of Banda's rule: Unity, Loyalty, Obedience and Discipline.

This attempt to legitimise the one-party system of government in an internationally recognised referendum in June 1993 failed because two-thirds of the voters voted in favour of the introduction of a multi-party-system. Especially the Northern and Southern Regions voted against the single party system. This event marked another milestone on the road to democracy.

The democratisation process was initiated and encouraged by the Western donors, who demanded democratic reforms in return for aid. However, this can only partly explain why Banda accepted the democratic transition, which was carried out in a reasonably orderly and peaceful way. Idiosyncratic factors (age, illness and senility of the President) clearly contributed to the process because Banda made some important mistakes. He thought he could win the referendum and thus preserve his one-party system of government and later, the elections against a split opposition in a way other leaders have managed to do elsewhere. The interruption of the democratisation process was almost impossible since the army was not willing to participate in repressive actions against the opposition movements. On the contrary, Banda faced the threat of a military coup.

It is remarkable with what insignificant costs the international donor community was able to initiate, support and guard the democratic transition process in Malawi. This process was almost exemplary, being without disasters and with few human victims. Although there are similar structural conditions (small and poor agrarian countries dependent on development aid) in other African states, it is not possible to call Malawi's transition a model for the latter countries because there were idiosyncratic factors which facilitated the transition.

## **2.6 The Beginning of the Democratisation Phase**

The Referendum of June 1993 marked the starting point of the democratisation phase. Banda reluctantly accepted (after some pressure from the Military) the results of the referendum and formally introduced the multiparty system of government within two weeks after the vote. He promised free general elections within a year. This policy followed two calculations. Firstly, there was no way to ignore the outcome of the referendum other than repression which was difficult to achieve against the military and which would have seriously affected the flow of Western financial aid. Secondly, the defeat of the MCP in the referendum was bitter but not crushing. There was still

considerable hope for Banda to win the elections against a fragmented as well as financially constrained opposition.

The regime created a National Consultative Council (NCC), which comprised all the seven registered political parties (an amnesty provision allowed the exiled movements to return to Malawi) with proportional representation for each party. The NCC, however, had neither executive nor legislative powers and was there to oversee the transition process. The smooth run of the transition faced a major challenge in October 1993 when Banda fell seriously ill and was temporarily incapacitated. According to the Constitution, a Presidential Council, led by the newly appointed MCP Secretary General, Gwanda Chakuamba, was empowered to run the country. In early December 1993, junior staff and middle ranking officers of the Malawi Army in a surprise attack (“Operation Bwezani”) disarmed the paramilitary MYP movement after two unarmed soldiers had been shot dead by Young Pioneers in a punch-up at a bottle store in the Northern city of Mzuzu. The MYP fled the country to Mozambique or returned to their villages. Only 22 lives were lost which came as a surprise since the MYPs were believed to be a strong force (about 8000). This action destroyed Banda’s last meaningful influence on the security machinery and made it impossible for the regime to forcefully interrupt the democratisation process.

Consequently, a democratic Constitution was drafted within a few months - with considerable input from foreign experts. The new Constitution was passed by the one-party Parliament just a day before the first multiparty presidential and Parliamentary elections took place on 17<sup>th</sup> May 1994. These first democratic elections ever since Malawi became an independent state were quite orderly and peaceful. Banda and the MCP, who scored about one third of the vote cast, conceded defeat even before the casting of votes was completed and congratulated Bakili Muluzi and his UDF, who scored about 47% of the vote cast, and gained victory. The third candidate, Chihana of AFORD, scored just about 19% of the vote cast. The voting pattern of the referendum was repeated: While the UDF scored most of the votes in the Southern Region, the MCP mobilised major support in the Central Region while almost the entire votes of the sparsely populated Northern Region went to AFORD. The voter turnout of 80% was even higher than in the referendum (67%) and showed that the political parties were able to mobilise their supporters even in the rural and remote areas in large numbers.

Since the UDF was short of four seats in the National Assembly, they had to form a coalition government with either AFORD or MCP. The latter option was ruled out by Muluzi in accordance with the Western donors who wanted to see a new political beginning. However, the political process of coalition building proved difficult since Chihana of AFORD demanded a large share of government offices. In order to strengthen his bargaining power, he even formed a coalition with MCP in order to frustrate all moves of the government in Parliament. Only in late September 1994 did Chihana and five AFORD members of Parliament join the Cabinet, while the formal coalition with the UDF was established only in July 1995. The position of Second Vice President was created for Chihana. The coalition of UDF and AFORD used their two-thirds majority in Parliament to carry out the review of the Constitution without any real input from outside Parliament. A Constitutional conference held in February 1995 with broad societal participation did not have much influence on the decision-making process. Though the UDF-AFORD coalition broke apart in May 1996 with the resignation and withdrawal of Chihana from government, the UDF stayed in power because five AFORD ministers refused to resign and remained as independent members of Parliament. In the 1999 General Elections, the UDF managed to win a slight majority in Parliament.

With the introduction of a pluralistic Constitution, democratic elections and change of government in May 1994, the formal process of democratisation was completed. This means that democratic institutions were put in place. All attempts of the Banda regime to block, influence or forcefully interrupt the democratisation process proved futile. This was not because of the fact that the MCP had changed into a democratic party as Banda wanted to pretend, but due to the lack of alternatives since the army was in favour of the democratisation process.

### **3. Assessment of Democracy**

#### **3.1 Human Rights, Civil Liberties and Minority Rights**

##### **3.1.1 General Assessment**

The catalogue of human and civil rights is enshrined in Chapter IV of the Constitution, which was drafted in 1993/94 and passed by Parliament on 16<sup>th</sup> May 1994. This interim Constitution was promulgated in May 1995. The provisions laid

down in Chapter IV cannot be changed by Parliament unless a majority of voters approve it in a referendum. There have, so far, been no attempts to restrict fundamental human and civil rights by amending the Constitution. Basic freedoms (such as freedom of life, thought, conscience, religion, expression, movement, assembly, press as well as absence of torture, access to information) as much as social rights are comprehensively covered in Chapter IV of the Constitution. In this aspect the Constitution stands out as a blueprint for other countries.

However, looking into the socio-political practice, there are some serious constraints. The freedom of life is, in general, not under threat but in times of crisis the government cannot always ensure that all citizens will have access to sufficient food. In 2001/2002 a number of people died because the state was not able to manage and distribute the strategic grain reserve properly, but wasted urgently needed food resources because of inefficiency and corruption. Freedoms of movement, thought, conscience and religion are respected. Religious tolerance is especially outstanding. As of now, religion (about one fifth of the population are Muslims, while about 75% belong to different Christian denominations) has not been harnessed for ethnic interests or politicised. Isolated incidents such as the burning down of mosques in the Northern Region after the 1999 General Elections were not a sign of religious intolerance. This incident was instigated by one or two politicians of one of the political parties, which had lost the elections. The Christian churches expressed their concern and donated money to rebuild the mosques. Fundamentalist Muslims do not play a role in Malawi. The Christian churches and the Muslims worked hand in hand during the transition period in order to bring a democratic system of government to Malawi. This constructive cooperation, which has been institutionalised in the Public Affairs Committee (PAC) since 1992, however has suffered slightly in the last two or so years. This is mainly due to the fact that the Muslim community is perceived as a serious competitor by the Christian churches. The growing influence of the Muslim Association of Malawi is seen in the mushrooming of mosques and especially in the fact that the Muslim institutions are able to offer social services and schooling opportunities to the people. This used to be more or less the monopoly of the Christian churches. The fact that President Bakili Muluzi is a Muslim has, so far, not obviously increased the political influence of the Muslim society. Beside Cassim Chilumpha, a former Minister and UDF Vice Presidential candidate designate, there are no Muslim heavyweights in the government. Muluzi himself attends Muslim as

well as Christian prayers and is regarded – even by the Christian church leaders – as a tolerant non-fundamentalist Muslim. Whether the societal influence of the Muslims has increased significantly, is difficult to judge. The overall annual budget of the Muslim Association of Malawi, the main body of Islam in the country, is just K 6.8 Mio. (2003) and mainly comes from Muslim organisations in the Middle East. It is likely that there might be some additional funding from foreign sources and perhaps from the President's pocket, but not in a significant or alarming quantity. More important were symbolic actions such as the plan of government to abolish Bible knowledge as a school subject and change it into Religious Studies. This move, which was in perfect accord with the freedom of religion because it would have ended the monopoly of Christian studies at school, was vehemently criticised and fought by the Christian churches.

The ambitions of the government to amend the Constitution in order to allow President Muluzi to stand for a third term was mainly frustrated by the Christian churches who more or less openly preferred a Christian President in order to limit the growth of Islam in Malawi. With this attempt to politicise religion, the Christian churches created a rift in the PAC by sidelining the Muslim Association, who were not even given one important position in the PAC Executive Committee in 2002 because the Christian churches used their majority to vote for their own candidates. In order to prevent the Muslim Association from leaving the PAC, the position of General Secretary was given to them. The highly controversial third term provision was brought down by the churches - not only because of their official stand that the Constitution and democracy had to be protected, but in order to serve their own interest, in reducing Muslim influence in Malawi and hoping to stop the propagation of Islam.

The attempt to allow a third term which was the main topic in political life since the year 2000, not only caused numerous power struggles and rifts in all major political parties especially after 2001, but also led to violent clashes between the youth wings of the major political parties or pressure groups. Although only a few people lost their lives (contrary to clashes in other countries like Nigeria) the situation was tense and made the government react with repressive measures. The freedoms of assembly, demonstration and expression were temporarily compromised when, in 2002, the government prohibited all demonstrations in favour of or against the third term bill and stated that the police and armed forces would enforce this directive. This ban on

demonstrations was lifted by the High Court, which correctly ruled that it was a violation of the Constitutional right to demonstrate peacefully. There was informal pressure on people who were against the third term bill. Some lost their privileges, others were sidelined or found it difficult to renew their contracts with government institutions. Most of the repression seemed to emanate from the controversial third term issue, which now seems to be closed since Muluzi has publicly declared that he will not stand in the 2004 Presidential Elections and the nomination of the UDF presidential candidate (who is a Christian) has been endorsed in April 2003. In general, the third term issue had put some fundamental civil liberties under stress but the fact that they were reinforced by the courts, is a positive step towards consolidation of the democratic system.

The freedom of the media still shows some serious shortcomings. While the print media (newspapers and magazines) are considered free and without direct influence or interference from the government, the state-owned broadcasting stations, MBC 1 and 2, as well as the only TV Channel - TV Malawi, are under tight control of the government. The control of the state owned MBC is, however, balanced to a certain extent by private radio stations who are free to air their programmes. The major problem, which limits the influence of the media, is poverty. Newspapers are quite expensive (K 35 per copy) and mostly published in the English language, which means that they are almost exclusively read in urban areas. The rural population (about 85% of the population) is therefore excluded. To a certain extent, this applies to access to radio, too, since batteries are quite expensive and the villagers usually cannot afford to buy them. The privately owned radio stations merely cover urban areas.

Ethnic and linguistic minorities, as well as disabled people, are treated equitably by the state and face no discriminations. Unlike under the Banda regime, every linguistic group has the right to officially use its language. Primary education is provided in the mother tongue if enough qualified teachers are available. The state-owned radio broadcasts news in different languages. There is no open ethnic discrimination, but there is an ethnic-regional pattern of identity, which means that people from the South have much closer ties to others from the same region. In practice, patron-client relations will be within one region. This applies to the Northern and Central Regions, too.



The new land policy might discriminate against foreigners or people without a Malawian citizenship because this group is not allowed to acquire land with freehold title, but to lease it for 50 years or to form a joint venture with a Malawian. This policy appears to mainly affect the small Asian community of about 8000. The right to obtain Malawian citizenship is provided for in Art. 47 of the Constitution. In practice, however, the authorities can and do frustrate applications by simply not making a decision on it.

The freedom from torture, as guaranteed in the Constitution, is compromised by cases of violence especially in police custody. Those cases (still not large numbers) are caused by police officers who have not been trained sufficiently about human rights. Another major constraint is poor prison conditions. The prisons are overcrowded with very poor sanitation, poor nutrition and lack of access to medical treatment. There are, however, no political prisoners and nobody has been detained without trial, which was the order of the day under the Banda regime.

In general, the human rights situation has improved tremendously since May 1994. Most of the shortcomings are due to poverty and lack of training, but not intentional as was the case under the autocratic regime.

There are democratic institutions such as the Malawi Human Rights Commission (MHRC), the Ombudsman and the Anti Corruption Bureau (ACB). The MHRC and the Office of Ombudsman who play a major role in the protection and implementation of human rights were established only in 1999 and 1996 respectively. Their major constraint is funding. Their budget application is usually cut down significantly by Parliament because of lack of funds. But then there is usually another cut of between 30-50% from the approved budget that is deducted by the Treasury, which makes it difficult to work effectively. This practice is, however, not seen as a way to frustrate the work of these institutions but as a general problem of funding since almost all government departments and state institutions are affected by insufficient funding. This of course has a negative effect on the work of the institutions because their capacity to investigate complaints are very limited. The Office of Ombudsman was seriously damaged by the first Ombudsman (1996-1999) who misappropriated huge amounts of money.

Most of the rural population is politically and economically marginalized and are not aware of their Constitutional rights or how to enforce them. This is because of lack of civic education, poverty and lack of information. There are offices of MHRC and

Ombudsman only in Lilongwe and Blantyre. Financial constraints make it difficult for these institutions to grow roots in the rural areas.

The assessment shows that, by and large, human and civil rights have been respected since the Banda regime was voted out in 1994. After 30 years of autocratic rule, this development is already a success despite the deficits that are manifest. Democracy is expensive and many shortcomings are due to the fact that there is insufficient funding to run the state institutions properly.

### **3.1.2 Working on the Past: The Mwanza Accident Case and the National Compensation Tribunal**

After having taken over government, Muluzi fulfilled the promise he had made during the election campaign to investigate one of the most prominent cases of political murder, viz The Mwanza accident. In May 1983, three senior Cabinet ministers (one of them was the MCP Secretary General and therefore number two in the official government hierarchy after Banda) and a Member of Parliament, were murdered by the police after they had criticised a decision of the autocrat. The murder was camouflaged as a car accident on the Mwanza road near the Mozambique border. Muluzi appointed an independent Commission of Inquiry, which presented a comprehensive report in December 1994 and led to the detention of Banda and his life partner Cecilia Kadzamira (because of humanitarian reasons they were put under house arrest). John Tembo, who is the uncle of Kadzamira, and others were put in remand prison (early January 1995). The court trial, however, ended in December 1995 with the acquittal of the suspects because of lack of evidence, which was a serious blow not only for the independent judiciary but also for the democratic system because the majority of the population had no doubt that the murder was instigated by the Banda regime. The acquittal was perceived by the public as a sign of the inefficiency and injustice of the democratic system (the judiciary was seen as the backbone of the democratic system). Banda hired prominent British lawyers to defend him.

The disappointing outcome of the trial as well as the high costs served to dissuade the government from investigating any other case of the authoritarian past. Another reason was probably that leading UDF politicians could have been involved in human rights abuses when they served Banda in prominent positions. In order to compensate

victims of the Banda regime and their relatives, a National Compensation Tribunal was set up to entertain claims with respect to the alleged criminal and civil liability of the Banda government. A National Compensation Fund was created in order to provide compensation to the successful applicants. The work of the Tribunal is almost completed and all applications have been decided upon. In accordance with the Constitution (Art. 145) the Tribunal shall be winding up within a time span not exceeding 10 years (2004). The problem is that most of the approved claims have only been paid a mere pittance as part settlement because of financial problems. The decisions regarding the choice of eligible claimants were not always transparent and some politicians of the ruling party or AFORD (during the time of coalition) seem to have been advantaged while others are still waiting for their compensation and quite a number of applicants will have died before any payment is made.

With the winding up of the NCT, the work on the past is completed. The intention to leave the past untouched and to compensate victims of the Banda regime instead seems to have been widely accepted by society. A criminal prosecution of such cases would not only have cost a lot of money, which was not there, but would also have created rifts in society. The small judiciary would have been unable to handle so many criminal and civil cases in a reasonable time span and for victims – especially from rural areas – it would have been difficult to engage a lawyer to fight a civil case in court in order to be compensated. The other way of working on the past was the establishment of a truth and reconciliation commission as in RSA. Here again, the work would have been very costly and the public hearings would likely have created hatred and an atmosphere of witch hunting instead of reconciliation. In fact, the political killings, torture and all kinds of repression caused by the Banda regime seem not to be perceived as an unresolved issue and a burden for the democratic consolidation process. There seems to be no need for reconciliation because there are no serious rifts in society on this issue. A person like John Tembo, who was the strong man behind Banda was elected to Parliament in 1994 and 1999 and is now the democratically elected leader of the MCP and probably their presidential candidate in the 2004 Presidential Elections.

## **3.2. RULE OF LAW**

### **3.2.1. General Assessment**

Malawi ranks among one of the most peaceful countries in Africa, where the transition to democracy and the process thereafter were peaceful. Therefore, it is not surprising that the Rule of law is generally prevalent throughout Malawi. However, there are some major challenges to the Rule of Law, such as:

\* Existence of two sets of laws – The legal reform exercise of 1994-95 saw the abolition of the regional Traditional Courts and the National Traditional Appeal Courts and the integration of all the lower level Traditional Courts into the Judiciary. This was done in pursuance of Section 204 of the Constitution of Malawi of 1995. This integration of legal systems however, did not correspond with harmonization of the two sets of laws. The Law refers to both state law and traditional customary law. In case of conflict between the two divergent sets of laws the traditional law generally prevails. Traditional customary law generally governs the day-to-day lives of the majority of Malawians and this law often conflicts with the state laws. State laws guaranteeing women's and children's rights ran counter to the norms of customary law which permitted disinheritance of widows and children, allowed domestic violence and polygamy (Women and Law in Southern Africa, 2000).

\* Inefficiency of the Police Service – The inability of the police to handle law and order efficiently led to a general deterioration of security and this also undermined the rule of law, as criminal law could not be enforced adequately. In the period between 1994 – 1999, there were a number of cases where the people, being frustrated with the inefficiency of the police and courts, took the law in their hands and resorted to mob justice. Although the traditional courts operated as instruments of oppression and tyranny they also performed a positive role of providing law, order and security. After their abolition there was no effective check on crime in the rural areas.

\* Inadequate access to justice – Research in this area indicates that there is limited access to quality justice for the rural poor and service delivery in the remote areas is severely limited.

\*Weak Institutional capacity of judicial and legislative branches of government – Courts are unable to cope with the increasing demands they face. Infrastructural shortcomings such as, inadequate court buildings, poor communication facilities, inefficient and inadequate information management technologies, all these - coupled with inadequate human resources skills within the justice delivery system, have rendered the Rule of Law less effective.

**3.2.2 Judicial Independence** – The Judiciary in Malawi generally commands respect and public confidence as the custodian of the Constitution and a guarantor of basic human rights. Since 1994, a number of occasions have arisen where the judiciary was called upon to intervene in cases of a political nature. In the period 1994 – 1999, no less than 20 such cases have been decided by the High Court and Supreme Court of Appeal dealing with issues arising out of struggles for political power. Some important cases of this nature are: Election of President Muluzi in 1999 (Chakuamba Vs Electoral Commission), Appointment of Chakufa Chihana as the Second Vice President (Attorney General Vs. Kachere), the Constitutionality of the Press Reconstruction Act to establish control over the largest business established by the former Head of State (Attorney General Vs. Malawi Congress Party). The principles of separation of powers and procedures to ensure governmental accountability are yet to become firmly entrenched, where institutions of government do not strictly adhere to the set norms and procedures in the conduct of their affairs. The judiciary often finds itself dragged into cases which are not really within its fold, and this often places the judiciary in a difficult situation. Further it increases the already existing backlog of cases.

In the last ten years, there have been many instances where the judiciary have had to review certain important and controversial bills passed by the National Assembly, which were perceived to be against the spirit of the Constitution. In some of these cases, out of political expediency, the Supreme Court overturned rulings of the High Court which were in line with the Constitution. Partisan considerations and personal loyalties seem to have played a role and taken precedence over righteousness and fairness. This has caused concern and suspicion regarding the independence of the judiciary. (This is further discussed in section 3.5 on separation of powers.)

The need for a Constitutional court to deal with such issues is being increasingly raised. Establishment of such a court would surely be a move in the right direction.

**3.2.3. Equality before Law and equal access to Justice** – The principle of equality before law is enshrined in the Constitution in Section 12 (v) and further strengthened in other Sections (20, 23), by guarantees of equal and effective protection under the law for all, and for women and children in particular. There is also guarantee of access to justice and legal remedies in Section 41 and guarantee of administrative

justice in Section 43(1). In practice however, there are many challenges to access to justice by a vast majority of the population.

The principle that no one is above the law generally applies as there are a number of cases where decisions of public officials have been successfully challenged in judicial review proceedings.

**3.2.4. Anti-Corruption Law-** An Anti-Corruption Bureau (ACB) was established in 1998 under Section 13 (o) of the Constitution of Malawi which strives to secure Public Trust and Good Governance by ensuring transparency, personal integrity and financial probity. The Bureau gets its funding from the Malawi Parliament, The Department for International Development (DFID) and the European Union. The Bureau has its headquarters in Lilongwe and regional offices in Blantyre and Mzuzu. Since its inception in 1998, the ACB has made important progress in public procurement processes involving millions of Malawi Kwacha.

The Corrupt Practices Act has been found to be inadequate in facilitating effective functioning of the Bureau. The Law Commission has completed amending the Act, and it now awaits passage by Parliament. Once passed by Parliament, it will hopefully enhance the working of the Bureau. The ACB receives numerous complaints, for instance, in three months in early 2002, the Bureau received as many as 377 cases, 74 of which were corruption-related, and 43 of them were completed within the next three months. (Insider Publication August 21/ 2002)

While corruption at high levels is mounting, the Anti Corruption Bureau has not proven to be effective and competent in dealing with them due to lack of adequate legislative empowerment and infrastructural capacity. The amended corrupt practices bill is yet to be passed by parliament.

In addition, institutions like the Director of Public Prosecutor (DPP) have been prone to political interference, control and dominance.

### **3.2.5. Constitutional Bodies: The Ombudsman, the Human Rights Commission and the National Compensation Tribunal**

Chapter X in the Constitution provides for an office of the Ombudsman who is mandated to investigate and take legal action against government officials responsible

for human rights violations and other abuses. This office came into existence in 1995. Since then, the office has received thousands of complaints from people from various walks of life. In recent years, the office of the Ombudsman has particularly risen to prominence with its judicious and efficient handling of cases, some of them involving some senior politicians.

The Human Rights Commission is enshrined in chapter XI of the Constitution with a mandate to investigate violations of the rights accorded by the Constitution and strives for the protection of those rights. The Commission became fully functional only in 1999 after the legislation on the membership, responsibilities and powers of the commission was finally passed by Parliament in 1998. The Human Rights Commission Act gives the Commission broad powers to be effective and autonomous. Section 15 of the Act gives the Commission wide ranging powers to hear and obtain any necessary evidence, to conduct searches after obtaining a warrant issued by a magistrate and to exercise unhindered authority to visit detention centers.

To address past abuses of human rights, the Constitution created the National Compensation Tribunal to adjudicate claims of criminal and civil liability against the former government and provide financial compensation. The Tribunal registered 24,500 people for compensation and so far 7000 have been given a mere pittance as a part of the approved compensation. Grossly inadequate financial resources turns the Tribunal into a farce. The Tribunal faced several challenges in the dispensation of its mandate, such as identification of real victims of atrocities, inadequate resources for compensation, and creating awareness about the existence of the tribunal especially in the rural areas. In 2004 the period for compensation will be over.

### **3.3 POLITICAL PARTICIPATION - ELECTIONS**

General elections in Malawi witness a large voter turn out and are peaceful and orderly. They are generally declared free and fair by local and international observers. However, elections are not yet fought on the basis of policies, but on personalities. Parties enjoy the right to campaign although this right has certain limitations in terms of their access to the electronic media.

The electoral process could be managed and conducted more efficiently. The 1999 elections were faced with numerous logistical and administrative inadequacies arising out of lack of adequate planning and co-ordination with the various stakeholders. This undermines the efficiency of the whole process. The elections have also brought to the forefront the need to restore the credibility of the Electoral Commission and to build the capacity and skills of the commission's secretariat.

**3.3.1 Universal Adult Franchise** - Every citizen of Malawi who is residing in the country, and has attained the age of eighteen and is ordinarily resident in that constituency or was born there or is employed or carries on a business there, is eligible to vote according to the Parliamentary and Presidential Act of 1993. The 1995 Constitution under Section 77 states, "All persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum subject only to this section. The right extends to every citizen, and those non-citizens who have been ordinarily residing in the Republic for seven years, who has attained the age of eighteen years, and is ordinarily resident in that constituency or was born there, or is employed or carries on a business there.

The people of Malawi have shown great enthusiasm and commitment to exercise their right to franchise. This can be inferred from the voter turn out which has been progressive from the time of Referendum to the 1999 elections. 67 % of total registered voters voted in the Referendum, 80.54 % in the 1994 elections, and 93.76 % in the 1999 elections.

**3.3.2 The Electoral System in practice**- Since the time of independence of the country, election of representatives to the National Assembly has been based on the 'First- Past-The-Post' system. Under the former regime, the Malawi Congress Party (MCP - the only party) nominated candidates who competed in the elections in constituencies and those who won the largest number of votes were declared elected. Being a former British colony, Malawi has inherited a number of British practices and conventions and the electoral system is one of them.

The same electoral system has been continued after the change to multiparty system and the 1994 elections were held on the same basis. This was done by a process of deliberation between two bodies- the National Consultative Council (NCC) that was formed by an Act of Parliament in 1993 and the National Executive Council, which



was the reflection of the Cabinet. Both the bodies were made up of an equal number of representatives of the seven political parties, which were registered as of 1<sup>st</sup> November 1993.

The NCC was responsible for preparing a new Constitution slated to come into effect ‘immediately after the first multiparty elections.’ At the National Constitutional Convention held in 1995, it was resolved that Malawi should maintain the ‘First-Past-The-post’ electoral system for both Parliamentary and Presidential elections. The people directly elect the President. According to section 80 (1) of the Constitution, the elections of the President and of the members of the National Assembly are held concurrently on the basis of direct, universal and equal suffrage.

The Constitution of Malawi provides for the regular holding of elections, by stating that the National Assembly shall last for five years from date of swearing in and then stands dissolved and general elections shall be held within sixty days of dissolution. By-elections shall be held to fill seats declared vacant by the Speaker.

### **3.3.3 1994 & 1999 Elections**

#### **1999 Presidential Elections**

<b>CANDIDATE</b>	<b>TOTAL VOTES</b>	<b>% OF VOTES</b>
B. Muluzi	2,442, 6885	51.37
G.Chakuamba	2, 106, 790	44.30

Source: *Electoral Commission Report. 1999*

#### **1994 Presidential Elections**

<b>CANDIDATE</b>	<b>TOTAL VOTES</b>	<b>% OF VOTES</b>
H.K. Banda	996353	33.45
C. Chihana	562862	18.90
B. Muluzi	1404754	47.16

Source: *Electoral Commission Report 1994.*

The 1994 figures indicate that Bakili Muluzi emerged the winner with the single largest proportion of votes of 47.16%. The other two candidates jointly secured 52.3% of the votes. The election brought about a change of government from a single

party to a multiparty system and thus re-introduced the presence of opposition parties in the legislature since the election of 1961.

In the 1999 elections, Bakili Muluzi emerged the winner, polling 51.37% of the votes cast. The opposition presidential candidates contested the results on two grounds: that there had been rigging on the part of Bakili Muluzi and the United Democratic Front and that the Constitution required that for a candidate to be declared the winner of the presidential election, he or she must have obtained a number of votes greater than 50% of *all registered voters* (*Chakuamba, Mkhumbwe and Kalua v the Electoral Commission*). On the criteria for winning the presidential election, the High Court has since decided the case in favour of Bakili Muluzi and the Electoral Commission and held that the winning candidate need only obtain over 50% *of the votes cast*. This decision of the High Court was further challenged in the Supreme Court of Appeal. The Supreme Court endorsed the decision of the High Court. The Supreme Court held that a right counts or matters only when it is exercised.

The fairness of the electoral process was further challenged on grounds of irregularities such as; printing of additional ballot papers locally, illegal possession of polling material by district staff, and so on. The court ordered the inspection of ballot boxes and ballot papers from 16 districts. The elections case was one of the longest court battles, which lasted for more than a year and ended with the courts declaring the opposition's claims invalid and legitimised the victory of the United Democratic Front (UDF).

### **3.3.4 Fairness of Elections**

*Political Campaign-* All registered political parties have a right to campaign, under section 56 of the Parliamentary and Presidential Elections Act (PPEA). In Malawi, parties exercise this right to the utmost. Party meetings, rallies, gatherings are the main points of interaction between them and the people. Parties identify their supporters and choose their members from these public platforms.

The period for campaigning in public by every political party under the Act is a period of two months closing forty- eight hours before the opening of the poll on the first polling day. Section 59 of the PPEA guarantees to every political party and every representative, member or supporter thereof, complete and unhindered freedom of

expression and information in the exercise of the right to campaign. This right is further secured by the inclusion of the provision that, no person during or after the campaign period shall be subjected to any criminal prosecution for any statement he made or any opinion he held or any campaign material he produced, published or possessed while campaigning in the election.

*Unequal Access to Media-* The opposition political parties do not get adequate air-time to address the masses. As the radio is the most popular and pervasive mode of communication, lack of adequate access by all contending parties was tantamount to an unequal playing field. The monopoly of the national radio station (the only station with national coverage) by the ruling Party was a classic example of using public resources for partisan purposes, which is an offence under any electoral law. The Malawi Broadcasting Corporation (MBC) covered the political campaigns of the state President live and rebroadcast them in the evening the same day, whilst those of the opposition leaders were not covered. In spite of its much stated independence, the Electoral Commission appeared unable to implement the new legislation, which was intended to open the airwaves to all political parties and thereby level the playing field during the campaign period. Television Malawi was introduced just before the 1999 elections and was used almost exclusively to cover the ruling party campaign.

*Campaign Violence and Intimidation-* In the 1994 general elections there were instances of intimidation of voters by confiscation of their voter registration certificates by members of political parties or by the Traditional Authorities at the instance of the party they supported. There were also a number of cases of reported violence, disturbance of campaign meetings of one party by another, physical threats to candidates of one party by another and so on and so forth. The following by-elections were also not free from campaign related violence.

In the case of 1999 elections, after the results were announced, there was considerable public frustration and outrage. There were instances of violence especially in the Northern region, where anti UDF demonstrators set some mosques ablaze, while homes of UDF functionaries were vandalized. Politicians, both from the ruling Party and the Opposition, pointed fingers at each other. Generally, civil Society organisations and opposition parties accused the police of bias and indifference.

### 3.4. POLITICAL COMPETITION

#### 3.4.1. Political Parties – A general assessment

After the national referendum of 14<sup>th</sup> June 1993, several legal reforms were initiated, one of which was the formation of political parties, and underground pressure groups evolved into political parties like the United Democratic Front. In the last ten years political parties have proliferated in Malawi. There are twenty-six officially registered parties but only seven or so have been functional at any given point in time.

About political parties in Malawi, one feature that comes out clearly is a lack of perception of what they stand for. Lack of an ideological perception and orientation towards clear policies and programmes is common among the parties. So also lack of adequate mechanisms for keeping an approximate count of their members. Even in the case of the functioning parties interactions within the Party at various levels and between them are rare and inadequate and inter party interactions are extremely limited. Party activities are too elections focused. Parties have not yet evolved a democratic system of functioning within their own parties in terms of transparency, appointments, and appropriation of funds.

#### 3.4.2 Role of Political Parties in Parliament

In Malawi the opposition parties won a sizeable number of seats in the National Assembly, both in 1994 and 1999 elections, unlike in other countries in the region where the ruling parties gained an overwhelming majority of seats. Parties have been flexible in terms of forming coalitions and alliances. The following tables reflect the composition of the National Assembly.

Distribution of Seats following the 1999 Parliamentary Elections

	Political Party				
	MCP	UDF	AFORD	Independen	TOTAL
Region					
NORTH	4	1	28	0	33
CENTRE	54	16	1	1	72
SOUTH	8	77	0	3	87
Total	66	94	29	4	193

Source: *Electoral Commission Report 1999*

Distribution of Seats following the 1994 elections

	Political Party				
	MCP	UDF	AFORD	Independent	TOTAL
<b>Region</b>					
NORTH	0	0	33	0	33
CENTRE	51	14	3	0	68
SOUTH	5	71	0	0	76
<b>Totals</b>	56	85	36	0	177

Although the UDF had more seats in the National Assembly than the other parties it was short of four seats to have a majority in the Parliament. Thus, for the first four months of the new government (25 May to 24<sup>th</sup> September 1994), the ruling UDF was in a minority and the opposition parties AFORD and MCP formed a coalition.

The united opposition was in a strong position - they displayed their strength in the very first sitting of the National Assembly, where the Speaker was from AFORD and both deputy speakers from the MCP. All the seven (operative) Committees of Parliament had large representation from the opposition and were even chaired by opposition members. The role of the opposition was not always constructive and proved to be an impediment to the regular conduct of governmental business. The opposition, though very active and critical on one hand, was also a hindrance to the functioning of the Parliament as it resorted to tactics like walk outs and boycotts. This behaviour of the opposition unfortunately created an impression of being a threat to the minority led UDF government, which could have led to political instability. In September 1994, AFORD broke away from its coalition with the MCP and joined hands with the ruling UDF. Thus a UDF and AFORD coalition government was formed and the position of second vice president was created to accommodate Chihana, the president of AFORD, in that position. Seven AFORD MPs were given ministerial positions. The creation of the office of the second vice president has been a thorny Constitutional issue since then. This coalition too, however did not last long.

In its second term, after winning the 1999 elections, the UDF was eager not to have a repeat of the first term of having a formidable opposition and in order to secure its

position as the ruling party, reportedly resorted to luring opposition MPs to its side thereby resulting in some defections of opposition members to the ruling party. As a result, within a year after the 1999 elections, the composition of the National Assembly was as follows:

As of mid 2000, the distribution of seats in the National Assembly was as:

	<b>Political Party</b>			
	MCP	UDF	AFORD	TOTAL
<b>Number of Seat Constituencies</b>	64	99	30	193

### **3.4.3. Weak Institutional Capacity of Political Parties**

It is very easy to register as a political party in Malawi. In many respects, the performance of political parties have generally been poor, not due to the lack of freedom, but the lack of institutional capacity and training of party functionaries in the functions of political parties. Parties do not have effective mechanisms for identifying and recruiting members. A study conducted in 1998 on political parties in Malawi revealed that the estimation of party membership or supporters was imprecise and subjective. This was due, in large part, to the absence of precise identification and recording mechanisms of party members and supporters (Kadzamira, Mawaya, Patel: 1998). The former practice of the MCP issuing party membership cards, which was used as a coercive tool of the state during the era of one-party dictatorship, left behind a deep negative connotation. The present political parties promptly discontinued with the party cards system but did not substitute it with another mechanism and therefore there is no reliable way of establishing their membership. Parties use public rallies as a forum for recruiting members and supporters. Often the turn out at such rallies is presumed to comprise their members and supporters.

What restricts the competitiveness of parties is their limited perception of their long-term vision and programmes. The parties are also not clear in terms of what they stand for. As such their messages are not strong in terms of substantive matters.

Even the major parties have problems in clearly formulating their ideologies and distinguishing themselves from each other. However they do have international affiliations, which can be used as an indication of some ideological distinctions. In this connection, it is informative that the UDF is a member of the Liberal International; AFORD has some association with the Socialist International while the MCP historically had relationships with members of the Conservative government of Prime Minister Margaret Thatcher. The parties, however, do not make much of these international affiliations in public and do not use them to underscore any ideological distinctions between them. These deficiencies limit the capacity of the parties to compete and offer the electorate a genuine choice between different policies.

#### **3.4.4. Limited Choice to the Electorate**

In spite of the political party system gaining ground in the country, the choice for the voter is severely limited. This is because of the dominance of single parties in particular regions of the country, and the lack of opportunity and resources for the parties not represented in the Parliament to reach them. Parties do not offer much choice to the electorate in terms of policies and ideologies as mentioned earlier. The “first past the post” electoral system limits the chances for smaller parties to be represented in Parliament. Traditional structures like Village Chiefs and Traditional Authorities are increasingly used by political parties for partisan purposes, and these authorities command great respect and obedience from the people and therefore use their position to influence the public mind on their political choice.

#### **3.4.5 Party Funding**

The Constitution requires the state to fund any party, which secures more than one tenth of the national vote to ensure that it is able to continue to represent its constituency (section 40(2)). Thus in principle, the three parties represented in Parliament receive funding from Parliament. However, in practice the funds have often been suspended to the opposition parties for reasons like the boycott of the Assembly, or non- submission of audited reports despite the fact the Constitution does not stipulate any such requirement for securing the funds. Funding from the state caters only to a part of the requirements of the parties. Parties need to supplement this

from other sources. Political parties in Malawi, including the ones in Parliament have not put up sound income generation mechanisms like setting up party companies, or making investments. Parties in Malawi tend to largely rely on personal funding and on certain individuals as main fundraisers, this diminishes the collective participation, ownership and accountability of the party and, in addition, only serves to reinforce and perpetuate neopatrimonialistic patronage systems. Some parties have links with the business sector however; business enterprises do not openly support parties for fear of reprisals and this limits the interaction between them.

### **3.4.6 Leadership Crisis and Disintegration of parties**

Regular communication and dialogue within parties on issues cutting across all levels from grassroots to the national level is almost nonexistent. Communications are more in the form of giving instructions or direction from the top. In other words, parties lack intra-party democracy and there seems to be no real concerted efforts towards that.

Leaders not guiding and encouraging aspiring leaders within the party is leading to serious dissents resulting in factions. Avoiding conventions for almost ten years have caused mistrust, suspicion, hatred and intolerance within the ruling party which was further exasperated by the third term bid of the incumbent presidential candidate. The formation of the National Democratic Alliance as a pressure group by one of the senior most leaders of the UDF and the subsequent resignation and dismissal of a number of senior party officials has brought the UDF to the verge of disintegration. In the case of MCP, personality clashes and personal differences between two of its leaders divided the party into two factions, which almost paralysed the opposition in Parliament. Support for the third term bid by one of the factions and the subsequent reversal of its stand and reconciliation with the other faction has distorted the image of the party considerably. AFORD has been going through major internal squabbles for sometime and the president's support for the third term bid with some of the followers has brought the party to the brink of a break up. Hate speech and perpetration of violence have become rampant thereby leaving lesser scope for accommodation and reconciliation.



Internal matters of the party that are left unresolved for long are brought out in rallies and public gatherings - often in offensive language, thereby causing tension. There is a disturbing practice of using the youth to disrupt the rallies of the opposition to perpetrate violence in the party rallies of the opposition.

### **3.4. (b) THE DEVELOPMENT AND ROLE OF CIVIL SOCIETY**

#### **3.4.(b.1.)General Assessment**

Civil society institutions, though present, were not independent entities and had no political role. During the colonial period and also under the one party rule there were religious organizations with varying degrees of autonomy and NGOs working in various areas of development. However, these institutions were either co-opted into the regime or were completely non political. With the advent of multi party politics, a new set of these institutions have emerged focusing on democratisation, human rights and governance issues and thus having a direct role in the political issues. Among the civil society institutions the church has played a particularly prominent role in the transition to democracy, followed by Non Governmental Organisations and the church continues to play an active and leading role. The academia and workers did play a role in bringing about the transition, but somehow did not maintain the momentum, reasons for which are discussed in the following section. The early 1990s signalled a new era for free media, with a proliferation of print media and some new stations in the electronic media - particularly the radio, and television arrived on the media scene. While it can be said that there is freedom of expression, there are limitations and constraints to this right. In all, it can be said that there is a space for civil society in Malawi in the governance arena, and this space is yet to be fully exploited. Civil society institutions need to be more proactive. On the side of the government, there is more suspicion and mistrust about civil society rather than receptiveness to involve civil society as partners in the developmental and governance process.

#### **3.4.(b.2.) Role of Non-Governmental Organisations (NGOs)**

In the transition period, that is 1992 –1994, civil society institutions were active participants, aptly described as co-managers of the process of political transition. They engaged both the state and society in a dialogue for the country's political

future, and acted as an avenue and as a forum for articulating citizen's political demands. Notable among these were the Public Affairs Committee (PAC), Civil Liberties Committee (CILIC), Malawi Institute for Economic and Democratic Affairs (MIDEA), the Centre for Human Rights & Rehabilitation (CHRR), the Catholic Commission for Justice & Peace (CCJP), and the Centre for Advice, Research and Education on Rights (CARER). There are also others focusing on the rights and needs of specific groups like the Centre for Youth and Children Affairs (CEYCA), Society for the Advancement of Women (SAW).

In the period following the first multiparty elections in 1994, these civil society institutions, particularly the NGOs, faced several challenges like weak institutions, lack of long-term vision and strategies, and intransigence of the state. The NGOs did not channel their efforts towards close networking and developing a sense of solidarity and collective strength, but kept their focus narrow and rather closed. This was largely responsible for rendering the NGO sector fragile and fragmented. NGO activities have been event driven and adhoc and therefore unsystematic in their efforts to engage the state and society in a process of political transformation that is sustained and smooth. Some NGOs emerged as a way of making a living for its founders.

The 1999 elections were a challenge for civil society institutions to play a viable role because numerous administrative and logistical obstacles confronted the entire electoral process. In a novel attempt to join hands, the Church NGO Consortium was formed mainly to impart voter and civic education to the people. A notable aspect of this exercise was the presence of the Consortium in almost all parts of the country. However, after the 1999 elections, the Consortium disintegrated with the withdrawal of the sole church component of the Consortium - the Catholic Commission for Justice & Peace (CCJP). CCJP withdrew on the order of the Episcopal Conference of Malawi because it held that "the Consortium had departed from the original objective of implementing a community based civic education plan using the church structures"(Ott: 2000).

The overall performance of NGOs in the second multiparty elections raised several doubts regarding their efficiency and, more importantly, their neutrality and credibility. The issue of lack of accountability and responsibility also surfaced prominently and some of the notable ones like MIDEA had to eventually wind up.

The Danish Embassy, while demanding audited accounts for all projects, came out with a very firm stand on the serious consequences of misusing Danish funds by partners. Parliament initiated a move to enhance the accountability and transparency of NGOs by passing the NGO Act in early 2001.

The Act endeavoured to provide for the rights and obligations of Non-Governmental Organisations in Malawi and to promote the development and values of a strong independent civil society. The Act further strived to provide for the establishment, functions and powers of the Non-Governmental Organisations Board of Malawi and the right of the public to access information with respect to registered organizations and to provide for matters incidental thereto or connected therewith. (Act .No 3 of 2001) The objectives of the Act included provisions to create a conducive environment for NGO development through Government provision of incentives, and to promote donor and public confidence in the NGO sector, to encourage the development of an NGO code of conduct. The Act designated the Council for Non-Governmental Organisations (CONGOMA) as the NGO coordinating body for the purposes of this Act. The Act further required all registered NGOs to be affiliated to CONGOMA.

The Act was not received well by many in the NGO community. NGOs like Centre for Human Rights & Rehabilitation (CHRR) expressed strong reservations on the requirement for all NGOs to be affiliated to CONGOMA as a violation of the freedom of association; institutions should be free to register or not to register and enforcing association by law is a violation of such a right. The registration and other costs involved in the process of obtaining membership of CONGOMA are prohibitive for small local NGOs. There are 250 registered NGOs in Malawi, functioning in the areas of development and governance sectors; 35 or so of these NGOs have a religious basis.

Since the year 2000, NGOs, especially those engaged in the governance area, have joined hands and taken concerted measures in opposing the proposed Constitutional amendment to extend the term of office of the State President beyond two terms. These measures were in the form of numerous press statements, public debates and effective lobbying. The church organizations too played a vital role on the issue of

extension of the presidential term, and civil society institutions, namely the church, NGOs and the media, put up a formidable fight against the proposed bill.

### **3.4.(b.3 )Role of Religious institutions**

Any discussion on the role of religious institutions in the democratisation process in Malawi would naturally and rightly begin with the recognition of the Catholic Pastoral Letter and the activities of the Public Affairs Committee (PAC) in initiating and accelerating the country's movement to multi-party system. The various Malawian churches accept PAC as their representative institution influencing politics in Malawi. In the last ten years PAC has been engaged in three main areas: advocacy, mediation and civic education. From 1992 to the end of the first term of the new government PAC's role was more in advocacy and mediation. The Presidential Committee on Dialogue in the transition period of 1992 –1994, the round table conferences involving government, political parties and NGOs to discuss issues of tolerance, reconciliation and accountability are some of the cases of PAC's mediational role. Further, PAC tried to mediate in the 1996 Parliamentary boycott by the opposition parties as well as in bringing an end to the civil servants strike.

Civic education has been an ongoing activity of PAC since 1995 on areas of good governance, and voter education towards the 1999 elections. Series of seminars were held for local religious leaders in all the districts through the country. Older religious institutions, which were active before 1992 like the Christian Service Committee (CSC) and the Christian Health Association (CHAM) also, began to adapt to the new environment by organizing seminars and workshops on capacity building, rights of women and such other areas.

The Catholic Church in particular, has been a close observer of the political scene and has been open and strong in its criticism of the government from time to time on issues of corruption at high levels, and harassment and intimidation of government officials who do not toe the line of ruling party, disbursal of state funds to party supporters, and so on. Following the report by the Public Accounts Committee of the Parliament, exposing the government's misuse of funds, the Catholic Commission for Justice & Peace (CCJP) issued a strongly worded letter condemning the financial mismanagement as well numerous forms of political abuse by the ruling party.

In the wake of the passage of controversial Constitutional amendments in the year 2001, such as the amendment to Section 65 (Defection bill), the NGO bill, and the increasing number of incidents of violence arising out of political intolerance, the PAC held a meeting with the State President. PAC particularly appealed for reinstatement of two opposition Members of Parliament who were unseated on the application of the amended defection Act. Subsequently the two MPs were reinstated by court order.

The issue of the bid for a third term for President Bakili Muluzi brought a heightened role of the church to an extent and magnitude comparable to its role in 1992 –93. The PAC came out with a series of press releases on the issue, followed by the Malawian Council of Churches (MCC) a protestant grouping of Christian denominations, which also took a firm and clear stand against the third term. Forum for Defence of the Constitution (FDC) formed at the initiative of the Church of Central Africa Presbyterian (CCAP) with prominent members of other civil society institutions also came out as a very powerful forum serving the specific cause of upholding the Constitution with reference to this burning issue. The Church Development Coordination Committee (CDCC) an interdenominational group held two major gatherings in early 2003, which were attended by prominent opposition party leaders and drew large crowds. The clergy made strong and forceful comments together with some political leaders.

The Muslim Association of Malawi took a stand supporting the open term bid. This stand of MAM infuriated PAC which had a strong diverse stand. This caused tension between MAM and rest of PAC members.

A new pressure group called the Forum for the Defence of the Constitution (FDC) was launched in October 2002 primarily to uphold the Constitution and to ensure that the incumbent president did not contest in the 2004 elections. This forum is chaired by Rev. Gunya of Blantyre Synod. The Forum enjoyed the support of PAC in its activities.

The firm and critical stand of the church against the third term brought out in the open the subtle tensions between the church and the government that had been brewing for a long time. The President's response to the delegation of CCAP leaders on the issue

of nurturing democracy in Malawi was defensive and abrasive. Senior members of the ruling party started accusing church leaders of being partisan and nurturing political ambitions. The church evidently has its own political leanings and all of them are not neutral and unbiased. The government even went to the extent of questioning the fundamental role of the church by saying the church's sphere of activity is spiritual and not political and therefore it should not meddle in politics. All the arguments and counter arguments brings one issue to the forefront that is defining the role of religious bodies in politics. Should the church be an active player in the ongoing political process or should it be a body that guides and directs the process whenever it is looked upon for guidance by the government and civil society? It should however not be overlooked that the Christian churches are led by their own interests, too. They wanted to slow down islamisation and therefore they prefer a Christian presidential candidate to win the forthcoming elections.

On the role of the church an important observation has been made that while the church plays a role in 'high' politics that is the national executive, legislature and political parties at the national level, there were significant limits to their grassroots civil society activism of the church (Peter VonDoepp: 1998). These limitations are traced to the religious framework of the church, the organizational setting of the clergy and the class character of the clergy themselves. However, there is a great potential for the clergy to play a more active political role at the local level owing to their elevated status in local communities and their affiliation to larger and powerful religious organisations at the macro-level.

#### **3.4.(b.4.) Role of the Media**

Media throughout Africa is shedding its earlier role as an instrument for securing loyalty and support for the regime in power and is now striving to reflect the needs and aspirations of the people and bring the state and its citizens closer to each other. Malawi is not an exception to this trend.

The press in Malawi emerged against the backdrop of elections, largely focusing on party campaigns and electoral activities. Newspapers thus became conduits for propaganda, character assassination, mud slinging and such other features that are part and parcel of aggressive electioneering. One of the most significant measures after

transition towards promoting a free media was the incorporation of Articles 35, 36 and 37 in the Constitution guaranteeing the following freedoms:

- Freedom of expression to every person,
- Freedom of press
- Freedom to every person to access all information held by the state so far as the right is required by him for the exercise of his right.

The electronic media also underwent changes towards reform and progress. Institutions like the Public Affairs Committee, the opposition parties and civil society institutions addressed critical issues like those of editorial independence, fair access to the media to all political parties and personalities and protection of media personnel from arbitrary arrests and suspensions. During the 1994 elections the Malawi Broadcasting Corporation demonstrated the ability and will to carry out independent and fair reporting.

The period following the first multi party elections however witnessed signs of reversal of the MBC in particular and of the media in general. In the early 1990s there were about 50 newspapers, although most published a few issues and closed. The reasons are not difficult to find. Many of them were poorly written and printed and did not sell, some were sued for defamation and closed when they lost their lawsuits, some could not find sufficient advertising revenue, and many were short of capital and could not manage as the cost of wages and inputs increased. The print media is mostly privately owned whereas, the MBC and Television Malawi are supposed to be independent public broadcasters but are in effect controlled by the government. The Constitutional provisions were not supported and enhanced by the liberalization of related legislations like the Penal Code of Sedition of 1930 and the Censorship Act of 1968. These Acts were not repealed until 1999.

Journalists have not been free from official and unofficial intimidation and harassment. Defamation suits have been a common tactic of using restrictive laws against journalists. There have been cases where journalists have been charged of offences only to have them withdrawn after that accused had suffered the anxiety and anguish of a person awaiting trial for a crime punishable with imprisonment. As stated earlier, some of the repressive legislations of the past regime were not repealed for

almost five years after the new regime was installed and this further throttled the growth of an independent media. Media personnel also often become victims of direct harassment and intimidation exemplified by the raid on and damaging of equipment at the Daily Times office by the Malawi Army soldiers because the paper had carried a story on the prevalence of HIV/Aids among the rank and file in the army. There were also cases of dismissal and threats of dismissal of some senior staff in the government –controlled media.

The public and donor pressure for reform of the MBC Act since 1994 finally evoked a positive response from the MBC Board by way of coming up with a Bill which would free the Corporation from government control. After wading through several obstacles the Bill was finally passed by parliament in 1998. The Communications Act set out a unitary regulatory structure for the entire communication sector comprising telecommunications, posts and broadcasting bringing them under a new Malawi Communications Regulatory Authority (MACRA). Although the setting up of MACRA came as a ray of hope, it also aroused concerns on account of its frequent references to the minister and his general powers to give directives to the body.

The MBC's role in the 1999 electoral process was far from providing the ground for fair competition and leveling the playing field. It was completely monopolized by the ruling party. The common feeling was that the MBC had played a fairer role in the 1994 elections. The opposition parties have already started expressing serious concern at the continued monopoly of the state –owned MBC and Television Malawi (TVM) by the ruling party and doubting the fairness of the electoral process (Malawi News: July 2003) The opposition leaders are demanding the enforcement of the Communications Act by MACRA to ensure equal coverage to all political parties.

The role of MACRA has come under great concern and scrutiny since early 2003 when it ordered community radio stations to stop airing news bulletins on the ground that the Communications Act forbade such stations from running news programmes. Section 51(3) c of the said Act bars community stations from broadcasting news services and factual programmes. The Media Institute of Southern Africa (MISA) has held the decision of MACRA unconstitutional and has demanded an immediate repeal



of the section so as to bring the Act in line with the Constitutional provisions guaranteeing freedom of expression and the press.

Numerous challenges continue to face the media industry preventing it from playing its due role as the fourth pillar of democracy. First of all, is the issue of ownership of the media houses. Most of them are owned by politicians or their families or by individuals with strong political leanings. Political power and control impinges not only on the neutrality and independence of the paper, but also on the job security and survival of the reporters who do not comply with the wishes of their masters. Secondly, the lack of professionalism in the sector, is a major handicap with a majority of journalists being untrained and inexperienced. Journalism is a new field and before the transition there was no institution imparting training in journalism. Thirdly, weak media organizations like the Media Council, which should safeguard media ethics, remain weak. The issue here is one of devising a mechanism to empower such a body.

As with other civil society organizations like the NGO, and the church, there is no empathy between the government and the media. The relationship is one of suspicion and mistrust and this is a major obstacle in the process of democratisation.

### **3.4 (b.5) Role of Trade Unions & academia**

Under the one party regime a mechanism was put in place to make unions non-existent except through the party hierarchy. Although state legislation never forbade the establishments of trade unions in the public service the procedure involved almost amounted to prohibition. The transition from 1992 marked a series of strikes, especially between May and September 1992. By the end of 1993 more than 88 cases of strikes were reported. The workers were in full support of the Pastoral Letter as it made particular reference to the low wages and poor working conditions. The working force in Malawi being very small could not play an effective role as organized entities. However, the workers were fully supportive of the formation of underground pressure groups, which eventually became political parties. However, with the passage of time the political parties and the trade unions went in divergent ways. It almost seemed that the parties did not need the unions anymore.

The new Constitution guarantees (under the section of human rights) the right to form unions. This was followed by the Labour Relations Act of 1996, which guaranteed freedom of association to both employers and employees. A sectorisation plan was adopted in the formation of unions with a view to avoid unnecessary multiplication of trade unions, and as of 1998 there were twelve unions under twelve sectors. Critics argue that the motive behind sectorisation was political. It was meant to give the state a hold over the labour movement.

What has also weakened the labour movement is that the Malawi Congress of Trade Unions (MCTU) was designated by the state as an umbrella organisation of all unions in Malawi, without the body having such a mandate from all the unions. The Civil Service Trade Union (CSTU) was a strong and powerful union but was made to become a part of the MCTU.

In sum, the unions have on one hand succumbed to political pressures and been lured by gifts and grants, and on the other hand failed to generate a strong following by inculcation of a strong spirit of unionism. There are no labour education institutes and centres as in other countries. Malawi's labour movement is perhaps the least developed and weakest in the Southern African Development Community in terms of unionisation levels and material resources.

The university campuses were focal points of activities during the transition from 1992 to 1994. Prominent academics like the late Matambo Nzunda played an active role in the formulation of the new Constitution of Malawi. In the years following the transition, though many individual academics have contributed to the democratisation process in a number of ways, they have not developed a common forum or platform. Academic staff unions or associations are narrowly focused on issues pertaining to staff welfare and these too are not adequately addressed. University campuses are also not vibrant in discussing issues of national concern and the interaction between university and other civil society organisations is minimal.

Few academics take a stand on current political issues in their individual capacity and they are not free from intimidation and harassment. During the civil society campaign against the Presidential third term bid some members of the academic community took a firm position and faced dire consequences. The student bodies at the university have held effective demonstrations on sensitive issues like the proposed impeachment

of three High Court Judges by the Parliament and on the third term issue. The demonstrations were met with the police using teargas against the demonstrators, as is the common practice against most demonstrations.

### **3.5. The Separation of powers: Checks and Balances**

#### **3.5.1. General Assessment**

The 1995 Constitution of Malawi clearly establishes a presidential form of government. The sections of the Constitution on composition and powers of the three branches of government are clear-cut and well defined. However, the practices of the last eight years demonstrate that separation of powers has not been corresponded with separation of personnel and this is essence tantamount to concentration of powers in practice. There are individuals who hold a number of positions, often leading to conflict of interests. For instance, until recently the offices of minister for justice and the Attorney General were combined. A common trend in the democratisation process in Africa is that the executive tends to wield too much power and dominates over the legislature, almost turning the latter into a rubber stamp. Malawi is not an exception to this trend. The judiciary enjoys greater public confidence as a free and independent body capable of upholding the Constitution.

#### **3.5.2. Executive and the Legislature**

The relationship between the two has been tense and competitive rather than complementary and cooperative. The legislature in Malawi always had a strong opposition with almost the same number of seats as the ruling party. In the initial years of multiparty dispensation members of the political executive (Cabinet) had both elected members of Parliament and the rest - non members of Parliament attended and actively participated in the deliberations of the house and even voted on bills. The opposition AFORD and MCP members raised serious objections, as it was a clear violation of the principle of separation of powers.

The principle of separation of powers between the Executive and Legislature was put to the test by the case, commonly known as the "Strangers in the House" case, which was instigated by Fred Nseula. The MP who had crossed the floor from the UDF to the MCP had his seat declared vacant by the Speaker of the House. Nseula

challenged the Speaker's action in court. However the High Court ruling by went beyond the issue of 'crossing the floor' and raised another major related Constitutional issue of 'Ministers doubling as MPs'. The issue here was whether ministers could also serve as MPs. He held that in keeping with the principle of separation of powers ministers should not be MPs. The ruling created a Constitutional crisis. The President strongly reacted to the High Court ruling by branding it as political interference by the Judiciary. He said judges should not exceed their limits and he invoked section 92 (1) of the Constitution that grants the president the power to select anyone as a Cabinet Minister. The Supreme Court of Appeal overruled the high court judgment and held that Cabinet ministers could be members of Parliament.

In the October 1997 session of the Assembly, three members of Parliament raised another concern over Ministers who were not MPs continuing to attend the session of the National Assembly. They referred to the High Court ruling, which had declared that it was illegal and unconstitutional for Ministers who were not MPs to attend the House. In this case the Supreme Court of Appeal ruled that the Parliament should decide such matters on the basis of its Standing Orders and defined it as an area where the judiciary should not interfere in the affairs of the legislature. It is interesting to note that in the year 1994 the total number of ministers was 22 out of which 11 were MPs and 11 were not MPs. In the year 2000 the number of ministers rose to 33 out of which 26 were MPs and only 7 were not MPs. As of 2003 the size of the Cabinet is 46. The growing size of the Cabinet has also been a cause of concern for the Parliament, civil society and the donors.

### **3.5.3. Legislature and the Judiciary**

This section examines two contexts in which the legislature and the judiciary confront each other. Firstly, the political parties in Parliament being disorganised and immature diminish its role by seeking legal intervention in the internal matters of Parliament. Secondly, the executive through the Parliament attempts to challenge the independence of the judiciary.

Taking the first context, lack of inter-party democracy and factionalism among political parties vitiated their role in the Parliament and brought about a situation where the judiciary was called in by the parties themselves to tackle purely in-house Parliamentary matters. For instance the leadership crisis in the MCP due to

personality clashes between two of its leaders, gave the ruling party an opportunity to interfere in the appointment of the leader of the opposition in the house. The Speaker compromised on neutrality and declared J.Z. Tembo as the leader of the opposition and even went to the extent of declaring G. Chakwamba's seat vacant in a manner inconsistent with the Parliamentary norms. The party took the matter to court. The court could not help the party in resolving its squabbles but Parliament lost valuable time on an issue, which could have been easily resolved, by the parties. Thus Parliament could have preserved its rights and control over its domain.

In the above mentioned second context, which posed the most severe challenge to judicial independence, was the petition for removal of three judges by Parliament. Over 113 out of the 193 members of the House signed the petition in the November 2001 sitting of the Assembly. The removal of the judges was sought on grounds of alleged misconduct and incompetence. The action of the Assembly generated wide condemnation from within and outside the country. The legal adviser to the International Commission of Jurists (ICJ) stated, 'the action to dismiss the judges flies in the face of the 1994 Constitution of Malawi, the African Charter on Human and People's Rights and the United Nations basic principles on the independence of the judiciary which recognises the value of an independent judiciary as necessary to uphold the rule of law.' The finding of the ICJ was that some politicians have been over-sensitive to judicial pronouncements and this over-sensitivity led to the action for 'removal of judges' whose decisions were found to be unpalatable. The president eventually rejected the motion to impeach the judges.

#### **3.5.4 Setbacks to governmental accountability**

As has been discussed above the Constitution of Malawi clearly establishes a presidential system of government with adequate mechanism for checks and balances. However, lack of strict adherence to some of the basic tenets of presidentialism and reference by some vested interests to the term 'hybrid system' to describe Malawi's form of government without any substantial reasoning has led to deliberate confusion about the system of government.

One of the amendments to the Constitution even before it was adopted in 1995 was the repeal of the recall provision of section 64 of the Constitution by Act No.6 of 1995. This provision provided for the recall of those Members of Parliament by his/her constituency who failed to

perform satisfactorily, and who failed to adhere to the code of conduct. The repeal of the Act evoked strong resentment and distress. The issue continues to surface in all debates on Constitution and governmental accountability.

The Constitution had elaborate and well-structured sections on the Senate (section 68 to 72). The composition of the senate was designed to have representatives from all the districts elected by the District Council, and it was also to include members from interest groups. It was conceived to be primarily a deliberative body to receive, scrutinize and amend Bills from the National Assembly. The sections on senate was repealed by the Constitution amendment Bill No.4, 2000 passed in January 2001 when the National Assembly sat for a week specially to table three important bills, namely the Local Government bill, the NGO bill and the senate bill. The abolition of the senate bill was tabled for the second time after it was defeated during the previous sitting of Parliament. The position of the ruling party and those who supported the bill was that the economy of the country was not in a position to afford a senate.

One of the core objectives of the senate was to provide a forum for deliberation and would have been a check on the powers of the National Assembly. By abolishing the senate a mechanism for ensuring accountability was demolished. The bill was strongly condemned and opposed by the civil society and sections of opposition parties as unconstitutional on the grounds that the senate is protected under section 45 (8) of the Constitution which states that, 'under no circumstance shall it be possible to suspend this Constitution or any part thereof or dissolve any of its organ, save as is consistent with the provisions of this Constitution.' It was also raised by many quarters that the bill touched the substance or effect of the Constitution and therefore section 196 (3) can be invoked which stipulates that any amendment which affects the substance or effect of the Constitution requires a national referendum. The contention of the civil society therefore, was the issue of abolition of senate required a national referendum. Malawi Human Rights Commission and Malawi Human Rights Resource Centre sought injunction from the court for refraining the bill from being tabled. As the high court in Lilongwe reserved the ruling the government swiftly tabled, debated and passed it.

The overt dominance of the executive over the legislature in a number of ways is also because of the lack of effectiveness of the Committees of Parliament. Only seven out of thirteen committees are functional. The committee on legal affairs, public accounts,

budget, public appointments are some of the active ones and these have only recently come to public knowledge. It is the Parliament's budget committee, which has from time to time sought public participation and input. Lack of resources is stated to be the reason for the non-functioning of these committees. However, the reality is the funds allocated for the committees are diverted for other purposes.

The oversight function of the Parliament is restricted because of inadequate input from civil society. Civil society has not taken on its role of advocacy seriously, consistently and professionally. As has been said earlier the civil society's role is event driven and reactive.

### **3.5.5. The Civil service – towards reforms**

Civil service as the backbone of any governmental system had to be revamped and rejuvenated to keep pace with the demands of the new dispensation. Therefore, the new Government issued a "Policy Statement on Civil Service Reform and Institutional Development" in May, 1994 in which it recognised the critical role of the civil service plays in realising national development objectives. As the operational arm of Government, the civil service is charged with the task of providing an enabling physical, economic and administrative environment that facilitates the achievement of the nation's social and economic objectives. To this end, it is Government's policy to periodically subject Public Sector Organisations, including the civil service, parastatal companies and local government institutions to external reviews of their operations, responsibilities, functions, structures and establishment levels." Also in the same year, Government promulgated a Public Service Act that provides for: clarification of the role of the Civil Service; equal access to public employment, merit based recruitment and promotion; and increased predictability, accountability and transparency in the policies and practices of the public service.

The first initiative in civil service reform was a census of civil servants in 1995 by which the "ghost employees" were removed from the payroll, and payroll and personnel management information systems were linked in order to cut out 'ghost' pensioners. The next initiative was a functional review of ministries. These reviews have resulted in a reduction in the number of ministries from 26 to 23.

In addition to the abolition of ministries, several functions have been identified as appropriate for contracting out. Invariably, the contracting out arrangement results in

substantial reduction in the number of civil service employees, especially those without skills. The reform programme also covers human resources management.

The Malawi Constitution (section 193) guarantees the independence of the civil service. Government and political parties are, Constitutionally, forbidden from causing civil servants to engage in activities that promote or undermine the interests or affairs of any political party or individual members of any party. However, in practice, civil servants are answerable to the ruling political party through its ministers and the party president who is the Chief Executive of the state. The State President, who is also the President of the ruling party, has powers to dismiss civil servants. A worrying aspect has been the appointment and/or promotion of civil servants, by the president, at open political rallies. Civil servants have also been facing threats of dismissals or suspensions which are politically motivated. The autonomy of the civil service is thus both undermined and limited by such acts.

### **3.5. (b) Decentralisation**

The decentralisation process is still quite new. The first local government elections in the democratic dispensation took place only in November 2000. The government kept on postponing the decentralisation since 1995 officially because of technical problems and lack of funding. The Local Government Act was passed by Parliament only in 1998 but the setting up of the administrative structures took another three years and the institutions are still not fully operational. One reason for this long and difficult process – besides the financial and technical problems – is the fact that the government had no serious interest in decentralisation because it meant to transfer powers and authority from central government to local councils. The Local Government elections in November 2000 were very disappointing in terms to participation. Only about 14% of the registered voters turned out to cast their votes in contrast to almost 94% turnout in the 1999 General Elections. The reasons for the low turnout are that the political parties did not put much emphasis on the mobilisation of voters. The parties were either not willing or able to spend much money for the campaigns. The MCP was divided into two camps and failed to nominate candidates in many wards. Another deficit was that democratic local government elections were something new and most of the rural population was not aware of the meaning and



importance of local government structures. Civic education was inadequate. Further there was a voter fatigue. It should, however, be mentioned that even in other countries in the region participation in local government elections tends to be less than in national elections.

The formal administrative structures are in place. There are elected councils in 27 districts, eight towns, the Municipality of Zomba and three cities. They are formally operational. The democratically elected Local Government Councils have the responsibility for the promotion of infrastructural and economic development through the presentation of local development plans to the central government. Further, they are expected to consolidate and promote local democratic institutions and participation. They are the link between the local communities and the central government. The major problem is funding because these councils do not have financial autonomy. They are entitled to collect revenues including fees for services rendered, property rates and ground rents. But only the cities are able to raise substantial funds from such fees. The councils have no right to collect taxes but depend on financing from the central government. The financial allocations are decided upon by the National Local Government Finance Committee. This national government body has powers to control funding and to determine the financial allocations. In case of shortage of public funds – which is the order of the day - the allocations can be cut down and could seriously affect the work of the Local Councils. The administrative local government structures are still quite inefficient. It is difficult if not impossible to recruit well trained and qualified staff such as accountants and administrators because there is a shortage of qualified staff and it is difficult to hire them because it is more attractive for professionals to work in one of the cities than as poorly paid civil servants in remote district centres. In 2001 most of the councils were not able to present audited accounts because of lack of personnel.

The Councillors are only paid small allowances, which encourages corruption. The councillors' interaction with traditional authorities, members of Parliament and other representatives of society is not free from problems. The main controversial point is the fact that only the elected councillors have a right to vote in the council while all other members (traditional Chiefs, Sub Chiefs, Members of Parliament are ex officio members, and five representatives of special interest groups, who are elected by the Council) just have an advisory role. Some Councils were temporarily paralysed because of power struggles and divisions. The overall performance of most of the

councils is poor. The councils' popular reputation is low because of their failure to deliver. The general public does not see the advantages of local government structures because they do not perform better than the central government.

The transfer of responsibilities from the central government to the Local Councils is still under way. It is planned to decentralise the education and health systems. The problem is that the administrative capacities in many districts are too weak to function effectively.

In summary it must be stated that there are serious shortcomings in the decentralisation process. The Councils are not equipped with the necessary resources to fulfil local functions effectively. Another big constraint is that the central government is not seen to promote and support decentralisation. It is not a priority of government policy. This is, however, not surprising for a poor country. Moreover, political and administrative decentralisation in Malawi could also increase corruption because poorly paid local councillors can use their powers to top up their low salaries. The local government structures are still new (only two years old) and are not consolidated. They have not yet grown roots in the population, which is mostly quite unaware of the necessity and work of the Councils. They are excessively dependent on the central government and are too weak to counterbalance the latter. It will take much more time to consolidate such structures and make them an important component of the political and administrative structure. Here the same conclusion can be drawn: Democracy is expensive and for a poor country like Malawi decentralisation is not affordable if not generously supported by donors.

## **3.6. Political Culture**

### **3.6.1. General Assessment**

There is generally an excitement about the triumph over dictatorship and installing of a democratic regime and there is an eagerness to preserve the hard won democracy. The findings of Afrobarometer on Malawi are interesting. While it reports promising signs of the country's ability to move towards a political system where democracy is widely accepted, it also draws attention to the important regional cleavages and significant pockets of support for authoritarian rule that are only visible if one looks at the results on a regional basis. The reminiscences of the past like the culture of secrecy and silence are still present. An environment of open dialogue and free

discussion has not fully set in. The tension and controversy surrounding the third term issue also sparked political intolerance and violence.

Government is still widely understood in its traditional sense where the term government connotes 'boma', a Swahili word for an enclosure around the dwelling units of the traditional chiefs, slave owners/ traders and important people in the pre-colonial society. The term also fitted well to describe the colonial administrative centers. Boma is the administrative regime and/or the physical entity of the state and/or government. In the minds of the ordinary people, the boma is conceptualized and understood as a powerful and feared institution that is protected by the police/guards. It does not belong to the ordinary people, but they benefit from it (Poeshke/ Chirwa: 1998). Government is therefore, something that operates at the top and cannot be seen or realized at the grassroots and thus the people do not really see themselves as part of the governance process.

The level of corruption is enormous but does not evoke strong public condemnation except for a few apex institutions like the media, opposition parties and the NGOs. Commissions and committees of enquiry are set up but their findings are often not taken to their logical conclusion and the perpetrators are often left free.

### **3.6.2. Lack of spirit of accommodation, tolerance and dialogue**

When we look at the performance of political parties in a wider context, we can say that parties conduct themselves in a responsible and mature way. For instance, though the 1999 election results were not accepted by the opposition parties and the matter was contested in court, the government was formed and there was by and large law, order and peace except for a brief spell of violence, which was soon contained. The formation of coalitions and memoranda of understanding between parties from time to time is also an indication that lines of ethnicity and regionalism are not rigid.

However, developments since 1999 within and between parties demonstrate a clear lack of tolerance and accommodation. Since the year 2000 incidents of violence at party rallies and meetings have become common. Lack of accommodation of dissenting views within parties is expressed in derogatory and spiteful language by party presidents themselves. The incumbent party presidents demonstrate patrimonial behaviour and resent any change in the party hierarchy and structure.

### 3.6.3. Some Indicators of democracy and human rights

While focussing on the status of democracy and rights in Malawi it is perhaps useful to look at it in a regional comparative perspective through reports of some of the indicators reported by international and regional bodies. Two tables are provided below- The first portrays the level of rights enjoyed by the Southern African states with reference to freedom of expression, assembly and so on. The second portrays the level of understanding of issues of democracy and good governance from the grassroots.

Table 1 is an account of the level of democratic rights in SADC countries as measured by the Freedom House on a scale of 1 to 7 where 1 stands for the most free country and 7 for the least free country.

Table 1

STATES	PARTY SYSTEM	CIVIL LIBERTIES		POLITICAL RIGHTS		2000-2002 TRENDS
		2000	2002	2000	2002	
ANGOLA	Civil war cont.	6	6	6	6	Not Free
BOTSWANA	Multi party	2	2	2	2	Free
CONGO –DR	Single party	7	6	6	6	Not Free
LESOTHO	Multi party	4	4	4	4	Partly Free
MALAWI	Multi party	3	3	3	4	Partly Free
MAURITIUS	Multi party	2	2	1	1	Free
MOZAMBIQUE	Multi party	4	4	3	3	Partly Free
NAMIBIA	Multi party	3	3	2	2	Free
SEYCHELLES	Multi party	3	3	3	3	Partly Free
SOUTH AFRICA	Multi Party	2	2	1	1	Free
SWAZILAND	Autocracy	5	5	6	6	Not Free
TANZANIA	Multi party	4	4	4	4	Partly Free
ZAMBIA	Multi Party	4	4	5	5	Partly Free
ZIMBABWE	Multi Party	5	6	6	6	Not Free

The above table indicates the setback suffered by political rights in Malawi indicating the lack of accommodation and growing political intolerance.

Table 2 How democratic is the way your country is governed? The Afro -barometer study reports the following:

	Botswana	Zimbabwe	Zambia	Malawi	Lesotho	Namibia
Completely democratic	45.8	9.0	24.4	33.8	23.6	29.6
Democratic, but with some minor exceptions	36.2	17.8	37.8	28.2	12.6	41.4
Democratic with some major exceptions	7.6	17.2	20.1	22.6	12.8	15.1
Not a democracy	5.0	37.9	7.1	12.3	17.3	2.7
Do not understand question: do not read	1.2	12.1	2.3	0.8	2.6	3.7
Don't know/ Do not read	4.0	5.2	7.0	2.2	30.8	7.6

In the above-mentioned study the perceived increase in freedoms and rights under multiparty politics ranks high in Malawi except for fear from crime and violence where there is an indication of grave concern.

#### **3.6.4. Status and Participation of women**

Women in Malawi are seriously disadvantaged in every sector of development. This state of affairs has not come about suddenly but is the product of social attitudes against women that are entrenched in the Malawian culture. Gender imbalances have subjugated women to severe and harsh living conditions. Women's contribution to the national economy by way of their contribution to agricultural production goes unacknowledged and unrecognised. The presence and participation of women at policy and decision making levels is almost negligible. Gender equality and mainstreaming is in process and will take a while to bring tangible results. Efforts at translating the rhetoric into concrete actions remain distant and limited. There is an ongoing debate on ways and means to enhance representation of women in all sectors. In the National Assembly there are 17 women out of 193 and 70 out of 774 local councillors. While there is a general consensus regarding the need to increase the number of women MPs the challenge lies in getting more women contestants to stand for elections. First of all the number of women joining political parties is low and there are fewer women at the party rank and file. Political rallies are largely attended by women. It is also a common observation that women vote in large numbers.

## 4. Evaluation of the democratic transition process: progress or regression?

### **4. Evaluation of the Democratic Transition Process**

#### **4.1.1. Economic Conditions: A General Assessment**

With a nominal per capita income of \$160, Malawi is one of the poorest countries in the world, with dire poverty that is pervasive and deeply rooted. Thirty percent of the population earn incomes that are inadequate to assure basic caloric needs. Life expectancy is at an average of 39 years.

This daunting scenario is further compounded by one of the highest prevalence of HIV/AIDS; in urban areas, the prevalence rate among women visiting prenatal clinics is estimated at over 30 percent. Water and sanitation and rural infrastructure are severely inadequate: over two-thirds of households use pit latrines, and potable water is available to only half the population. Prospects for any material dent in the depth and breadth of poverty are limited as long as population continues to grow at the high rate of 2.7 percent a year, whilst economic growth declines year upon year.

Malawi's location and geography also pose daunting challenges to growth and development. It is a relatively small country (118000 square kilometres), landlocked (with the attendant implications of high transport costs), lacks mineral resources, and is among the most densely populated in Sub-Saharan Africa. The pressure of people on land has resulted in serious environmental degradation, which is threatening livelihoods, water supply, and hydro-electricity generation. Malawi is highly vulnerable to periodic drought; it has recently suffered three droughts in four years. The economy is mainly agrarian, with 40 percent of GDP produced by, and 85 percent of the labour force employed within an agriculture sector focused on maize and burley tobacco.

Economic policies in the three decades following independence fostered a dualistic economy with a vertically integrated and inter-locking pattern of ownership by an elite stratum – at the expense of the masses. A handful of public and private corporations, and banks dominated the economy. Similarly, the agriculture sector comprised of a few thousand commercially oriented estates, which paid only nominal rent for their lease holdings, and a smallholder sector with nearly 2 million household farmers based mainly on subsistence maize production.

Nevertheless, Malawi enjoyed successful management during the decade following independence. This was largely as a result of investments in estate agriculture and infrastructure, conservative macroeconomic policies, and a disciplined parastatal sector. The economy experienced healthy growth in the first years of independence, with per capita income increasing between 1966 and 1980 at an average annual 3 percent. But in the late 1970s the confluence of favourable factors that supported the growth of the economy ended. Over the following 15 years, Malawi suffered from economic shocks in the form of periodic drought, increases in oil prices and the cost of international borrowing, decreases in tobacco prices, and civil war in its neighbouring country, Mozambique, which disrupted its main transport route.

To cope with the resulting imbalances, the government embarked on a series of adjustment programs that continue to the present, supported by the IMF and World Bank. Success in stabilizing the economy led to two periods of recovery in 1982-85 and 1987-91, interspersed by periods of instability and fiscal crisis. The second period of growth (1987-91) was aborted when huge shocks confronted the economy between 1992 and 1994. Major droughts in 1992 and 1994, and falling tobacco prices led to losses of more than 25 percent of GDP. These shocks were compounded by a disruption in external assistance for 18 months over 1992-94 as donors expressed displeasure over poor governance. Finally, in 1994, a full-blown macroeconomic crisis developed in the face of drought, runaway government expenditures in the months preceding the election, steep depreciation in the exchange rate and a deterioration in public revenue and expenditure management.

In 1995, Malawi recovered from the large shocks caused by price movements and droughts of the last few years. There were important successes in stabilizing the economy from the large fiscal deficit, expenditures, and monetary expansion of previous years. GDP recovered by 10%, led by the recovery of smallholder production and good growth in the transport and distribution sectors. Investment savings also recovered considerably, mainly stimulated by major cuts in government expenditure. The cash budgeting system for the government proved more effective in controlling expenditures. Revenue collection met budget targets. Consequently, the fiscal deficit for fiscal year 1996 (after grants) was about 5% of GDP, compared to 15% in the previous year.

However this proved to be short lived as the economy has declined steeply since then. Malawi suffered an extreme drought in 2002 and had to import over 200 thousand tonnes for maize to avoid mass starvation. However even this issue proved controversial. The Government of Malawi subsidised prices of maize to private traders by over MK I billion, but failed to protect the poor Malawians from the thieving prices of the private traders. The National Food Reserve Agency (NFRA) had bought maize at MK 7.80 kg in 1999 but sold the same to private traders and Admarc at prices ranging from MK 3/kg - MK 6/kg. The private traders, exercising their free marketing right, sold the maize to starving poor Malawians at prices ranging from Mk 17 - MK42 / kg. Government and most International Financing Institutions refused to subsidise prices to local Malawians, because "it is simply a question of demand and supply" and that "Malawi is a free trade area". Later, government ordered that only the state owned Agricultural Development and Marketing Cooperation (ADMARC) was allowed to sell maize - at a price ceiling of K17/kg. (Malawi Economic Justice Network: 2002)

Numerous IMF delegations have highlighted serious non-compliance with conditionalities and have, thus far, declined to enter into any new agreements until the anomalies have been corrected. This has resulted in little or no Donor Budgetary Support for the last 18 months, thereby forcing the Government to borrow heavily from the domestic financial markets (MK40 billion as at January 2003), which in turn has hiked up interest rates to a level (44%) where local firms can no longer survive. Over 40 firms/industries have closed down or relocated to other countries during the past 12 months. Government expenditure shows no sign of reducing and the budget deficit continues to deepen.

The experience of fiscal year 2001/2002 makes the probability of this year's budget deliverance smaller. Last year, the IMF withheld over MK 3.5 billion (US \$47 million) of its PRGF funds after Malawi could not comply with economic management commitments. In the same year, DFID, a bilateral donor, withheld over MK900 million (US \$12.5 million).

The situation has not changed much this year. Information from the Ministry of Finance and the Ministry of Economic Planning shows that, at the moment, government is relying solely on domestic collections because the Donor Community have not yet come to support the budget 2003/2004. Unfortunately, most bilateral



donors to Malawi would resume their support only if the IMF boards recommended resumption of the PRFG. Domestic revenue in Malawi amounts only to about half the total budget and the country is heavily dependent on donor funding with 39% of the national budget being funded by donors.

#### **4.1.2. Land Reform Policy**

The much-vaunted Land Reform Policy has now been adopted as a blueprint by Government, despite serious concerns raised by various sectors. The main concerns are on inclusivity, constitutionality, ownership, compatibility and equitability however these have not elicited any responsiveness from the relevant Ministry. The perceived obduracy has further shaken investor confidence and caused a hiatus in new construction and other ventures that would depend on security of tenure. The Law Commission has invited submissions from the public, prior to drafting new Land legislation that would comply with the framework laid out in the new Land Policy, and consultations are expected to commence sometime in 2003.

The Privatisation Program has also generated much controversy and debate, due to public perceptions of opacity and “insider trading”. It is commonly believed that “National Assets” are being disposed off at giveaway prices to profit-driven private entrepreneurs – usually foreign firms because of the lack of financial capacity in local investors, with little or no benefit accruing to the people of Malawi who are, in theory, the ultimate owners of these assets. Indeed, in some cases, these parastatals (such as ADMARC) performed a social safety net function in the absence of a governmental structure, for the poorest sections of Malawian society and it is feared that privatisation of these enterprises would, inevitably lead to the cessation of vital support systems that sustain people who live in dire poverty.

#### **4.1.4 Privatisation in Malawi**

One of the concerns often raised, is that of loss of jobs and poor welfare of the remaining staff. Most circles of the civil society see privatisation as process where government refuses its responsibility of providing for the basic needs of the people and referring the community to the mercy of profit-oriented private traders. Some critics also see privatisation as a deliberate loss of public assets by government since the companies are often sold at a loss and this has generated considerable animosity and rancour amongst the people who feel cheated by the process.

Thus far, from the sale of 42 companies, government raised an amount of MK 1.67 billion (about US \$20 million) but the proceeds from privatisation are not used for viable investment. From the sale of the above companies, some money is used to run the Privatisation Commission, restructuring/making the other prospective parastatals 'viable for privatisation,' support payments for retrenchment/redundancies and in funding 'any project within the government development plans'. Since the establishment of the Privatisation Commission of Malawi, 42 parastatals have been privatised. Government has sworn to privatise 28 more companies.

Civil society has been voicing serious concerns about the privatisation scenario. The latest case is that of ADMARC. According to figures from the Parliamentary Committee on Agriculture that was conducting hearings on the views of Malawians on whether or not to privatise Admarc, all of the 36 respondents were against ADMARC privatisation. The arguments were that such a move would threaten an already shaky food security situation in the country, and might endanger availability of maize to those in dire need. It is hoped that the findings of the Parliamentary committee will complement the cries of the poor and pressurize the government not to privatise ADMARC, but install proper management in place to ensure financial viability, and that the Donor Community, through the auspices of the IMF/World Bank will heed these earnest pleas and desist from applying pressure on the Government.

All the above factors point to a pressing need for urgent positive remedial measures to curb Malawi's seemingly inexorable economic decline. This can only be accomplished with public co-operation and support that could be engendered by inclusivity and transparency within the process. Unless the imbalances are rapidly corrected, the continued economic decline will inflict ever-increasing hardship upon the already suffering masses, and this, in turn, would impact negatively upon the inculcation, consolidation, and evolution of Democracy in Malawi.

#### **4.1.5. Corruption**

Public officials, especially the MPs are required by law to declare their assets soon after their swearing in. This requirement has not been pursued and the mechanism for carrying out this task has not been effectively put in place. It has been commonly noticed that politics is pursued not as a vocation but as an occupation to redeem oneself and ones family of poverty. Records show that the government loses in a year

is over MK 22 million in corruption. There have been cases of government paying MK 2.6 million to 'ghost teachers' and over a million to owners of 'ghost houses'. Prominent politicians have virtual monopoly over some key businesses like sugar, 70% of which are controlled by politicians.

An assets draft bill is completed and pending tabling in Parliament since the end of 2002. The draft bill proposes impeachment of the president if he does not declare his assets. It further proposes loss of seats by MPs, dismissal of civil servants, parastatals organisations chairs and chief executives who fail to indicate how much they are worth after being reminded twice. The Public Assets Declaration Committee formulated the bill on the basis of inputs from the general public and major inputs from the DPP and the ACB.

## **4.2 Institutional Structures: Continuities and Change**

### **4.2.1 The Role of the Executive**

Malawi has a presidential system of government. Therefore the most powerful position is the presidency. In the democratic dispensation the powers of the president are limited by the system of separation of powers. He cannot dissolve Parliament except after the Constitutional life of Parliament has come to an end. Parliament on the other hand cannot dissolve itself and cannot bring down the president except through impeachment, which means that the president must have committed serious crimes. The president has the exclusive right to appoint (and dismiss) Cabinet ministers from within or outside Parliament. While there is no prime minister, there is a Vice President who is answerable to the president. This dominant role of the President and the Cabinet has not changed since Muluzi came into power in 1994. There were no serious attempts to either reduce or increase the institutional powers of the President and the Cabinet.

There is a close inter-relationship between the state structures and the ruling party, the UDF. Muluzi is (since 1992) President of the UDF, which means that he is head of state and head of the ruling party at the same time. This is per se not undemocratic and is in fact the usual way in countries like Great Britain and Germany where the head of government also leads the party. The problem comes in if there is no clear

distinction between party and state business. President and other members of government are seen to use government facilities to perform party business or to campaign for their party. They use government vehicles or helicopters for campaign purposes. Since the UDF is short of money and is almost exclusively funded out of Muluzi's private pocket (he is a wealthy businessman and entrepreneur) there are cases of patronage. Reliable functionaries and supporters of the party are employed in parastatal companies where they earn their livings while concentrating on party work because the party cannot pay adequate salaries. The President has a special presidential fund which can be used to support and co-opt individuals and organisations.

The administrative system as one arm of the executive is under tight control of the government. Since there is a shortage of qualified senior civil servants, the UDF government took over almost the entire civil service from the Banda regime. Only a few persons occupying top positions such as principle secretaries were removed. The principles of civil service neutrality were upheld which means that even prominent MCP-supporters among the senior civil servants were not fired but sidelined. In the first five years of UDF government there were quite a number of attempts of senior civil servants to frustrate government decisions, which ended up in the silent sidelining. There are still cases of disobedience in the civil service. Senior civil servants in the treasury were transferred to less powerful positions when they tried to frustrate decisions of the President. The UDF tries to control the civil service by employing more of its supporters and by sidelining civil servants who are seen as critical of the government. Civil servants who want to campaign for a public office (e.g. member of Parliament) have to resign first. In 1999 some opposition candidates were forced to tender their resignation immediately while some UDF candidates were given more time.

In general there is room for improvement in separating government from party business. This, however, is not a serious threat to democratic consolidation as long as the party influence on the administration is not increased further.

#### **4.2.2 The Security Apparatus**

The Malawi Army has always been professional and has not been used as an instrument of government repression under the Banda regime. During the transition

period the Army was sympathetic to democratisation and not willing to defend Banda. In the democratic dispensation the Army did not interfere with politics (with the only remarkable exception when soldiers forcefully entered and damaged the offices of the 'Daily Times' newspaper in Blantyre in January 1998 after a report about AIDS in the Armed Forces. The next day the Army Commander was retired.). From time to time the army assists the Police to crack down on criminals. The armed forces are small and have been cut down by about 40% to 5000 since Muluzi took over government. Military expenditures are low (0,7% of BIP in 2000). There were some rumours of a plan for a coup attempt in September 1998 and the detention of 15 soldiers. This and similar reports have not officially been confirmed. It seems, however, very unlikely that the Armed Forces would interfere in politics or bring the democratic system down.

The Police (about 6000 officers) was always in favour of the Banda regime and tried its best to frustrate the pro-democratic opposition. Under Muluzi at first this attitude did not change and the police was seen as working inefficiently in order to frustrate the Muluzi government. It was only after clear warnings by government that all officers who were not willing to support the democratic system and to serve the government of the day would be fired that their attitude changed. The Police have been loyal to the government. Over the last two years and particularly in 2002 it even acted unconstitutionally by forcefully suppressing anti-third-term demonstrations as ordered by Muluzi. The Police have not been willing or able to prevent or stop clashes between supporters of different political parties especially since 1998. This was clearly seen during the debate of the third term issue in 2002 and early 2003.

The performance of the Police in fighting crime is still poor but has improved slightly since 1999 when the British government supported them with training and equipment. They were, however, not able to prevent mob justice during food crisis in 2001 and 2002. Low salaries cause lack of commitment and invite corruption.

While the Secret Service was the backbone of the Banda regime, it played almost no role in the first years of the democratic government. The National Intelligence Bureau was re-established and is now a more important arm of the executive. There is no public control of its work and not much is known about its actions. It undertakes security checks of applicants for senior or sensitive positions in the civil service. However, the criteria it uses remain unknown. Further there are hints that telephone

conversations can be tapped without the approval of a judge. This means that the political opposition could be controlled, too. There is, however, no evidence for it.

#### **4.2.3 Behaviour Patterns of Political Actors**

There are no forces, which fight the democratically elected government violently. As of now all relevant actors accept the Constitutional framework as the basis on which political competition is done. There are no guerrilla movements or illegal actors, which aspire to bring down the government forcefully. Therefore the fundamental democratic structures are accepted by political actors. This, however, does not mean that the spirit of democracy is there. To most of the political actors, either in government or in opposition, democracy was a very new thing in 1994. This still determinates the behaviour patterns of most of the politicians in today's Malawi. In general it can be stated that the government politicians try to increase and consolidate their powers with all legal and sometimes even illegal (e.g. Corruption) means. The situation worsens when the government is under threat, as in the run up to the elections (1998/99) and during the highly sensitive third term issue in 2002/03. In such situations some actors do not even shy away from causing or tolerating political violence. This, however, is not a monopoly of the ruling party. There is a tendency towards more political intolerance. Sometimes even mild criticism is perceived as a hostile act, especially if it is raised from within one's own party. During the debate on the third term UDF politicians who were not fully supporting the move were expelled from their government offices, sidelined or openly castigated. The fight against corruption is one of the key priorities of government but it is mostly fought by words not by action. This means that the leading political actors are not an example for society to stop corruption.

The actors of the political opposition are mostly not democrats by heart, too. They try to use the democratic dispensation to gain maximum profit from it. Some are willing to be co-opted into government and are ready to give up their principles, while others fight for winning the next elections in order to form the new government and to control its resources. There are no significant programmatic let alone ideological differences between the political parties. Since there is a "the winner takes it all" or zero-sum situation, the competition for political powers is vital and therefore fought with almost all means. The government more or less monopolises the access to jobs,

tenders and resources. The opposition politicians usually have no alternative to accumulate wealth and prestige outside the state structures and only a few will make it into Parliament. This has a negative influence on the behaviour pattern of the political actors.

Most of the political actors are not seen as being mainly interested in the welfare of Malawi and its citizens but more if not exclusively in promoting themselves and their families. This trend – which is seen in European democratic states too – is a threat to the consolidation of democracy because it will have a negative effect on political participation. The voter will lose interest in politics if he and his interests are marginalized.

Lack of political principles, corruption and a high flexibility of politicians as much as the lack of democratic spirit are all constraints on the way to consolidating the democratic system. This is also caused by an information deficit.

What, however, is encouraging is the fact that there is a general consensus between senior political actors. They can publicly castigate each other but usually they are still in talking terms. Most of them have known each other for many years and they often are able to solve problems across party lines silently.

#### **4.2.4 Shortcomings of the Political Opposition**

The political opposition is relatively weak and fragmented. After its defeat in the 1994 General Elections the formerly powerful MCP found itself in an essential crisis. This was because the party lost access to government resources and was not even aware of the role of an opposition party in a democratic system. Even worse, the lack of funding is a permanent threat to the MCP. The financial support, which is paid quarterly by Parliament according to the number of seats held, is not sufficient to run the party. The MCP had to sell or rent out their offices including their national headquarters in Lilongwe. There are no sufficient funds to pay allowances to politicians or to employ staff. The local party structures have turned inefficient in some areas of the country, especially in those districts where the party has no members of Parliament. The MCP is the only nationwide opposition party, which has currently 61 of 193 seats. Currently the MCP Vice President G. Chakuamba finds it difficult to settle the costs of K 2,6 Mio. (about EUR 26.000) for a lost court case on the 1999 elections. Since he fought the case in court in his personal capacity and not

on behalf of MCP he risks being declared bankrupt and consequently being disqualified from holding public office for seven years.

The main threat to the MCP was a lasting and most damaging power struggle between the Party President Chakuamba and his Deputy, John Tembo. Both of them were leading politicians in the Banda regime. The rift between the two was created when Chakuamba was imprisoned in 1980. He served a prison term till 1993 because of treason, which was probably fabricated by Tembo who wanted to get rid of him because he was seen as becoming too powerful. In 1993 Tembo accepted Chakuamba to lead the MCP in order to increase the chances in the 1994 Elections. The unpopular Tembo thought he could run the government through Chakuamba but the latter tried everything to get rid of his rival.

This rivalry, which has been there since 1994, broke out openly after the 1999 Elections. It led to a de facto division of the MCP in a Tembo fraction and a Chakuamba fraction. The Tembo camp temporarily supported the UDF (2000-July 2002). This rendered the MCP as an opposition party almost inefficient. Whether the official reconciliation of the two camps will last is more than doubtful. After Tembo defeated Chakuamba in the election of the MCP President on the Party Convention in April 2003 thugs, probably hired by Chakuamba (who was elected Vice President) caused violence at the convention. Since the two rivals still form the leadership the struggle seems to continue. Another shortcoming of MCP is that it is still led by prominent politicians of the Banda regime. Both have a more than doubtful human rights record and are not able to give the party a new and democratic image.

The AFORD, the third political party (30 seats in Parliament), has similar shortcomings. It has serious financial problems (it is de facto impossible to collect membership fees by selling party cards because this practice was discredited by Banda. People were forced to buy MCP membership cards). Another shortcoming is the fact that AFORD is a regional party. It has its exclusive stronghold in the sparsely populated Northern Region. The AFORD President Chakufwa Chihana has shown a high flexibility in politics since 1994. He worked with MCP before he switched to UDF and back to MCP and since 2001 has been supporting UDF again. In April 2003 he even joined the government as Second Vice President. These moves were usually done without participation of the party which shows another serious shortcoming: The decision making process in the AFORD is not democratic. Since 2002 the AFORD as



been divided into two camps. While Chihana's camp (about one third of the M.P's) joined government, the other camp is against this cooperation.

Another political force is the National Democratic Alliance (NDA), a breakaway from the UDF. The pressure group, which commands support from five members of Parliament, has so far avoided registering as a political party in order to prevent getting its Parliamentary seats declared vacant. NDA is led by Brown Mpinganjira, a founding member of UDF who was sacked from the UDF Cabinet in late 2000 after the Anti Corruption Bureau started probing him on corruption. Mpinganjira fell into disgrace with Muluzi because of his ambitions to succeed the President. NDA is more or less a one-man show, which commands some support in Mulanje and Thyolo Districts in the Southern Region. Without forming an opposition coalition with MCP the political influence of the group will remain quite low. There are 26 registered political parties with 23 of them outside the Parliament with very limited financial resources and political support. For political decision-making process they are almost meaningless.

In general the opposition parties are no programmatic alternative to government. The party manifestoes are very similar and there are no ideological differences. Even the major opposition parties command their main support from their regional strongholds. They are financially weak and divided and therefore not really able to perform the role of opposition effectively. MCP and AFORD were, however, able to frustrate the government's plan to amend the Constitution in order to allow the President to stand for a third term of office. This question caused the fractions inside MCP and AFORD but despite this issue seems to be closed the divisions in the opposition will prevail as long as there are power struggles in the top leadership. The policy of MCP and AFORD is more motivated by gaining short term advantages and power than by fighting for political principles and programmatic objectives.

### **4.3 Transition Legacies**

The length of the transition process is a question of definition. We consider the transition as completed when the democratic Constitution is put in place and democratic elections have been held. This was the case in Malawi in May 1994. With

the democratic Constitution the formal democratic system with the democratic institutions was established.

Therefore the transition process lasted about two years from the publication of the pastoral letter in March 1992 to the first democratic elections in May 1994. The transition process was managed and mainly controlled by the Banda regime, which was under extreme external pressure from the donors to democratise the political system. Since the Army was in favour of the democratic transition and the paramilitary Malawi Young Pioneers movement which was loyal to Banda was disarmed by the Army in December 1993 there was no way for the regime to disrupt the transition process by using force. There was limited participation of the people in the transition process: A two third majority voted in the Referendum of June 1993 in favour of the introduction of a multiparty system of government. After that a National Consultative Council (NCC) comprising the seven registered political parties was established in order to oversee the transition process. Although it had only advisory powers it had an important input on the transition.

The regime was too weak to suppress the opposition because of external pressure and the Army, which was not prepared to play a role in suppressing the opposition. The opposition on the other hand was not strong enough to overthrow the regime. The regime realised that the opposition was strong enough to increase significantly the costs of not negotiating with the opposition groups. The regime, however, was stronger than the opposition throughout the transition. Banda was ill and old aged and partly out of touch with the political development and not aware of his limited popularity. This caused him to make wrong decisions. He never thought of losing the elections but when he realised it, it was too late. It should be mentioned that Banda was not really in control of the government. From November till December 1993 he was seriously ill and incapacitated. The real power was with the then Minister of State in the President's Office, John Tembo and his niece Cecilia Kadzamira, the life partner of Banda. They manipulated the ailing president and were the real persons behind all-important decisions.

According to our definition the consolidation process started nine years ago in May 1994 and is still under way. Since there was a change of government and the Banda regime was moved out of power the conditions for the democratic transition process were in this respect favourable. Even the high participation of the voters (80%) in the first democratic general elections was encouraging. The biggest disadvantage was that

democracy was a new thing to Malawians. Malawi never enjoyed a democratic system of government. After the non-democratic colonial rule, Banda ruled the country with an iron fist for three decades. Therefore the democratic system had no roots and there were almost no democrats. Almost all the politicians and the Bureaucratic apparatus were in the past close to the authoritarian regime. Most of the opposition politicians used democracy as a vehicle to come into power but the spirit of democracy was in many cases not deep rooted.

Another disadvantage for democratic consolidation is the low urbanisation rate. About 85% of the Malawians live in rural areas. They are poor small farmers with rudimentary or no formal education, cut off from the information system and politically marginalized. There is almost no knowledge of the principles of democracy and human and civic rights in the rural population. The expectations of democracy were very high. Especially an improvement of the standard of living was expected but has not happened. This, too, is a threat to the consolidation of democracy.

The numerous other political parties (there are 20 political parties outside Parliament) are small, with very limited financial resources and little political support. For the political decision making process they are almost meaningless.

## **5. Assessment of Prospects for Further Changes**

There are different scenarios of possible future political developments. It should, however, be noticed that political scientists are usually not very good in predicting future political developments because political actors rarely follow rational and foreseeable decision patterns.

The political developments since 1994 have – despite all shortcomings and deficits – in general been encouraging. This is taking into consideration where Malawi comes from: three decades of the autocratic Banda regime were very unfavourable for bringing democratic change. The socio-economic as well as political conditions (poverty, poor infrastructure, almost nonexistent civil society structures, political authoritarianism) were heavy burdens on the way to establish and consolidate a democratic system of government.

The democratic system is far from being considered as consolidated. It is still very fragile and could be overthrown at any time. The time span of almost a decade has not

been long enough to make democracy grow roots in the Malawian society. But even a time span of 30 years is no guarantee for the survival of democracy as the Gambia shows. There would be only few people to defend the democratic system.

For the time being and for the near future it might be sufficient that democracy is happening only in the urban areas while the large rural population is politically marginalized. In the long run it will be necessary for the consolidation process that the villagers are included in it. This does not only require time and civic education as well as access to information but also a certain extent of economic and social development. People who are concerned with their daily survival are not ready for enjoying political participation, rule of law, human rights and political articulation. The majority of the rural Malawian population is more or less excluded from services the state should offer and they are neither aware of their Constitutional rights nor are they in a position to exercise their rights. The only way of political inclusion of the rural population is participation in elections. In the General Elections of 1994 and 1999 the turn out was extremely high while the interest of the voters in the local government elections in 2000 was much lower. The ability of the political parties to mobilise their supporters in the elections is quite high and it is likely that it will be high again in the 2004 general elections. This is because of the political parties' practice of distributing small amounts of money and gifts to their supporters and to make promises in return for votes.

The main problem for the consolidation of democracy is the fact that the state is the major and almost only source of gaining wealth, power and status. This means that access to state coffers is essential. Losing power in elections means losing access to wealth and power. The principle of "the winner takes it all" turns presidential and Parliamentary elections into a vital exercise. This makes the power struggle a certain extent violent.

The attempt at amending the Constitution to allow the president to stand for a third term caused a lot of political violence and intolerance as well as regressive tendencies in the democratic process. It seems that this issue is closed. There are, however, possibilities of reviving the matter and it should not be ruled out completely that the government will find ways to amend the Constitution accordingly. This would again provoke protests from the Christian churches and civil society as well as from parts of the opposition and would be likely to create cleavages in society. Even without Muluzi as presidential candidate the UDF still has a good chance to win in the 2004

elections but the chances would be higher with him. The nomination of Bingu wa Mutharika, a former Deputy Governor of the Reserve Bank of Malawi, cannot be considered a political heavyweight. The election of Mutharika would assure Muluzi of continuous political power through the backdoor. He might remain Chairman of the UDF and indirectly influence major political decisions. This would also be a way for the current government to enjoy immunity.

The opposition is fragmented and financially constrained. It is not yet clear who will stand as presidential candidate of the major opposition party MCP because the two aspirants (John Tembo and Gwanda Chakuamba) have cases in court, which could lead to their disqualification. Tembo is seen as an able economist and his supporters believe that he could improve the disparate economic situation in the country. But he is also closely associated with the brutality of the Banda regime and is still widely feared because of his history. A victory of Tembo in the presidential elections would probably be a major setback for the democratic consolidation process because of his history as the driving force and right hand man of the dictatorship of Banda. He is not seen as an advocate of the principles of democracy. Other presidential candidates are very unlikely to win the 2004 elections.

A major problem for the democratic consolidation is the ethnic-regional voting pattern, which has been experienced since 1994. Political programmes do not matter. The patron-client system will most likely determine the voting pattern in the forthcoming elections. The elections will be internationally observed and will therefore likely be conducted democratically but may show technical shortcomings. Whether and how the government will accept a defeat remains to be seen. It is, however, quite unlikely that it would abolish the democratic system in order to turn Malawi into an authoritarian system because of the high dependence on foreign aid which would most likely be suspended or cut down significantly. Without foreign aid the Malawi economy is quite likely to collapse.

In Malawi the civil society is still small and weak. Its political influence is limited but it is growing as was seen during the third term bid, which failed because of significant protest from parts of the civil society. But if the government was serious in amending the Constitution it will have managed to get it through.

Another main constraint to democratic consolidation is the economic crisis. The government is not in a position to provide sufficient funding for maintaining the democratic institutions. It is not even in a position to fund the forthcoming general

elections. Democracy is expensive and not affordable for a poor country like Malawi. In the nearer future the country will remain dependent on donor funding for performing major democratic duties such as elections. This is problematic.

A military coup seems to be very unlikely since there is no tradition of direct military interference in politics either in Malawi or in the region. Despite the ethnic-regional cleavages the possibility of a civil war or serious and widespread inter-ethnic clashes is very low. The Malawians are peaceful people who seem to believe in the integrity of the state. There are no tendencies of secession in any part of the country.

## **6. Role of major external players and their support for democratisation**

### 6.1. General Assessment

On the issue of donor's role particularly in the context of democracy and development in Africa there are two divergent views:

- a) Aid donors have supposedly weakened the resolve of African states to act on behalf of their citizens.
- b) There is a correlation between the amount of aid received by a country in the 1990s and the extent to which, its political system opened up to greater accountability and competition.

The role of donors is too complex for one to take a stand in support of either of these two positions. In the Malawian context, the external donors played a phenomenal role in bringing about the transition, which has been already discussed in detail in earlier sections. Donor support in the area of democracy and good governance has been significant and persistent. In Malawi a number of donor have been active in the area of democracy and good governance, such as the rule of law programme. Following is a summary of current donor initiatives and involvement.

<b>Donor Agency</b>	<b>Focus areas/Projects</b>
Dept. for International Development (DFID)	Malawi Access to Safety, Security and Justice (MASSAJ)

United States Agency for International Development (USAID)	Civic education in rule of law and human rights
Norway Agency for Development (NORAD)	Good Governance
Canadian International Development Agency (CIDA)	Economic governance
Malawi German Programme for Democracy & Decentralisation (MGPDD)	Civic education on democracy, Decentralisation
United Nations Development Programme (UNDP)	Consolidation of Democracy
European Union (EU)	National Initiative for Civic Education (N.I.C.E.-Programme) Rule of law, access to justice
Konrad Adenauer Foundation (KAF)	Political party development

A need has been felt both by the donor community and the Malawian government and society a more coordinated and harmonised approach of several donor initiatives in the area of democracy and good governance. This is imperative in the light of the forthcoming first tri-partite elections in 2004 combining presidential, Parliamentary and local government elections.

## **6.2. An assessment of donor's role in democratisation in Malawi**

While these programmes indicate varying degrees of success, the impact at the grassroots is yet to be felt. The struggle for basic necessities of life coupled with reminiscence of past ear like fear and secrecy obstruct the enhancement of freedoms.

Civil society is yet to emerge as proactive and vibrant body and so is the case of other important institutions of democracy. This often leads frustration on the donor side,

which can be defined in familiar terms as ‘donor fatigue’ and for the recipients as ‘donor pressure.’ The dissatisfaction with donors recently expressed by the Chairman of the Electoral Commission of Malawi is a case in point. The relations between the Electoral Commission and the donor community has been tense since the 1999 elections each blaming the other for the administrative and logistical fiasco witnessed on that occasion.

However, of late fundamental issues of concern emerge on donor role and their impact on our fragile democracy in most of the ongoing debates on democracy in the country. It is refreshing to observe the shift in approach to look at the donors’ role critically and raise issues of donor’s accountability and not taking the donor as the sole protector and guardian of our society and state.

Such frustrations could lead to antagonism if Malawi does not begin to consolidate the reforms initiated by the donors on her own, while gradually reducing the dependence.

## **7. Summary of the Main Findings**

With the introduction of a pluralistic Constitution, democratic elections and change of government in May 1994 the formal process of democratisation was completed. This means that democratic institutions have been put in place. The basic freedoms (such as freedom of life, thought, conscience, religion, expression, movement, assembly, press as well as absence of torture, access to information) as much as social rights are comprehensively covered in Chapter IV of the Constitution. In this aspect the Constitution stands out as a blueprint for other countries. There have so far been no attempts to restrict the fundamental human and civil rights by amending the Constitution. However, looking into the socio-political practice there are some serious constraints. The freedom of life is in general not under threat but in times of crisis the government cannot always ensure that all citizens will have access to sufficient food. In 2001/2002 a number of people died because the state was not able to manage and distribute the strategic grain reserve properly but wasted urgently needed food resources because of inefficiency and corruption.

Freedoms of movement, thought, conscience and religion are respected. Especially the religious tolerance is outstanding. As of now religion (about one fifth of the



population are Muslims, while about 75% belong to different Christian denominations) has not been harnessed for ethnic interests or politicised.

There are democratic institutions such as the Malawi Human Rights Commission (MHRC), the Ombudsman and the Anti Corruption Bureau (ACB). The MHRC and the Office of Ombudsman who play a major role in the protection and implementation of human rights were established only in 1999 and 1996 respectively. Their major constraint is funding. Their budget application is usually cut down significantly by Parliament because of lack of funds. But then there is another cut of between 30-50% from the approved budget, which makes it difficult to work effectively. This practice is, however, not seen as a way to frustrate the work of these institutions but as a general problem of funding since almost all government departments and state institutions are affected by insufficient funding.

### **Constitution**

The 1995 Constitution of Malawi clearly establishes a presidential form of government. The sections of the Constitution on composition and powers of the three branches of government are clear-cut and well defined. However, the practices of the last eight years demonstrate that separation of powers has not been corresponded with separation of personnel and this is essence tantamount to concentration of powers in practice. There are individuals who hold a number of positions, often leading to conflict of interests. For instance, until recently the offices of minister for justice and the Attorney General were combined. A common trend in the democratisation process in Africa is that the executive tends to wield too much power and dominates over the legislature, almost turning the latter into a rubber stamp. Malawi is not an exception to this trend. The judiciary enjoys greater public confidence as a free and independent body capable of upholding the Constitution.

There have been many instances where the judiciary had to review certain important and controversial bills passed by the National Assembly, which were perceived to be against the spirit of the Constitution. In some of these cases, out of political expediency, the Supreme Court unfortunately overruled the ruling of the High Court, which was in line with the Constitution. Partisan considerations, personal loyalties seem to have played a role and taken precedence over righteousness and fairness. This has caused concern and suspicion regarding the independence of the judiciary.

### **Elections:**

The electoral process needs to be managed and conducted more efficiently. The 1999 elections were faced with numerous logistical and administrative inadequacies arising out of lack of adequate planning and co-ordination with the various stakeholders. This undermines the efficiency of the whole process. The elections have also brought to the forefront the need to restore the credibility of the Electoral Commission and to build the capacity and skills of the commission's secretariat.

### **Political Parties**

General elections in Malawi witness a large voter turn out and are peaceful and orderly. They are generally declared free and fair by local and international observers. However, elections are not yet fought on the basis of policies but on personalities. Parties enjoy the right to campaign although this right has certain limitations in terms of their access to the electronic media. What restricts the competitiveness of parties is their limited perception of their long-term vision and programmes. In general the opposition parties are no programmatic alternative to government. The party manifestoes are very similar and there are no ideological differences. Even the major opposition parties command their main support from their regional strongholds. They are financially weak and divided and therefore not really able to perform the role of opposition effectively. MCP and AFORD were, however, able to frustrate the government's plan to amend the Constitution in order to allow the President to stand for a third term of office. This question caused the factions inside MCP and AFORD but despite this issue seems to be closed the divisions in the opposition will prevail as long as there are power struggles in the top leadership.

### **Economy**

With a nominal per capita income of \$160, Malawi is one of the poorest countries in the world, with dire poverty that is pervasive and deeply rooted. Thirty percent of the population earn incomes that are inadequate to assure basic caloric needs. Life expectancy is at an average of 39 years.

This daunting scenario is further compounded by one of the highest prevalence of HIV/AIDS; in urban areas, the prevalence rate among women visiting prenatal clinics is estimated at over 30 percent. Water and sanitation and rural infrastructure are severely inadequate: over two-thirds of households use pit latrines, and potable water is available to only half the population. Prospects for any material dent in the depth

and breadth of poverty are limited as long as population continues to grow at the high rate of 2.7 percent a year, whilst economic growth declines year upon year.

In the final analysis it can be said that though Malawi's democracy is not regressing, it is still fragile and if not nurtured carefully and cautiously it can slip backwards. However, there is a space for the citizenry through civil society institutions to play a role and consolidate the democratic process. The need for coordinated and concerted efforts by all formal and informal institutions in the country to work hand in hand with the government and the donor agencies is imperative. The forth coming elections is going to be the real test of Malawi's democracy.

#### Appendix 1

<b>Malawi Data Profile</b>			
	<b>1997</b>	<b>2000</b>	<b>2001</b>
<b>People</b>			
Population, total	9.7 million	10.3 million	10.5 million
Population growth (annual %)	2.2	2.1	2.0
National poverty rate (% of population)	..	..	..
Life expectancy (years)	40.7	38.8	38.2
Fertility rate (births per woman)	6.4	6.3	6.2

Infant mortality rate (per 1,000 live births)	126.6	117.0	114.0
Under 5 mortality rate (per 1,000 children)	..	188.0	183.0
Births attended by skilled health staff (% of total)	..	55.6	..
Child malnutrition, weight for age (% of under 5)	..	25.0	..
Child immunization, measles (% of under 12 mos)	87.0	83.0	82.0
Prevalence of HIV (female, % ages 15-24)	..	..	14.9
Illiteracy total (% age 15 and above)	42.4	39.9	39.0
Illiteracy female (% of age 15 and above)	56.7	53.5	52.4
Primary completion rate, total (% age group)	..	..	..
Primary completion rate, female (% age group)	..	..	..
Net primary enrolment (% relevant age group)	..	100.6	..
Net secondary enrolment (% relevant age group)	..	24.9	..
<b>Environment</b>			
Surface area (sq. km)	118.5 thou	118.5 thou	118.5 thou
Forests (1,000 sq. km)	..	26,010.0	..
Deforestation (average annual % 1990-2000)	..	2.4	..
Water use (% of total resources)	..	1,668.0	..

CO2 emissions (metric tons per capita)	0.1	..	..
Access to improved water source (% of total pop.)	..	57.0	..
Access to improved sanitation (% of urban pop.)	..	96.0	..
<b>Economy</b>			
GNI, Atlas method (current US\$)	2.1 billion	1.7 billion	1.7 billion
GNI per capita, Atlas method (current US\$)	220.0	170.0	160.0
GDP (current \$)	2.5 billion	1.7 billion	1.7 billion
GDP growth (annual %)	3.8	1.7	-1.5
GDP implicit price deflator (annual % growth)	7.8	25.2	26.1
Value added in agriculture (% of GDP)	33.7	36.5	34.0
Value added in industry (% of GDP)	18.8	17.4	17.9
Value added in services (% of GDP)	47.5	46.0	48.1
Exports of goods and services (% of GDP)	22.5	26.4	26.0
Imports of goods and services (% of GDP)	35.3	38.5	38.0
Gross capital formation (% of GDP)	12.2	12.5	10.9
Current revenue, excluding grants (% of GDP)	..	..	..
Overall budget balance, including grants (% of GDP)	..	..	..
<b>Technology and infrastructure</b>			

Fixed lines and mobile telephones (per 1,000 people)	4.4	9.1	10.6
Telephone average cost of local call (US\$ per three minutes)	0.0	0.0	0.0
Personal computers (per 1,000 people)	..	1.2	1.3
Internet users	500.0	15,000.0	20,000.0
Paved roads (% of total)	19.0	..	..
Aircraft departures	3,600.0	4,800.0	4,700.0
<b>Trade and finance</b>			
Trade in goods as a share of GDP (%)	52.0	54.1	49.2
Trade in goods as a share of goods GDP (%)	90.6	93.5	87.6
High-technology exports (% of manufactured exports)	..	..	..
Net barter terms of trade (1995=100)	111.5	94.0	..
Foreign direct investment, net inflows in reporting country (current US\$)	22.1 million	45.0 million	58.4 million
Present value of debt (current US\$)	0.0	1.5 billion	1.5 billion
Total debt service (% of exports of goods and services)	13.6	11.7	7.8
Short-term debt outstanding (current US\$)	23.5 million	78.4 million	46.2 million
Aid per capita (current US\$)	35.6	43.3	38.1

**Source: World Development Indicators database, April 2003**

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