

Democratic transition and consolidation in Africa

Malawi's process of democratic
transition: An analysis of political
developments between
1990 and 2003

DR HEIKO MEINHARDT
UNIVERSITY OF HAMBURG

DR NANDINI PATEL
UNIVERSITY OF MALAWI

© KAS, 2003

All rights reserved

While copyright in this publication as a whole is vested in the Konrad-Adenauer-Stiftung, copyright in the text rests with the individual authors, and no paper may be reproduced in whole or part without the express permission, in writing, of both authors and the publisher. It should be noted that any opinions expressed are the responsibility of the individual authors and that the Konrad-Adenauer-Stiftung does not necessarily subscribe to the opinions of contributors.

Published by:
Konrad-Adenauer-Stiftung
Gelu House, 1st floor
Kamuzu Procession Road
Lilongwe
Malawi

Telephone: +265 1 75 92 74
Telefax: +265 1 75 90 74
E-mail: kasmal@malawi.net

www.kas.de

Editing, DTP and production: Tyrus Text and Design, South Africa
Reproduction: Rapid Repro, South Africa
Printing: Montfort Press, Balaka, Malawi

Table of contents

List of tables	vi
List of abbreviations	vii
About the authors	viii
 Preface	 ix
 Chapter 1: Introduction	 1
1.1 Aims of the study	1
1.2 Methodology	1
1.3 Research programme	1
 Chapter 2: The starting point at 1990: Characteristics of the Banda regime and democratic deficits	 3
2.1 Characteristics of political rule during the Banda regime	3
2.2 Political opposition under Banda's rule	5
2.3 Violations of human, civil and political rights	5
2.4 Participation of society in the political process	6
2.5 The disintegration of the authoritarian regime	7
2.6 The beginning of the democratisation phase	11
 Chapter 3: Assessment of democracy	 15
3.1 Human rights, civil liberties and minority rights	15
3.1.1 <i>General assessment</i>	15
3.1.2 <i>Working on the past: The Mwanza Accident Case and the National Compensation Tribunal</i>	19
3.2 Rule of law	21
3.2.1 <i>General assessment</i>	21
3.2.2 <i>Judicial independence</i>	22
3.2.3 <i>Equality before the law and equal access to justice</i>	23
3.2.4 <i>Anti-corruption law</i>	23
3.2.5 <i>Constitutional bodies: The Ombudsman, the Human Rights Commission and the National Compensation Tribunal</i>	24

3.3 Political participation – elections	24
3.3.1 <i>Universal adult franchise</i>	25
3.3.2 <i>The electoral system in practice</i>	25
3.3.3 <i>1994 and 1999 elections</i>	26
3.3.4 <i>Fairness of elections</i>	27
3.4 Political competition	29
3.4.1 <i>Political parties – A general assessment</i>	29
3.4.2 <i>Role of political parties in parliament</i>	29
3.4.3 <i>Weak institutional capacity of political parties</i>	31
3.4.4 <i>Limited choice to the electorate</i>	32
3.4.5 <i>Party funding</i>	32
3.4.6 <i>Leadership crisis and disintegration of parties</i>	33
3.4 (b) The development and role of civil society	33
3.4 (b.1) <i>General assessment</i>	33
3.4 (b.2) <i>Role of NGOs</i>	34
3.4 (b.3) <i>Role of religious institutions</i>	36
3.4 (b.4) <i>Role of the media</i>	38
3.4 (b.5) <i>Role of trade unions and academia</i>	41
3.5 The separation of powers: Checks and balances	42
3.5.1 <i>General assessment</i>	42
3.5.2 <i>Executive and the legislature</i>	43
3.5.3 <i>Legislature and the judiciary</i>	44
3.5.4 <i>Setbacks to governmental accountability</i>	45
3.5.5 <i>The civil service – towards reforms</i>	46
3.5 (b) Decentralisation	47
3.6 Political culture	50
3.6.1 <i>General assessment</i>	50
3.6.2 <i>Lack of spirit of accommodation, tolerance and dialogue</i>	50
3.6.3 <i>Some indicators of democracy and human rights</i>	51
3.6.4 <i>Status and participation of women</i>	52
Chapter 4: Evaluation of the democratic transition process:	55
Progress or regression?	
4.1 Evaluation of the democratic transition process	55
4.1.1 <i>Economic conditions: A general assessment</i>	55
4.1.2 <i>Land reform policy</i>	58

4.1.3 <i>Privatisation in Malawi</i>	58
4.1.4 <i>Corruption</i>	59
4.2 Institutional structures: Continuities and change	60
4.2.1 <i>The role of the executive</i>	60
4.2.2 <i>The security apparatus</i>	61
4.2.3 <i>Behaviour patterns of political actors</i>	63
4.2.4 <i>Shortcomings of the political opposition</i>	64
4.3 Transition legacies	66
 Chapter 5: Assessment of prospects for further changes	 69
 Chapter 6: Role of major external players and their support for democratisation	 73
6.1 General assessment	73
6.2 An assessment of donors' role in democratisation in Malawi	74
 Chapter 7: Summary of the main findings	 75
7.1 Constitution	76
7.2 Elections	76
7.3 Political parties	76
7.4 Economy	77
 Appendix	 79
 Bibliography	 81

List of tables

• Table 1: 1999 Presidential Elections	27
• Table 2: 1994 Presidential Elections	27
• Table 3: Distribution of seats following the 1999 parliamentary elections	30
• Table 4: Distribution of seats following the 1994 parliamentary elections	30
• Table 5: Distribution of seats in the National Assembly (mid 2000)	31
• Table 6: Level of democratic rights in SADC countries as measured by Freedom House	51
• Table 7: Afrobarometer study: How democratic is the way your country is governed?	52
• Table 8: Current donor initiatives and involvement	73

List of abbreviations

ACB	Anti-Corruption Bureau
Admarc	Agricultural Development and Marketing Cooperation
AFORD	Alliance for Democracy
CCAP	Church of Central Africa Presbyterian
CCJP	Catholic Commission for Justice and Peace
CHRR	Centre for Human Rights and Rehabilitation
CONGOMA	Council of Non-Governmental Organisations of Malawi
CSO	Civil society organisation
DFID	Department for International Development
DPP	Director of Public Prosecutions
FDC	Forum for the Defence of the Constitution
GDP	Gross domestic product
ICJ	International Commission of Jurists
IMF	International Monetary Fund
KAF	Konrad Adenauer Foundation
MACRA	Malawi Communications Regulatory Authority
MAM	Muslim Association of Malawi
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MCTU	Malawi Congress of Trade Unions
MHRC	Malawi Human Rights Commission
MIDEA	Malawi Institute for Economic and Democratic Affairs
MP	Member of parliament
MWK	Malawi kwacha
MYP	Malawi Young Pioneers
NCC	National Consultative Council
NCT	National Compensation Tribunal
NDA	National Democratic Alliance
NGO	Non-governmental organisation
PAC	Public Affairs Committee
PPEA	Parliamentary and Presidential Elections Act
PRGF	Poverty Reduction and Growth Facility
SADC	Southern African Development Community
UDF	United Democratic Front

About the authors

Dr Nandini Patel is a senior lecturer in Political Science and International Relations at Chancellor College, University of Malawi. In her research and publications Dr Patel covers widely the democratisation process in Malawi, and places specific emphasis on the challenges and problems of the last round of multiparty elections in Malawi.

Dr Heiko Meinhardt is an associated researcher and senior lecturer at the Institute for International Affairs, University of Hamburg. His research is dedicated towards the analyses of transition and democratisation processes, elections, decentralisation and conflict prevention and management. Dr Meinhardt's regional focus is on Southern and Eastern Africa.

Preface

Since the *Third Wave of Democratisation* broke along African shores, many books and articles have been written about the particular transition processes. Ten years down the line, however, there is still a lack of comparative research on a sound methodological basis as well as a deficit in elaborate case studies. The Konrad Adenauer Foundation (KAF) – a German political foundation – started in 2002 a series of assessments on democratisation processes in sub-Saharan-Africa. On the basis of a common set of questions, the state and problems of democratic transition were analysed in order to enable a cross-country comparison. A first set of studies started in 2002 and covered Zimbabwe, Kenya, Nigeria and Burkina Faso. In 2003 the number of case studies was extended to Malawi, Mozambique and Zambia. Decisive for the selection of the case studies became the defunct character of their democratisation process. In all seven countries the democratic transition process was either never successfully accomplished or was, after a very promising beginning, sooner or later undermined by formidable challenges which threatened the reversal of democratic gains. To some degree the countries' democratisation processes can even be labelled an "extended process of transition".*

The comparative approach of the study aims at highlighting differences in the democratisation processes as well as identifying commonalities and roots for the problems encountered. The qualitative analysis also attempts to provide an academic foundation for the development of adequate policies in support of democracy in Africa in general and for KAF in particular.

The seven case studies were conducted by teams of German and African scholars; the latter originating from the country under review. As a qualitative measurement of democracy, the studies are based on personal observations from approximately 200 interviews and secondary sources that also encompassed empirical data gained from various surveys.

* G Erdmann, Neopatrimoniale Herrschaft – oder: Warum es in Afrika so viele Hybridregime gibt, in: P Bendel/A Croissant/ F Rüb (eds), *Zwischen Demokratie und Diktatur. Zur Konzeption und Empirie demokratischer Grauzonen*, Opladen, 2002, pp. 323-342.

Drawing on the paradigms of democracy by Robert A Dahl and Larry Diamond, the analyses focus on political competition and participation, civil and political rights, political and civil pluralism, the rule of law, and checks and balances. Additionally, the studies address aspects of political culture and the behaviour of key actors. In order to avoid the shortcomings of a mere assessment of the status quo, which would fall short of identifying underlying causes for obstacles in democratic consolidation, the analyses emphasise the process character and take into account developments within the transition process and historical legacies that still might have an impact.

In the case of the present Malawi study, the research team comprised Dr Heiko Meinhardt and Dr Nandini Patel. Both scholars are widely acknowledged for their in-depth analysis of Malawian politics. KAF would like to thank them for their dedication and excellent cooperation during the project period.

The present analysis comes at a time when Malawi is moving to another crucial stage of its democratisation process. Since 1994 when political pluralism became a reality in Malawi there has been significant progress, checkered by notable challenges with reference to the focus areas of this study. As the report will observe and imply, there are old undemocratic habits which demand 'unlearning' and 'reorientation'. This as a social transformational process will take a while. More challenges are manifestly seen in the growing concerns over police-public relations, intra- and inter-party relations, judicial independence, parliamentary and judiciary relations regarding political association and participation and, albeit not in greater detail, independence of the media.

Key to effective democratic development in Malawi, as elsewhere in the sub-region, will be the political will by the elite and all Malawians to accept unequivocal reform of social and political practice and behaviour in conformity to democracy. Democracy demands democrats. This *political will* should lead to the translation of research findings contained in this report into decisive and timely actions for the common good of all Malawians in order to accelerate democratic development and consolidation in Malawi.

Samson Lembani
Programme Director
Konrad-Adenauer-Stiftung
Malawi

Andrea E Ostheimer
Research Coordinator/Dep. Representative
Konrad-Adenauer-Stiftung
South Africa

Chapter 1

INTRODUCTION

This study attempts to examine the achievements and challenges, as well as to analyse the issues involved in Malawi's process of transition to democracy. The study was commissioned by the Konrad Adenauer Foundation (KAF). In 2002, KAF initiated a series of studies on democratic processes in sub-Saharan Africa. Countries such as Nigeria, Zimbabwe, Burkina Faso and Kenya, which are facing serious challenges in their transition to democracy, were specially chosen for the exercise. For 2003, the Foundation expanded the scope of its study and extended it to include 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 was carried out by Dr Heiko Meinhardt of the University of

Hamburg and Dr Nandini Patel of the University of Malawi. The study was conducted in a cordial environment and rapport between the two researchers was exemplary.

Chapter 2

THE STARTING POINT AT 1990: CHARACTERISTICS OF THE BANDA REGIME AND DEMOCRATIC DEFICITS

2.1 CHARACTERISTICS OF POLITICAL RULE DURING THE BANDA REGIME

Malawi was ruled by one of the most repressive regimes in Africa. Dr Hastings Kamuzu Banda – a medical doctor, trained in the United States 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, making 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. The MCP managed to win all the seats in parliament (except those few reserved for the white minority) in the only free parliamentary elections in 1961. This paved the way for Banda's autocratic leadership. The April 1964 elections had to be cancelled after all members of parliament (MPs) 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 held from 1971 until he lost the first multiparty general elections in 1994. The MCP, which Banda had led as president for life since 1960, was the only legal political party. Further, Banda 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

description was not far from the truth since Banda was also by far the largest private commercial farmer and entrepreneur in 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 the 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, on buses and in hospitals. 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, became 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’, comprising 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; it remained vacant between 1983 and 1993, after one office holder had been killed, another executed, one put in detention and two others had been unceremoniously dismissed.

The information system and the efficient repression system were important backbones of Banda’s power. Another 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 stop ministers from becoming too powerful. Popular or too powerful politicians in many cases found themselves victims of intrigues and ended up either dismissed, imprisoned or, in worst cases, executed or killed.

The judiciary was tightly controlled by Banda. 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 elite, was the main obstacle to the establishment of an opposition movement. After the only serious power struggle of September 1964 (the so-called Cabinet Crisis) there was no organised, open or clandestine opposition movement inside Malawi. The six cabinet ministers who rebelled against Banda fled the country and formed socialist opposition movements in neighbouring countries where they had been given political asylum. Their political influence remained limited since these 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 Banda's authoritarian rule.

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, under instruction of the political leadership, were empowered to detain anyone indefinitely without trial. Others were tried in traditional courts without legal representation and 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 death row. In 1967, the religious denomination of Jehovah's Witnesses was declared an unlawful

society. Its members were targets of massive repression and thousands were imprisoned. The main reason was the refusal of Jehovah's Witnesses to buy party cards or to pay tribute to the power symbols of the regime. They were therefore perceived by Banda as potential opponents.

As stated above, 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 and 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 targeting mainly 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 did not want to allow political participation by 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 unanimously elected Banda to the office of state president. 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 two and five 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.

Furthermore, the right of joining or forming political institutions other than the MCP was not available. Even non-governmental organisations (NGOs) were seen as a threat to the authoritarian regime. In 1985 there were only 25 local NGOs in the country. Only in the late 1980s did the government under external pressure open up the NGO sector. However, the government never removed its tight control on NGOs, which was maintained by the Council of Non-Governmental Organisations of Malawi (CONGOMA). All local 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 unable to develop.

2.5 THE DISINTEGRATION OF THE AUTHORITARIAN REGIME

Political and economic conditions in Malawi were highly unfavourable for a successful democratic transition (see Appendix). 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 marginalised, 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 gross domestic product (GDP) and contributed to at least 40% of the government budget. Malawi was rewarded for its strict anti-communist policy by Western donors, while 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, 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 made 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 more importantly, they were not suspected to be agents of the regime. The group, later known as the United Democratic Front (UDF), grew slowly – membership was by personal invitation only. 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. A wider platform was therefore 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 Church of Central Africa Presbyterian (CCAP) and the Roman Catholic church, had an effective nationwide organisational structure, but neither was known for being critical of the Banda regime. However, through personal contact 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 criticised for its poor human rights record, its lack of democratic rights, as well as corruption and inefficiency in the education and health sectors.

The Catholic Church had several important advantages for challenging the regime, which had not been publicly criticised 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 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. Repression 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 in Malawi on 8 March 1992. International support for the Bishops saved their lives after the MCP National Executive Committee, in an emergency meeting held after the Lenten Letter had been made public, had resolved to kill them. Banda was under enormous external pressure not to persecute the Bishops, and consequently risk the suspension of Western aid.

The fact that the Bishops publicly criticised 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 did not succeed. For the first time in the country's history strikes and violent demonstrations took place in Blantyre and Lilongwe in May 1992. These were violently crushed by the police force and this action further compromised Banda's international reputation.

At about the same time as the UDF movement was founded in late 1991, another underground opposition group was formed which later became known as the 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 the Southern African Trade Union Coordination Council based in Lilongwe. Chihana 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 from the Southern Region. The Northern Region had been neglected and sidelined under the Banda regime. Attempts by the UDF to unite or at least cooperate with AFORD were turned down because these groups were not able to solve the leadership issue, with both claiming leadership. Chihana instead tried to win the support of the veteran opposition groups in exile. This effort was, however, 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 did not want to take the risk of being imprisoned or killed in Malawi.

Chihana recognised that the regime could only be effectively challenged from within Malawi. He wanted to use the international publicity that Malawi enjoyed after the publication of the Pastoral Letter for establishing a

democratisation movement inside the country. Despite clear warnings from the regime that he would be arrested on his return to Malawi, Chihana flew back to Lilongwe where he was detained on arrival at the airport on 6 April 1992 when he began to read a speech calling for democratic reforms. The detention of Chihana and his trial for sedition were closely monitored by the international community. Owing to 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. For the first time in Malawi's history an opposition politician was therefore tried in a court of law. Chihana was sentenced to two years' imprisonment, which was later reduced to nine months; he was released in June 1993. Chihana's imprisonment made him a martyr. He became known throughout the country, as well as to donors and human rights NGOs in Europe and North America.

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 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. 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 into 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 Malawians live in villages) because the pressure groups were urban movements that were still quite unknown to the villagers. Unlike the pressure groups, the MCP had a well-organised party structure that 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 multiparty system. The Northern and Southern regions, in particular, voted against the single party system. This event marked another milestone on the road to Malawi's democracy.

The democratisation process was initiated and encouraged by 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 win the elections against a split opposition, as other leaders had managed to do elsewhere. 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 casualties. 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 idiosyncratic factors existed in Malawi which facilitated its transition.

2.6 THE BEGINNING OF THE DEMOCRATISATION PHASE

The referendum of June 1993 marked the starting point of Malawi's 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. First, there was no way to ignore the outcome of the referendum other than by repression, which was difficult to achieve against the military and which would

have seriously affected the flow of Western financial aid. Second, 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 and financially constrained opposition.

The regime created the National Consultative Council (NCC) comprising all 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 merely 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 8,000). This action destroyed Banda's last meaningful influence on the security machinery and made it impossible for the regime to forcefully interfere with 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 May 1994. These first democratic elections since Malawi became an independent state were orderly and peaceful. Banda and the MCP, which won about one-third of the votes, conceded defeat even before the casting of votes was completed and congratulated Bakili Muluzi and his UDF, which won about 47% of the votes cast, thereby gaining victory. The third candidate, Chihana of AFORD, won just 19% of the vote. The voting pattern of the referendum was repeated: the UDF won most of the votes in the Southern Region, the MCP mobilised major support in the Central Region, while almost all the votes of the sparsely populated Northern Region went to AFORD. Voter turnout of 80% was even higher than in the referendum (67%) and showed that the political parties were able to mobilise their supporters in large numbers even in the rural and remote areas.

Since the UDF was short of four seats in the National Assembly, it had to form a coalition government with either AFORD or the MCP. The latter option was ruled out by Muluzi in accordance with 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 the government offices. In order to strengthen his bargaining power, Chihana even formed a coalition with the MCP in order to frustrate all moves of the government in parliament. Only in late September 1994 did Chihana and five AFORD MPs join the cabinet, while a formal coalition with the UDF was established only in July 1995. The position of second vice president was created for Chihana. The UDF–AFORD coalition used its two-thirds majority in parliament to carry out a 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 MPs. 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 a change of government in May 1994, the formal process of democratisation was completed. This meant that democratic institutions were put in place. All attempts by the Banda regime to block, influence or forcefully interrupt the democratisation process proved futile. This was not because 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.

Chapter 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 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 and access to information) as much as social rights are comprehensively covered in Chapter IV. In that respect the constitution stands out as a blueprint for other countries.

There are, however, some serious constraints in terms of socio-political practice. 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 2001/02 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. Religion (about one-fifth of the population is Muslims, while about three-quarters 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 from 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 to bring a democratic system of government to Malawi.

This constructive cooperation – which has been institutionalised in the Public Affairs Committee (PAC) since 1992 – has, however, suffered slightly in the past 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 (MAM) is seen in the mushrooming of mosques and especially in the fact that Muslim institutions are able to offer social services and schooling opportunities to the people. This used to be the virtual 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 community. Besides Cassim Chilumpha – a former minister and UDF vice presidential candidate designate – there are no Muslim heavyweights in 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 MAM, the main body of Islam in the country, is just MWK6.8 million (2003) and comes mainly 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 are symbolic actions, such as the government plan to abolish bible studies as a school subject and to change it to religious studies. This move – which was in accordance with freedom of religion because it would have ended the monopoly of Christian studies at school – was strongly criticised and fought by the Christian churches.

The ambitions of government to amend the constitution in order to allow President Muluzi to stand for a third term were frustrated mainly 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 MAM, which was 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 MAM 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 from 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 such as Nigeria) the situation was tense and made the government react with repressive measures. 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, however, informal pressure on people who were against the third term bill. Some lost their privileges, while others were sidelined or found it difficult to renew their contracts with government institutions. The controversial third term issue now appears 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) was endorsed in April 2003. In general, the third term issue put some fundamental civil liberties under stress, but the fact that these liberties were upheld by the courts is a positive step towards consolidation of the democratic system.

Freedom of the media, however, still shows some serious shortcomings. While the print media (newspapers and magazines) are considered free and without direct influence or interference from government, the state-owned broadcasting stations (MBC 1 and 2) and the only television channel (TV Malawi) are under the tight control of government. Control of the state-owned Malawi Broadcasting Corporation (MBC) is, however, balanced to a certain extent by private radio stations that are free to air their programmes. A major problem limiting the influence of the media is poverty. Newspapers are relatively expensive (at MWK35 a copy) and mostly published in English, which means that they are almost exclusively read in urban areas. The rural population

is therefore excluded. To a certain extent, this applies to access to radio as well, since batteries are expensive and villagers usually cannot afford to buy them. The privately owned radio stations cover only urban areas.

Ethnic and linguistic minorities as well as disabled people are treated equitably by the state and face no discrimination. Unlike under the Banda regime, every linguistic group has the official right to 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 may discriminate against foreigners or people without Malawian citizenship because this group is not allowed to acquire land with freehold title, but can lease it for 50 years or form a joint venture with a Malawian. This policy appears to affect mainly the small Asian community of some 8,000. 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 them.

Freedom from torture, as guaranteed in the constitution, is compromised by reports of violence, especially in police custody. Those cases (still not large in number) are caused by police officers who have not been trained sufficiently about human rights. Another major constraint is poor prison conditions. Prisons are overcrowded with very poor sanitation, poor nutrition and lack of access to medical treatment. There are, however, no political prisoners and there have been no cases of detention 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 shortcomings are due to poverty and a lack of training but are not intentional, as was the case under the autocratic regime.

Democratic institutions such as the Malawi Human Rights Commission (MHRC), the Ombudsman and the Anti-Corruption Bureau (ACB) exist. The MHRC and the Office of Ombudsman, which 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 since their budget application is usually cut down significantly by parliament because of a lack of funds. There is also 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 a way to frustrate the work of these institutions, but rather reflects a general problem of funding since almost all government departments and state institutions are affected by insufficient funds. This, of course, has a negative effect on the work of the institutions because their capacity to investigate complaints is limited. Moreover, the Office of Ombudsman was seriously damaged by the first ombudsman (1996–99) who misappropriated large amounts of money.

Most of the rural population is politically and economically marginalised and are not aware of their constitutional rights or how to enforce them. This is because of a lack of civic education, a lack of information and poverty. MHRC and Ombudsman offices exist only in Lilongwe and Blantyre. Financial constraints make it difficult for these institutions to become well established in the rural areas.

In summary, human and civil rights have been largely 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 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 his election campaign promise to investigate one of the most prominent cases of political murder, namely 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 an MP 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 which led to the detention of Banda and his life partner Cecilia Kadzamira (owing to humanitarian reasons they were put under house arrest). John Tembo, Kadzamira’s uncle, 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 a lack of evidence. This was a serious blow not only to the

independent judiciary but also to the democratic system because most Malawians were convinced that the murder had been 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 involved, 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 while serving Banda in prominent positions. In order to compensate victims of the Banda regime and their relatives, a National Compensation Tribunal (NCT) was established to entertain claims with respect to the alleged criminal and civil liability of the Banda government. A National Compensation Fund was created to provide compensation to successful applicants. The work of the NCT is almost completed and all applications have been decided upon. In accordance with the constitution (Art. 145) the Tribunal must wind up within a period not exceeding 10 years (2004). The problem, however, is that most of the approved claimants have been paid only a mere pittance as part of their settlements owing to financial problems. Decisions regarding the choice of eligible claimants were not always transparent and some politicians belonging to the ruling party or AFORD (during the time of coalition) seem to have been advantaged. Other claimants are still waiting for compensation and quite a number more will have died before any payment is made.

Once the NCT has wound up, work on the past will be over. The intention to leave the past untouched and instead to compensate victims of the Banda regime, seems to have been widely accepted by society. Criminal prosecution of such cases would not only have been expensive, but would have created rifts in society. The small judiciary would not have been able to handle so many criminal and civil cases in a reasonable time span and victims – especially from rural areas – would have found it difficult to engage lawyers to fight civil cases in court. Another way of working on the past would have been the establishment of a truth and reconciliation commission, as in South Africa. Here again the work would have been very costly and public hearings would likely have created hatred and an atmosphere of witch hunting instead of reconciliation. In fact, the political killings, tortures and all kinds of repression caused by the Banda regime seem to be perceived as being resolved and are not a hindrance to the democratic

consolidation process. There seems to be no need for reconciliation because there are no serious rifts in society on this issue. As an example, a person like John Tembo – who was the strongman behind Banda – was elected to parliament in 1994 and 1999 and is now the democratically elected leader of the MCP, and will probably be its 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 non-violent. It is therefore not surprising that the rule of law is generally prevalent throughout the country. There are, however, some major challenges to the rule of law, including the following:

- *The 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, as well as the integration of all the lower level traditional courts into the judiciary. This was done in pursuance of Section 204 of the 1995 Constitution of Malawi. This integration of legal systems, however, did not correspond with harmonisation 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 usually prevails. Traditional customary law generally governs the day-to-day lives of the majority of Malawians and this law often conflicts with state laws. State laws guaranteeing women's and children's rights run counter to the norms of customary law which permit disinheritance of widows and children, and allow for domestic violence and polygamy.
- *Inefficiency of the police service:* The inability of the police to handle law and order efficiently has led to a general deterioration of security. This has also undermined the rule of law as criminal law could not be enforced adequately. In the period 1994–99 there were a number of cases whereby the people, frustrated with the inefficiency of the police and courts, took the law into their own hands and resorted to mob justice. Although the traditional courts operated as instruments of oppression and tyranny they also performed a positive role by providing law, order and security. After their abolition there was no effective check on crime in 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 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, coupled with inadequate human resource 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 as a guarantor of basic human rights. Since 1994 a number of occasions have arisen whereby the judiciary was called upon to intervene in cases of a political nature. In the period 1994–99, no less than 20 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: the election of President Muluzi in 1999 (*Chakuamba v Electoral Commission*), the appointment of Chakufa Chihana as the second vice president (*Attorney General v Kachere*), and the constitutionality of the Press Reconstruction Act to establish control over the largest business established by the former head of state (*Attorney General v Malawi Congress Party*).

The principles of separation of powers and procedures to ensure governmental accountability are yet to become firmly entrenched, and institutions of government do not adhere strictly to 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 places it in a difficult situation. Further, it increases the existing backlog of cases.

In the past ten years there have been many instances whereby the judiciary has had to review certain important and controversial bills passed by the National Assembly and which were perceived to be against the spirit of the constitution. In some of these cases the Supreme Court, out of political expediency, 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 discussed further

in section 3.5 on separation of powers.) The need for a constitutional court to deal with such issues is being increasingly raised and the establishment of such a court would surely be a move in the right direction.

3.2.3 EQUALITY BEFORE THE LAW AND EQUAL ACCESS TO JUSTICE

The principle of equality before the 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 a guarantee of access to justice and legal remedies in section 41 and a guarantee of administrative justice in section 43(1). In practice, however, there are many challenges to the access of justice for 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 by public officials have been successfully challenged in judicial review proceedings.

3.2.4 ANTI-CORRUPTION LAW

The 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 ACB 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 amendments to the Act, and it now awaits passage by parliament. Once passed, 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. Forty-three of them were completed within the next three months.

While corruption at high levels is mounting, the ACB has not proven to be effective and competent in dealing with it. This is due both to a lack of adequate legislative empowerment and infrastructural capacity. The amended corrupt practices bill is yet to be passed by parliament. In addition, offices such as the

Director of Public Prosecutions (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 of 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, it has received thousands of complaints from people across the board. 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 senior politicians.

The MHRC is enshrined in Chapter XI of the constitution. Its mandate is to investigate violations of those rights accorded by the constitution and to strive for the protection of those rights. The MHRC became fully functional only in 1999 after legislation on the membership, responsibilities and powers of the Commission was finally passed by parliament in 1998. The Human Rights Commission Act gives the MHRC 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 centres.

In an effort to address past human rights abuses, the constitution created the NCT. It adjudicates claims of criminal and civil liability against the former government and provides financial compensation. The Tribunal registered 24,500 people for compensation, of which only 7,000 have received payments so far for negligible amounts. Grossly inadequate financial resources have turned the Tribunal into a farce. The NCT faced several challenges in the dispensation of its mandate, such as the identification of real victims of atrocities, inadequate resources for compensation, and creating awareness about the existence of the Tribunal, especially in rural areas. The period for compensation will be over in 2004.

3.3 POLITICAL PARTICIPATION – ELECTIONS

General elections in Malawi have seen a large voter turnout 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 access to the electronic media.

The electoral process could be managed and conducted more efficiently. The 1999 elections were hampered by numerous logistical and administrative inadequacies arising out of a lack of adequate planning and coordination with the various stakeholders. This undermined the efficiency of the whole process. The elections have also brought to the fore 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

According to the Parliamentary and Presidential Act of 1993, every citizen of Malawi who is residing in the country and has attained the age of 18, and is ordinarily resident in that constituency or was born there, or is employed or runs a business there, is eligible to vote. 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 vote. This can be inferred from voter turnout, which has increased progressively from the referendum to the 1999 elections: 67% of total registered voters voted in the referendum, 80.54% voted in the 1994 elections and 93.76% voted in the 1999 elections.

3.3.2 THE ELECTORAL SYSTEM IN PRACTICE

Since independence the election of representatives to the National Assembly has been based on a first-past-the-post (FPTP) system. Under the former regime, the 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 was continued after the change to a multiparty system and the 1994 elections were held on an FPTP basis. This decision was reached by a process of deliberation between two bodies – the NCC, which was formed by an Act of Parliament in 1993, and the National Executive Council, which was a reflection of cabinet. Both bodies comprised an equal number of representatives of the seven political parties that were registered as of 1 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 an FPTP electoral system for both parliamentary and presidential elections. The people therefore directly elect the president. According to section 80(1) of the constitution, the elections of the president and of 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 the date of swearing in and then stands dissolved, and general elections shall be held within 60 days of dissolution. By-elections shall be held to fill seats declared vacant by the Speaker.

3.3.3 1994 AND 1999 ELECTIONS

The 1994 presidential election figures indicated that Bakili Muluzi emerged as the winner with the single largest proportion of votes (47.16%). The other two candidates jointly secured 52.3% of the votes. The parliamentary elections brought about a change of government from a single party to a multiparty system and re-introduced the presence of opposition parties in the legislature for the first time since the 1961 election.

In the 1999 elections, Bakili Muluzi emerged as the winner again, polling 51.37% of the votes cast. The opposition presidential candidates contested the results on two grounds: first, that there had been rigging on the part of Muluzi and the UDF, and second, that the constitution required that for a candidate to be declared the winner of the presidential election, he or she must have

Table 1: 1999 Presidential Elections

<i>Candidate</i>	<i>Total votes</i>	<i>% of votes</i>
B Muluzi	2,442,6885	51.37
G Chakuamba	2,106,790	44.30

Source: Electoral Commission Report 1999

Table 2: 1994 Presidential Elections

<i>Candidate</i>	<i>Total votes</i>	<i>% of votes</i>
HK Banda	996,353	33.45
C Chihana	562,862	18.90
B Muluzi	1,404,754	47.16

Source: Electoral Commission Report 1994

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 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, holding 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 the printing of additional ballot papers locally and the illegal possession of polling material by district staff. The court ordered the inspection of ballot boxes and ballot papers from 16 districts. The elections case was one of the longest court battles, lasting for more than a year and ending with the courts declaring the opposition's claims invalid, thereby legitimising the UDF's victory.

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 and

gatherings are the main points of interaction between political parties and the people. Parties identify their supporters and choose their members at these public events. The period for campaigning in public by every political party under the Act is two months, closing 48 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/she made or any opinion he/she held or any campaign material he/she 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 radio is the most popular and pervasive mode of communication, lack of adequate access by all contending parties has in the past been tantamount to an uneven 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 MBC covered the political campaigns of the state president live and rebroadcast them that same evening, while those of the opposition leaders were not covered. In spite of its much stated independence, the Electoral Commission appeared unable to implement 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's campaign.
- *Campaign violence and intimidation:* During the 1994 general elections there were instances of voter intimidation. This included confiscation of voter registration certificates by members of political parties or by traditional authorities (at the insistence of the party they supported). There were also a number of cases of reported violence, disturbances of campaign meetings of one party by another, physical threats to candidates and so on. The by-elections that followed were also not free of campaign-related violence. After the results of 1999 elections were announced, there was considerable public frustration and outrage. Instances of violence were reported, especially in the Northern Region, where anti-UDF demonstrators set some mosques ablaze, while the homes of UDF functionaries were vandalised. Politicians from the

ruling party and the opposition pointed fingers at each other. Generally, civil society organisations (CSOs) and opposition parties accused the police of bias and indifference.

3.4 POLITICAL COMPETITION

3.4.1 POLITICAL PARTIES – A GENERAL ASSESSMENT

Several legal reforms were initiated after the national referendum of 14 June 1993. One of these was the formation of political parties, which allowed underground pressure groups such as the UDF to evolve into political parties. Political parties have proliferated in Malawi over the past ten years. There are 26 officially registered parties, but only seven or so have been functional at any given point in time.

One feature that stands out clearly regarding political parties in Malawi is their lack of ideological perception and orientation towards clear policies and programmes, as well as their lack of adequate mechanisms for keeping an approximate count of their members. Even in the case of functioning parties, interaction within the party at various levels is rare and inadequate, while inter-party interaction is extremely limited. Party activities are too election-focused. Democratic structures within parties in terms of transparency, appointments and appropriation of funds, have not yet evolved.

3.4.2 ROLE OF POLITICAL PARTIES IN PARLIAMENT

In both the 1994 and 1999 elections, opposition parties won a sizeable number of seats in the Malawi National Assembly (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. Tables 3 and 4 (*over page*) reflect the composition of the National Assembly.

Although the UDF had more seats in the National Assembly than the other parties it was short of four seats to gain a parliamentary majority. For the first four months of the new government (25 May to 24 September 1994) the ruling UDF was therefore in a minority position since the opposition parties, AFORD and MCP, formed a coalition.

The united opposition was in a strong position and displayed its strength in the very first sitting of the National Assembly, where the Speaker was from AFORD and both deputy speakers were from the MCP. All the seven

Table 3: Distribution of seats following the 1999 parliamentary elections

<i>Region</i>	<i>Political Party</i>				<i>Total</i>
	<i>MCP</i>	<i>UDF</i>	<i>AFORD</i>	<i>Independent</i>	
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

Table 4: Distribution of seats following the 1994 parliamentary elections

<i>Region</i>	<i>Political Party</i>				<i>Total</i>
	<i>MCP</i>	<i>UDF</i>	<i>AFORD</i>	<i>Independent</i>	
North	0	0	33	0	33
Centre	51	14	3	0	68
South	5	71	0	0	76
Totals	56	85	36	0	177

Source: Electoral Commission Report 1994

(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, was also a hindrance to the functioning of parliament as it resorted to tactics such as walkouts and boycotts. This behaviour by the opposition created an impression of being a threat to the minority-led UDF government, which could have resulted in political instability. In any event, AFORD broke away from its coalition with the MCP and joined hands with the ruling UDF in September 1994. A UDF–AFORD coalition government was therefore formed and the position of second vice president was created to accommodate AFORD president, Chihana. (The creation of the office of the second vice president has been a thorny constitutional issue ever since.) In addition, seven AFORD MPs were given ministerial positions, but this coalition did not last very long either.

After winning the 1999 elections, the UDF was eager not to have a repeat of its first term experience, namely, having to face a formidable opposition. In

Table 5: Distribution of seats in the National Assembly (mid 2000)

	<i>Political Party</i>			<i>Total</i>
	<i>MCP</i>	<i>UDF</i>	<i>AFORD</i>	
Number of seats/constituencies	64	99	30	193

order to secure its position as the ruling party, the UDF reportedly resorted to luring opposition MPs to its side, resulting in the defection of some opposition MPs to the ruling party. Table 5 shows the distribution of seats in the National Assembly as of mid 2000.

3.4.3 WEAK INSTITUTIONAL CAPACITY OF POLITICAL PARTIES

Although it is easy to register a political party in Malawi, the performance of political parties has generally been poor due to a lack of institutional capacity and a lack of training of party functionaries. In addition, 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, in large part, due 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 therefore discontinued the party card system but did not substitute it with another mechanism. There is therefore no reliable way of establishing party membership figures. Parties use public rallies as forums for recruiting members and supporters, and the turnout at such rallies is presumed to reflect their members and supporters.

What restricts the competitiveness of parties is their limited perception of their long-term vision and programmes. The parties are not clear what they stand for and, 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 regard 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 former UK 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 or to 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 parliament to reach them. Parties do not offer much choice to the electorate in terms of policies and ideologies, as mentioned earlier. The FPTP electoral system limits the chances for smaller parties to be represented in parliament. Traditional structures such as village chiefs and traditional authorities are increasingly used by political parties for partisan purposes. These authorities command great respect and obedience from the people and therefore use their position to influence the public mind on their political choices.

3.4.5 PARTY FUNDING

The constitution requires the state to fund any party that 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. In practice, however, funds to opposition parties have often been suspended for reasons such as the boycott of the Assembly, or non-submission of audited reports, despite the fact that the constitution does not stipulate any such requirement for securing funds. Funding from the state caters only to part of parties' requirements. Parties therefore need to supplement this from other sources. But political parties in Malawi, including those in parliament, have not established sound income-generating mechanisms, such as the setting up of party companies or making investments. The parties instead tend to rely largely on personal funding and on certain individuals as main fundraisers. This diminishes the collective participation, ownership and accountability of parties and only serves to

reinforce and perpetuate neopatrimonialistic patronage systems. Some parties do have links with the business sector; however, such enterprises do not openly support parties for fear of reprisals, and this limits 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 non-existent. 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 effort towards changing that.

Leaders' not guiding and encouraging aspiring leaders within a party is causing serious dissent and resulting in fractures. The ruling party has also avoided holding conventions for almost ten years. This has caused mistrust, suspicion, hatred and intolerance within the party, which was further exacerbated by the incumbent presidential candidate's third term bid.

The formation of the National Democratic Alliance as a pressure group by one of the most senior 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 the 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 greatly distorted the image of the party. AFORD has been going through major internal squabbles for some time and the president's support for the third term bid has brought the party to the brink of a break up. Hate speech and the perpetration of violence have become rampant, thereby leaving little scope for accommodation and reconciliation.

Unresolved internal party matters are voiced at rallies and public gatherings – often in offensive language – thereby causing tension. There is a disturbing practice of using the youth to disrupt and cause havoc at opposition rallies.

3.4 (B) THE DEVELOPMENT AND ROLE OF CIVIL SOCIETY

3.4 (B.1) GENERAL ASSESSMENT

CSOs, though present, were not independent entities and had no political role in the past. During the colonial period and also under one-party rule, religious

organisations with varying degrees of autonomy and NGOs working in various development areas did exist. However, these institutions were either co-opted into the regime or were completely non political. With the advent of multiparty politics, new institutions that play a direct role in political issues have emerged. These institutions are focusing on democratisation, human rights and governance issues. Among the CSOs churches, followed by NGOs, have played a particularly prominent role in the transition to democracy. The church continues to play an active and leading role. Academia and trade unions were active in bringing about the transition but did not maintain momentum (the 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 the opening of new radio and television stations. While 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 the governance arena, but that this space is yet to be fully exploited. CSOs need to be more proactive. On the side of government, however, there is suspicion and mistrust towards civil society rather than a receptiveness to involve CSOs as partners in the developmental and governance process.

3.4 (B.2) ROLE OF NGOS

In the transition period from 1992 to 1994, CSOs were active participants, aptly described as co-managers of the process of political transition. They engaged both the state and society in dialogue regarding 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 PAC, the Civil Liberties Committee (CILIC), the Malawi Institute for Economic and Democratic Affairs (MIDEA), the Centre for Human Rights and Rehabilitation (CHRR), the Catholic Commission for Justice and Peace (CCJP), and the Centre for Advice, Research and Education on Rights (CARER). Other CSOs – such as the Centre for Youth and Children Affairs (CEYCA) and the Society for the Advancement of Women (SAW) – focus on the rights and needs of specific groups.

After the first multiparty elections in 1994, these CSOs, particularly the NGOs, faced several challenges including weak institutions, a lack of long-term vision and strategies, and intransigence of the state. NGOs did not channel their efforts towards closer networking and towards developing a sense of solidarity and collective strength, but kept their focus narrow and rather closed. The

result is that the NGO sector is fragile and fragmented. NGO activities have been event driven and ad hoc, 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 means of earning a living for their founders.

The 1999 elections were a challenge for CSOs to play a viable role, as numerous administrative and logistical obstacles confronted the entire electoral process. In a novel attempt to join hands, the Church NGO Consortium was formed, aimed at imparting 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 – the CCJP. The Commission 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/Patel: 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 notable NGOs, such as MIDEA, had to eventually close down. The Danish Embassy, which demanded audited accounts for all projects, came out with a firm stand on the serious consequences of misusing Danish funds by partners. In early 2001, parliament initiated a move to enhance the accountability and transparency of NGOs by passing the NGO Act.

The Act endeavoured to provide for the rights and obligations of NGOs in Malawi and to promote the development and values of a strong independent civil society. It further provided for the establishment, function and powers of the Non-Governmental Organisations Board of Malawi and the right of the public to access information with respect to registered organisations and to provide for matters incidental thereto or connected therewith (Act No. 3 of 2001). The Act included provisions to create an environment conducive to NGO development through government incentives, the promotion of donor and public confidence in the NGO sector, and by encouraging the development of an NGO code of conduct. CONGOMA was designated as the NGO coordinating body for the purposes of this Act, and all registered NGOs were required to be affiliated to it.

The Act was, however, not received well by many in the NGO community.

NGOs such as the CHRR expressed strong reservations on the requirement for all NGOs to be affiliated to CONGOMA, saying it was a violation of the freedom of association; institutions should be free to register or not register and enforcing association by law is a violation of such a right. Registration and other costs involved in the process of obtaining CONGOMA membership are prohibitive for small, local NGOs. There are 250 registered NGOs in Malawi functioning in the areas of development and governance; some 35 of these have a religious basis.

Since 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 state president's term of office beyond two terms. These measures were in the form of numerous press statements, public debates and effective lobbying. Church organisations also played a vital role in opposing the extension of the presidential term, and CSOs – 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 Malawi's democratisation process would naturally and rightly begin with the recognition of the Catholic Pastoral Letter and the activities of the PAC in initiating and accelerating the country's movement to a multiparty system. The various Malawian churches accept the PAC as their representative institution influencing politics in Malawi. During the past ten years the 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, the PAC's role was more around advocacy and mediation. Some of its cases involving mediation included the Presidential Committee on Dialogue in the 1992–94 transition period, and the round table conferences involving government, political parties and NGOs to discuss issues of tolerance, reconciliation and accountability. Further, the PAC tried to mediate in the 1996 parliamentary boycott by opposition parties as well as in bringing an end to the civil servants' strike.

Civic education has been an ongoing PAC activity since 1995, focusing on areas of good governance and voter education in the run-up to the 1999 elections. A series of seminars was held for local religious leaders in all districts throughout the country. Older religious institutions that were active before

1992 – such as the Christian Service Committee (CSC) and the Christian Health Association (CHAM) – also began to adapt to the new environment by organising seminars and workshops on capacity building, women's rights and other such 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 government, especially concerning issues of high level corruption, the harassment and intimidation of government officials who do not toe the ruling party line, the disbursal of state funds to party supporters, and so on. Following the report by parliament's Public Accounts Committee which exposed the government's misuse of funds, the CCJP issued a strongly worded letter condemning the financial mismanagement as well as numerous other forms of political abuse by the ruling party.

In the wake of the controversial 2001 constitutional amendments – such as the amendment to Section 65 (Defection bill) and the NGO bill – and the increasing incidence of violence arising out of political intolerance, the PAC held a meeting with the state president. The PAC appealed in particular for the reinstatement of two opposition MPs who were unseated after the amended defection act came into effect. The two MPs were subsequently reinstated by court order.

The issue of President Muluzi's third term bid heightened the church's role to the extent and magnitude comparable to its role in 1992–93. The PAC came out with a series of press releases on the issue, as did the Malawian Council of Churches (MCC) – a protestant grouping of Christian denominations which also took a firm and clear stand against the third term. The Forum for the Defence of the Constitution (FDC) was formed in October 2002 at the initiative of the CCAP, and comprised prominent members of other CSOs. The FDC was launched 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 the Blantyre Synod and enjoys the support of the PAC in its activities. The Church Development Coordination Committee (CDCC) – an interdenominational group – held two major gatherings in early 2003 that were attended by prominent opposition party leaders and drew large crowds. The clergy and some political leaders made strong and forceful comments. The MAM, however, took a stand supporting the open term bid. This infuriated the PAC which had a strong diverse stand and caused tension between MAM and other PAC members.

The firm and critical stand of the church against the third term bid brought out into the open the subtle tensions between the church and 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 of having political ambitions. Churches evidently have their 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 that the church's sphere of activity is spiritual and not political and therefore it should not meddle in politics. All these arguments and counter arguments bring one issue to the fore: 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 government and civil society? It should, however, not be overlooked that the Christian churches are led by their own interests, too. They want to slow down Islamisation and therefore 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 national level – there are significant limits to its grassroots civil society activism (VonDoepp: 1998). These limitations are traced to the religious framework of the church, the organisational setting of the clergy and the class character of the clergy themselves. However, there is great potential for the clergy to play a more active political role at the local level, owing to its elevated status in local communities and its affiliation to large and powerful religious organisations at the macro level.

3.4 (B.4) ROLE OF THE MEDIA

Throughout Africa the media 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 as well as to bring the state and its citizens closer to each other. Malawi is no 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 assassinations, 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, which guarantee:

- freedom of expression to every person;
- freedom of the press; and
- 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. The PAC, opposition parties and CSOs, among others, addressed critical issues such as editorial independence, fair access to the media by all political parties and personalities and protection of media personnel from arbitrary arrests and suspensions. During the 1994 elections the MBC demonstrated its ability and will to carry out independent and fair reporting.

The period following the first multiparty elections, however, witnessed signs of reversals by the MBC in particular and by the media in general. In the early 1990s there were about 50 newspapers, although most published a few issues and then closed down. The reasons are not difficult to find. Many of these publications were badly written and poorly printed and did not sell, some were sued for defamation and closed when they lost their lawsuits, others could not find sufficient advertising revenue, and many were short of capital and could not manage as wages and other input costs 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 liberalisation of related legislation such as 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 to use restrictive laws against journalists. There have been cases whereby journalists have been charged of offences, only to have them withdrawn after the accused had suffered the anxiety and anguish of a person awaiting trial for a crime punishable with imprisonment. As stated earlier, some repressive legislation of the past regime was 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 became victims of direct harassment and intimidation exemplified by the raid on, and damaging of equipment at, the *Daily Times* office by Malawi Army soldiers because the newspaper 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.

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 sets 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 concern 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 a level playing field. It was completely monopolised 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 as to the continued monopoly of the state-owned MBC and Television Malawi by the ruling party and have begun to doubt the fairness of the electoral process. 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 scrutiny since early 2003 when it ordered community radio stations to stop airing news bulletins on the grounds 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 declared this decision 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 and prevent it from playing its due role as the fourth pillar of democracy. First is the issue of ownership of the media houses. Most 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 newspapers, but also on the job security and survival of reporters who do not comply with the wishes of their masters. Second, the lack of professionalism in the sector is a major handicap, with the majority of journalists being untrained and inexperienced.

Journalism is a new field and before the transition there were no training or educational facilities in this field. Third, media organisations such as 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 CSOs, such as NGOs and the church, there is no empathy between 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 AND 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 establishment of trade unions in the public service, the procedure involved almost amounted to prohibition. The transition from 1992 was marked by 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 low wages and poor working conditions. Being very small, the work force in Malawi could not play an effective role as an organised entity, but workers were fully supportive of the formation of underground pressure groups, which eventually became political parties. With the passage of time, however, political parties and trade unions went their separate ways. It almost seemed as though the parties did not need the unions any longer.

The new constitution guarantees (under the section on 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 avoiding unnecessary multiplication of trade unions, and as of 1998 there were 12 unions representing 12 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 the umbrella organisation encompassing all unions in Malawi, without the body receiving such a mandate from all the unions. The Civil Service Trade Union (CSTU) was a strong and powerful union but was forced to join the MCTU.

In sum, the unions have succumbed to political pressure and have been lured by gifts and grants, while at the same time failing to generate a strong following

by inculcating a true spirit of unionism. There are no labour education institutes and centres, as exist in other countries. Malawi's labour movement is perhaps the least developed and weakest in the Southern African Development Community (SADC) in terms of unionisation levels and material resources.

University campuses were focal points of activities during the transition from 1992 to 1994. Prominent academics such as the late Matambo Nzunda played an active role in the formulation of Malawi's new constitution. In the years following the transition many individual academics have contributed to the democratisation process in a number of ways, but 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 universities and other CSOs is minimal.

Few academics take a stand on current political issues in their individual capacities 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. Student bodies have, however, held effective demonstrations on sensitive issues such as the proposed impeachment of three High Court judges by parliament and on the third term issue. The police used teargas against the demonstrators, as is 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, in practice, the past eight years have demonstrated that the separation of powers has not corresponded with a separation of personnel; and this in essence is tantamount to a concentration of power. Some individuals hold a number of positions, often leading to a conflict of interest. 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 no exception to this trend.

The judiciary, however, 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 executive and the legislature has been tense and competitive rather than complementary and cooperative. The legislature in Malawi always featured a strong opposition, holding the same number of seats as the ruling party. In the initial years of the multiparty dispensation, members of the political executive (cabinet) had both elected MPs and the rest – non MPs – 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 this was a clear violation of the principle of separation of powers.

The separation of powers between the executive and legislature was put to the test by a case, commonly known as the ‘Strangers in the House’ case, instigated by Fred Nseula. An MP who crossed the floor from the UDF to the MCP had had his seat declared vacant by the Speaker of the House. Nseula challenged the Speaker’s action in court. However, the High Court ruling 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. The judge held that in keeping with the principle of separation of powers, ministers should not be MPs. The ruling created a constitutional crisis. The president reacted strongly 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 MPs.

In the October 1997 session of the Assembly, three MPs raised another concern over ministers who were not MPs continuing to attend National Assembly sessions. 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 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 1994, the total number of ministers was 22, of which 11 were MPs and 11 were not MPs. In 2000, the number of

ministers rose to 33, of which 26 were MPs and only 7 were not MPs. The cabinet has grown to a current 46 members and concern regarding this has been expressed by parliament, civil society and donors.

3.5.3 *LEGISLATURE AND THE JUDICIARY*

This section examines two contexts in which the legislature and the judiciary confront each other. First, political parties in parliament that are disorganised and immature diminish parliament's role by seeking legal intervention in the internal matters of parliament. Second, the executive, through 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 parliament and brought about a situation whereby the judiciary was called in by the parties themselves to tackle purely in-house parliamentary matters. For example, 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 John Tembo as leader of the opposition, and even went to the extent of declaring Gwanda Chakwamba's seat vacant in a manner inconsistent with parliamentary norms. The MCP took the matter to court, but the court could not help the party in resolving its squabbles. Parliament in the process lost valuable time on an issue which could have been easily resolved by the parties, and compromised its rights and control over its domain.

The second context, which posed the most severe challenge to judicial independence, involved a petition for the removal of three judges by parliament. More than 113 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 that this over-sensitivity led to action for the '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 mechanisms 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 a repeal of the recall provision of section 64 of the constitution by Act No. 6 of 1995. This provision provided for the recall of an MP 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 the constitution and governmental accountability.

The constitution had an elaborate and well-structured sections on the senate (sections 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 of various interest groups. It was conceived to be primarily a deliberative body to receive, scrutinise and amend bills from the National Assembly.

The sections on the senate were, however, repealed by the Constitution Amendment Bill No. 4, 2000 passed in January 2001, when the National Assembly sat for a week especially 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 country's economy 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 opposed by civil society and by some

opposition party factions. It was further condemned as being unconstitutional on the grounds that the senate is protected under section 45(8) of the constitution. This states that, “under no circumstance shall it be possible to suspend this Constitution or any part thereof or dissolve any of its organs, save as is consistent with the provisions of this Constitution”. Many quarters also raised the fact that the bill touched the substance or effect of the constitution and therefore section 196(3) could be invoked, which stipulates that any amendment which affects the substance or effect of the constitution requires a national referendum. The contention of civil society, therefore, was that the issue of the abolition of the senate required a national referendum. The MHRC and Malawi Human Rights Resource Centre sought an injunction from the court to stop 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 is also due to the lack of effectiveness of the parliamentary committees. Only seven out of 13 committees are functional. The committees on legal affairs, public accounts, budget and public appointments are some of the active ones and these have only recently come to public knowledge. Parliament’s budget committee 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 that funds allocated for the committees are diverted for other purposes. The oversight function of parliament is restricted because of inadequate input from civil society, which has not taken on its role of advocacy seriously, consistently or professionally. As stated earlier, 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. The new government therefore issued a Policy Statement on Civil Service Reform and Institutional Development in May 1994, in which it recognised the critical role that 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 achievement of the nation’s social and economic objectives. To this end, it is government’s policy to subject public sector organisations – including

the civil service, parastatal companies and local government institutions – to periodic external reviews of their operations, responsibilities, functions, structures and establishment levels. Also in the same year, government promulgated the 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 ‘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 a substantial reduction in the number of civil service employees, especially those without skills. The reform programme also covers human resource 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. In practice, however, 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 the power 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 faced threats of dismissal or suspension, which are politically motivated. The autonomy of the civil service is undermined and limited by such acts.

3.5 (B) DECENTRALISATION

The decentralisation process is still quite new. The first local government elections under the democratic dispensation took place only in November 2000. Since 1995, government kept postponing decentralisation – the official reasons given being technical problems and a 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 would have meant a transfer of powers and authority from central government to local councils.

The November 2000 local government elections were disappointing in terms of participation. Only about 14% of registered voters turned out to cast their votes, in contrast to an almost 94% turnout in the 1999 general elections. The reason for the low turnout is that political parties did not put much emphasis on the mobilisation of voters. The parties were either unwilling or unable to spend much money on 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. Furthermore, there was 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.

Formal administrative structures are in place. There are elected and formally operational councils in 27 districts, in eight towns, in the Municipality of Zomba and in three cities. The democratically elected local government councils are responsible 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 central government. A 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 and depend on financing from central government. Financial allocations are decided by the National Local Government Finance Committee. This national government body has the power to control funding and to determine financial allocations. In cases of a shortage of public funds – which is the order of the day – allocations can be cut back and could seriously affect the work of 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. This is due to a shortage of qualified staff that is difficult to hire 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 unable to present audited accounts because of a lack of personnel.

Councillors are paid low salaries, which encourages corruption. Their interaction with traditional authorities, MPs and other society representatives is not problem free either. The main controversial point is the fact that only elected councillors have a right to vote in the council, while all other members (traditional chiefs, sub chiefs, MPs who are ex officio members and five representatives of special interest groups who are elected by the council) have an advisory role only. Some councils have been temporarily paralysed because of power struggles and divisions. The overall performance of most of the councils is poor and their 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.

A transfer of responsibilities from central government to the local councils is still under way and decentralisation of the education and health systems is planned. 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. Councils are not equipped with the necessary resources to fulfil local functions effectively. Another major constraint is that the central government is not seen to promote and support decentralisation: it is not a priority of government policy. This, however, is 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 become rooted in the population, which is mostly unaware of the necessity and work of the councils. Councils are excessively dependent on central government and are too weak to counterbalance the latter. It will take much more time to consolidate such structures and to make them an integral 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 excitement about the triumph over dictatorship and the installation of a democratic regime. There is also much eagerness to preserve this hard won democracy. Afrobarometer's findings 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 legacies of the past, such as a 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 whereby 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 pre-colonial society. The term was also used to describe the colonial administrative centres. *Boma* is the administrative regime and/or the physical entity of the state and/or government. In the minds of ordinary people, the *boma* is conceptualised 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 (Poeschke/Chirwa: 1998). Government is therefore something that operates at the top and cannot be seen or realised at grassroots level. People therefore do not really see themselves as being part of the governance process.

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

3.6.2 LACK OF SPIRIT OF ACCOMMODATION, TOLERANCE AND DIALOGUE

In terms of the performance of political parties in a wider context, 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, a government was formed and there was by and large law, order and peace (except for a brief spell of violence that 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 2000, 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

It is useful to look at the status of democracy and human rights in Malawi in a regional comparative perspective, by examining some of the indicators reported by international and regional bodies. Two tables are provided below: Table 6 illustrates the level of rights enjoyed by SADC states with reference to freedom of expression, assembly and so on, as measured by 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 7 illustrates the grassroots level of understanding of issues of democracy and good governance.

Table 6: Level of democratic rights in SADC countries as measured by Freedom House

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	Multiparty	2	2	2	2	Free
Congo-DR	Single party	7	6	6	6	Not Free
Lesotho	Multiparty	4	4	4	4	Partly Free
Malawi	Multiparty	3	3	3	4	Partly Free
Mauritius	Multiparty	2	2	1	1	Free
Mozambique	Multiparty	4	4	3	3	Partly Free
Namibia	Multiparty	3	3	2	2	Free

Table 6: Level of democratic rights in SADC countries as measured by Freedom House (continued)

States	Party system	Civil liberties		Political rights		2000-2002 trends
		2000	2002	2000	2002	
Seychelles	Multiparty	3	3	3	3	Partly Free
South Africa	MultiParty	2	2	1	1	Free
Swaziland	Autocracy	5	5	6	6	Not Free
Tanzania	Multiparty	4	4	4	4	Partly Free
Zambia	Multiparty	4	4	5	5	Partly Free
Zimbabwe	Multiparty	5	6	6	6	Not Free

(1 = most free country, 7 = least free country)

The Table 6 shows that political rights in Malawi have suffered a setback, indicating a lack of accommodation and growing political intolerance.

Table 7: Afrobarometer study: How democratic is the way your country is governed?

	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

The Afrobarometer study shows that the perceived increase in freedoms and rights under multiparty politics ranks high in Malawi, except for a fear of 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 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 negligible. Gender equality and mainstreaming is, however, under way but it will be some time before tangible results are shown. Efforts at translating the rhetoric into concrete actions remain distant and limited. There is ongoing debate on ways in which to enhance representation of women in all sectors. Of the 193 MPs in the National Assembly, 17 are women, while 70 out of 774 local councillors are women. While there is general consensus regarding the need to increase the number of women MPs, the challenge lies in getting more women contestants to stand for election. The number of women joining political parties is low and there are few women in the party rank and file. Interestingly though, political rallies are largely attended by women and it is also a common observation that women vote in large numbers.

Chapter 4

EVALUATION OF THE DEMOCRATIC TRANSITION PROCESS: PROGRESS OR REGRESSION?

4.1 EVALUATION OF THE DEMOCRATIC TRANSITION PROCESS

4.1.1 *ECONOMIC CONDITIONS: A GENERAL ASSESSMENT*

With a nominal per capita income of US\$160 per annum, Malawi is one of the poorest countries in the world. Poverty is pervasive and deep-rooted, with 30% of the population earning 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 prevalences of HIV/Aids; in urban areas, the prevalence rate among women visiting prenatal clinics is estimated at over 30%. 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 the population continues to grow at the high rate of 2.7% a year, while economic growth declines year on year.

Malawi's location and geography also pose daunting challenges to growth and development. It is a relatively small country (118,000 km²), landlocked (with the attendant implication 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% of GDP produced by, and 85% of the labour force employed within, an agricultural sector focused on maize and burley tobacco.

Economic policies in the three decades following independence fostered a dualistic economy with a vertically integrated and interlocking 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 agricultural sector comprised a few thousand commercially oriented estates, which paid only nominal rent for their lease holdings, and a smallholder sector with nearly two million household farmers based mainly on subsistence maize production.

Nevertheless, Malawi enjoyed successful economic 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 rate of three per cent. 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 droughts, 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 programmes that continue to the present day, supported by the International Monetary Fund (IMF) and the World Bank. Success in stabilising 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 was aborted when huge shocks hit the economy between 1992 and 1994. Major droughts in these years and falling tobacco prices led to a loss of more than 25% 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 expenditure in the months preceding the election, a 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 the price movements and droughts of the past few years. There were important successes in stabilising 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 expenditure. Revenue collection met budget targets. Consequently, the deficit for the fiscal year 1996 (after grants) was about five per cent of GDP, compared to 15% the previous year.

This proved to be short lived, however, as the economy has declined steeply since then. Malawi suffered an extreme drought in 2002 and had to import over 200,000 tons of maize to avoid mass starvation. Even this issue proved controversial. The Government of Malawi had subsidised maize prices to private traders in excess of MWK1 billion, but failed to protect Malawians from the thieving practices of private traders. The National Food Reserve Agency (NFRA) had bought maize at MWK7.80/kg in 1999 and sold the maize to private traders and to the state-owned Agricultural Development and Marketing Cooperation (Admarc) at below cost prices (ranging from MWK3/kg to MWK6/kg). However, private traders, exercising their free market right, sold the maize to starving, poor Malawians at prices ranging from MWK17/kg to MWK42/kg. The government and most international financing institutions refused to subsidise prices to local Malawians because “it is simply a question of demand and supply” and because “Malawi is a free trade area”. Later, government ordered that only Admarc was allowed to sell maize – at a price ceiling of MWK17/kg.

Numerous IMF delegations have highlighted Malawi’s 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 past 18 months, thereby forcing government to borrow heavily from the domestic financial markets (MWK40 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 have 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 2001/02 makes it unlikely that this year’s budget will be met. Last year, the IMF withheld over MWK3.5 billion (US\$47 million) of its Poverty Reduction and Growth Facility (PRGF) funds after Malawi could not comply with economic management commitments. In the same year, DFID (a bilateral donor) withheld over MWK900 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 present, the government is relying solely on domestic collections because the donor community has not yet come to support the 2003/04 budget. Unfortunately, most bilateral donors to Malawi will only resume their support if the IMF board recommends a resumption of the PRGF funds. Domestic revenue in Malawi is only about half the total budget and the country is heavily dependent on donors, with 39% of the national budget being donor funded.

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. These concerns cover inclusivity, constitutionality, ownership, compatibility and equitability, however, no response has come from the relevant ministries. The perceived obduracy has further shaken investor confidence and has caused a hiatus in new construction and other ventures that would depend on security of tenure. The Law Commission 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 some time in 2003.

The privatisation programme has also generated much controversy and debate due to public perceptions of non-transparency 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 local investors lack the financial capacity to buy these parastatals. As a result, little or no benefit accrues to the people of Malawi who are, in theory, the ultimate owners of these assets. Indeed, in some cases, these parastatals (such as Admarc) have performed a social safety net function in the absence of a governmental structure to support the poorest sections of Malawian society. It is feared that privatisation of these enterprises will inevitably lead to the cessation of vital support systems that sustain people who live in dire poverty.

4.1.3 PRIVATISATION IN MALAWI

One of the concerns often raised regarding privatisation is the loss of employment and poor welfare of the remaining staff. Most civil society circles see privatisation as a process whereby government rejects its responsibility of providing for the basic needs of the people, handing communities over to the

mercy of profit-oriented private traders. Some critics also see privatisation as a deliberate loss of public assets by government since companies are often sold at a loss. This has generated considerable animosity and rancour among the people who feel cheated by the process.

Thus far, from the sale of 42 companies (parastatals), the government has raised MWK1.67 billion (about US\$20 million), but these proceeds are not properly invested. Some of this money has been used to run the Privatisation Commission, to restructure or make other prospective parastatals 'viable for privatisation', to support payments for retrenchments or redundancies and in funding 'any project within the government development plans'. Government has sworn to privatise 28 more companies.

Civil society has voiced serious concern about the privatisation scenario. The latest case is that of Admarc. According to figures from the Parliamentary Committee on Agriculture which was conducting hearings on the views of Malawians on whether or not to privatise Admarc, all 36 respondents were against the Admarc privatisation. The arguments were that such a move would threaten an already shaky food security situation in the country, and may endanger the 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 pressurise the government not to privatise Admarc, but to instead install proper management to ensure its financial viability. It is also hoped that the donor community, through the auspices of the IMF/World Bank, will heed these earnest pleas and will desist from applying pressure on 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 cooperation and support that could be engendered through inclusivity and transparency within the process. Unless these imbalances are corrected post-haste, the continued economic decline will inflict ever-increasing hardship on the already suffering masses, and this in turn would impact negatively on the inculcation, consolidation and evolution of democracy in Malawi.

4.1.4 CORRUPTION

Public officials, especially MPs, are required by law to declare their assets soon after their swearing in. This requirement, however, has not been enforced and a 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 one's family of poverty. Records show that the government loses over MWK22 million a year in corruption. The government has paid MWK2.6 million to 'ghost teachers' and over a million kwacha to the owners of 'ghost houses'. Prominent politicians have a virtual monopoly over some key businesses like sugar, 70% of which is controlled by politicians.

An assets draft bill is complete and has been 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 and the dismissal of civil servants, parastatal organisation chairs and chief executives who fail to indicate how much they are worth after receiving notification at least twice. The bill was formulated by the Public Assets Declaration Committee on the basis of inputs from the general public as well as from the DPP and the ACB.

4.2 INSTITUTIONAL STRUCTURES: CONTINUITIES AND CHANGE

4.2.1 *THE ROLE OF THE EXECUTIVE*

Since Malawi has a presidential system of government, the most powerful position is the presidency. In the democratic dispensation, presidential powers are limited by the system of separation of powers. The president 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 have been no serious attempts either to 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 the norm in countries such as Great Britain and Germany, where the head of government also leads the ruling party. The

problem, however, is that there is no clear distinction between party and state business. The president and other members of government are seen to use government facilities to perform party business or to campaign for their party (government vehicles and helicopters are used for campaign purposes). Since the UDF is short of money and is almost exclusively funded out of Muluzy's private pocket (he is a wealthy businessman and entrepreneur) cases of patronage do exist. Reliable functionaries and party supporters are employed in parastatal companies where they earn their living 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 people occupying top positions, such as principle secretaries, were removed. The principle of civil service neutrality was upheld, which means that even prominent MCP supporters among the senior civil servants were not fired but rather sidelined. In the first five years of UDF government there were quite a number of attempts by senior civil servants to frustrate government decisions, which ended up in silent sidelining. There are, however, still cases of disobedience in the civil service. As an example, senior civil servants in the treasury were transferred to less powerful positions when they tried to frustrate decisions of the president. The UDF attempts to control the civil service by employing more of its supporters and by sidelining civil servants who are seen as being critical of the government. Civil servants who want to campaign for public office (e.g. MP) have to resign first. In 1999, some opposition candidates were forced to tender their resignations immediately, while UDF candidates were given more time.

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

4.2.2 THE SECURITY APPARATUS

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

transition period the army was sympathetic to democratisation and was not willing to defend Banda. In the democratic dispensation the army did not interfere with politics (with the only remarkable exception being 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 reduced by about 40% to 5,000 since Muluzi took over government. Military expenditure is low (0.7% of GDP in 2000). There were rumours of a planned coup attempt in September 1998, which allegedly resulted in the detention of 15 soldiers. This and similar reports have not been officially confirmed. It seems highly unlikely, however, that the armed forces would interfere in politics or bring down the democratic system.

The police force (about 6,000 officers), on the other hand, was always in favour of the Banda regime and tried its best to frustrate the pro-democratic opposition. Under Muluzi this attitude did not change at first and the police were 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 ever since. Over the past two years, and particularly in 2002, the police 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 on 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, unable to prevent mob justice during the food crisis in 2001 and 2002. Low salaries have resulted in a 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, however, no public control of its work and not much is known about its actions. The Bureau undertakes security checks on applicants for senior or sensitive positions in the civil service. However, the criteria it uses

remain secret. There are also hints that telephone conversations can be tapped without the approval of a judge. This means that the political opposition could be controlled; however, there is no firm evidence of it.

4.2.3 BEHAVIOUR PATTERNS OF POLITICAL ACTORS

There are no forces that fight the democratically elected government violently. All relevant actors have accepted the constitutional framework as the basis on which political competition is played out. There are no guerrilla movements or illegal actors aspiring to bring down the government forcefully. Fundamental democratic structures are therefore accepted by political actors. This, however, does not mean that a spirit of democracy exists. To most of the political actors, either in government or in opposition, democracy was a very new thing in 1994. This still determines the behaviour patterns of most politicians in today's Malawi. In general it can be stated that 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 issue, UDF politicians who were not fully supportive of 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 action. This means that leading political actors are not setting an example for society to stop corruption.

Most actors from the political opposition are not democrats at heart and they 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 to win the next election 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 'winner takes all' or zero-sum situation, the competition for political powers is vital and fought with (almost) all means. The government more or less monopolises access to jobs, tenders and resources. Opposition politicians usually have no

alternative but 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 of political actors.

Most politicians are not seen to be interested in the welfare of Malawi and its citizens but are more concerned with 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/she and his/her interests are marginalised.

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

What is encouraging, however, is the fact that there is general consensus between senior political actors. They can publicly castigate each other but usually remain on speaking terms. Most politicians have known each other for many years and they are often able to solve problems across party lines in private.

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 a crisis. This was because the party lost access to government resources and was not sure of its role as an opposition party in a democratic system. Even worse, 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 its offices, including its national headquarters in Lilongwe. There are insufficient 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 MPs. The MCP is the only nationwide opposition party, currently holding 61 of the 193 seats in parliament. The current MCP Vice President Gwanda Chakuamba finds it difficult to settle the costs of MWK2.6 million (about 26,000 euros) for a lost court case on the 1999 elections. Since he fought the case in his personal capacity and not on behalf of the 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 damaging power struggle between then Party President Chakuamba and his Deputy, John Tembo. Both 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 until 1993 because of treason, a charge which was probably fabricated by Tembo who wanted to get rid of him since he was seen as becoming too powerful. In 1993 Tembo accepted Chakuamba as leader of the MCP in order to increase its 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 had been there since 1994, erupted after the 1999 elections and led to a de facto division of the MCP into Tembo and Chakuamba factions. The Tembo camp temporarily supported the UDF (2000–July 2002). This rendered the MCP as an opposition party almost defunct. Whether the official reconciliation of the two camps will last is more than doubtful. After Tembo defeated Chakuamba in the MCP presidential election at the party convention in April 2003, thugs (probably hired by Chakuamba who was elected vice president) instigated acts of violence at the convention. Since the two rivals comprise the leadership, the struggle seems to continue. Another shortcoming of the MCP is that it is still led by prominent politicians of the Banda regime. Both Chakuamba and Tembo have tarnished human rights records and are not able to give the party a new and democratic image.

AFORD, the third political party (30 seats in parliament), has similar shortcomings. It faces serious financial problems. (It is de facto impossible to collect membership fees by selling party cards because this practice was discredited by Banda, when people were forced to buy MCP membership cards.) Another shortcoming is the fact that AFORD is a regional party. Its exclusive stronghold is in the sparsely populated Northern Region. AFORD President Chakufwa Chihana has shown much political 'flexibility' since 1994. He worked with the MCP before switching to the UDF and then back to the MCP, and since 2001 has been supporting the UDF again. In April 2003 Chihana even joined the government as second vice president. These moves were usually done without party participation, which shows another serious shortcoming: the decision-making process in AFORD is not democratic. Since 2002, AFORD has been divided into two camps: while Chihana's camp (about one-third of the MPs) joined government, the other camp is against this cooperation.

Another political force is the National Democratic Alliance (NDA) – a UDF breakaway. This pressure group, which commands support from five MPs, 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 the UDF who was sacked from the UDF cabinet in late 2000 after the ACB began probing him on corruption charges. Mpinganjira fell into disgrace with Muluzi because of his ambitions to succeed the president. The NDA is more or less a one-man show commanding some support in the Mulanje and Thyolo districts in the Southern Region. Without forming an opposition coalition with the MCP, the political influence of the group will remain quite low. There are 26 registered political parties, 23 of which are outside of parliament. These parties have very limited financial resources and political support and are almost meaningless in terms of the political decision-making process.

In general, the opposition parties provide no programmatic alternative to government. The party manifestoes are very similar and there are no ideological differences, as stated earlier. Even the major opposition parties command their main support from their regional strongholds. They are financially weak and divided and are therefore not really able to perform the role of opposition effectively. The 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 issue caused fractures within the MCP and AFORD, but despite this issue being closed, divisions in the opposition will prevail as long as there are power struggles at senior leadership level. MCP and AFORD policy is motivated more 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 a transition to be complete when a democratic constitution is 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 and its attendant institutions were established.

The transition process therefore 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 controlled mainly by the Banda

regime, which was under extreme external pressure from donors to democratise the political system. Since the army was in favour of the democratic transition and the paramilitary MYP 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 using force. There was limited participation by citizens in the transition process. A two-thirds majority did vote in the referendum of June 1993 in favour of introducing a multiparty system of government. Thereafter, however, the NCC comprising the seven registered political parties was established in order to oversee the process. Although it had only advisory powers, the NCC gave important input to the transition.

The regime was too weak to suppress the opposition because of external pressure and because the army was not prepared to play such a role. The opposition, on the other hand, was not strong enough to overthrow the regime but could increase significantly the regime's costs of not negotiating with them. The regime, however, was stronger than the opposition throughout the transition, but Banda was ill and old and partly out of touch with political developments. He was not aware of his limited popularity, and these factors caused him to make the wrong decisions. Banda never thought he would lose the elections and when he did realise it, it was too late. It should be mentioned that Banda was not really in control of the government. From November to December 1993 he was seriously ill and incapacitated. Real power lay with the then Minister of State in the President's Office, John Tembo and his niece Cecilia Kadzamira, Banda's life partner. They manipulated the ailing president and were the real people 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, conditions for the democratic transition process were in this respect favourable. Even the high participation of voters (80%) in the first democratic general elections was encouraging. The biggest disadvantage was that democracy was new to Malawians, having never experienced a democratic system of government before. After the non-democratic colonial rule, Banda ruled the country with an iron fist for three decades. The democratic system therefore had no roots and there were almost no democrats. Almost all politicians and the bureaucratic apparatus were in the past close to the authoritarian regime. Most opposition politicians used democracy as a vehicle to come into power, but the spirit of democracy was in many cases not deeply rooted.

Another disadvantage for democratic consolidation is the low urbanisation rate. About 85% of Malawians live in rural areas. They are poor, smallhold farmers with rudimentary or no formal education, cut off from the information system and politically marginalised. Among the rural population, there is almost no knowledge of the principles of democracy or of human and civil rights. The expectations of democracy were, however, very high; people expected an improvement in their standard of living, but this 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.

Chapter 5

ASSESSMENT OF PROSPECTS FOR FURTHER CHANGES

Various scenarios for possible future political developments exist. It should, however, be noted that political scientists are usually bad at predicting future political developments because political actors rarely follow rational and foreseeable decision-making patterns.

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 an autocratic Banda regime were unfavourable for bringing about democratic change. The socio-economic and political conditions (poverty, poor infrastructure, almost nonexistent civil society structures and political authoritarianism) were heavy burdens on the road to establishing and consolidating 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 point. The time span of almost a decade has not been long enough for democracy to take root in Malawian society. But even a period of 30 years is no guarantee for the survival of democracy, as the Gambia example shows. In Malawi, there are only a few people who would defend the democratic system.

For the time being and for the near future it might be sufficient that democracy exists only in the urban areas while the large rural population is politically marginalised. In the long run it will be necessary for the consolidation process that the villagers are included in it. This requires time, civic education and access to information, as well as a certain degree 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 route to political inclusion of the rural population is participation in elections. In the general elections of 1994 and 1999, the turnout was extremely high, but voter interest in the 2000 local government elections was much lower. The ability of political parties to mobilise their supporters at election time is quite high and it will likely be high again for the 2004 general elections. However, this is because political parties distribute small amounts of money and gifts to their supporters and 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 through the ballot box means losing access to wealth and power. The principle of 'winner takes all' turns presidential and parliamentary elections into a vital exercise. This, to a certain extent, makes the power struggle violent.

The attempt at amending the constitution to allow the president to stand for a third term caused much political violence and intolerance and introduced regressive tendencies into the democratic process. It seems that this issue is now 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, thereby creating cleavages in society. Even without Muluzi as its presidential candidate, the UDF still has a good chance of winning the 2004 elections, but its chances would be higher with him. The UDF has nominated Bingu wa Mutharika, a former deputy governor of the Reserve Bank of Malawi, as its presidential candidate, but he cannot be considered as a political heavyweight. Nevertheless, a victory for 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.

As mentioned, the opposition is fragmented and financially constrained. It is not yet clear who will stand as presidential candidate of the major opposition party, the MCP, because the two aspirants (John Tembo and Gwanda Chakuamba) both 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 desperate economic situation in the country. But he is also closely

associated with the brutality of the Banda regime and is still widely feared. A victory for 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 Banda's dictatorship. Additionally, Tembo is not seen as an advocate of the principles of democracy. Other presidential candidates are, however, unlikely to win the 2004 elections.

A major problem for democratic consolidation is the ethnic-regional voting pattern, 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 experience some 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. This is because of the country's high dependence on foreign aid, which would probably be suspended or cut back significantly. Without foreign aid the Malawi economy would no doubt collapse.

The backbone of democracy is civil society. Civil society in Malawi is still small and weak and its political influence is limited. It was, however, able to flex some muscle during the third term bid, which failed because of significant protest from sectors of civil society. (But if the government was serious in amending the constitution it would have managed to get it through anyway.)

Another main constraint to democratic consolidation is the economic crisis. The government is not in a position to provide sufficient funding for maintaining 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 near 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 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 civil war or serious and widespread inter-ethnic clashes is very low. Malawians are peaceful people who seem to believe in the integrity of the state. There are also no secessionist tendencies in any part of the country.

Chapter 6

ROLE OF MAJOR EXTERNAL PLAYERS AND THEIR SUPPORT FOR DEMOCRATISATION

6.1 GENERAL ASSESSMENT

On the issue of the role of donors, particularly in the context of democracy and development in Africa, there are two divergent views:

- Aid donors have supposedly weakened the resolve of African states to act on behalf of their citizens.

Table 8: Current donor initiatives and involvement

<i>Donor agency</i>	<i>Focus areas/projects</i>
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) Canadian International Development Agency (CIDA)	Good governance Economic governance
Malawi German Programme for Democracy and Decentralisation (MGPDD)	Civic education on democracy, decentralisation
UNDP	Consolidation of democracy
European Union (EU)	National Initiative for Civic Education (NICE Programme) Rule of law, access to justice
Konrad Adenauer Foundation (KAF)	Political party development

- 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. As discussed earlier, in the Malawian context, external donors played a phenomenal role in bringing about the transition. Donor support in the areas of democracy and good governance has been significant and persistent. Table 8 is a summary of current donor initiatives and involvement.

The donor community and the Malawian government and society have, however, expressed the need for a more coordinated and harmonised approach to several donor initiatives in the sphere of democracy and good governance. This is imperative in light of the forthcoming first tri-partite elections in 2004, which will combine presidential, parliamentary and local government elections.

6.2 AN ASSESSMENT OF DONORS' ROLE IN DEMOCRATISATION IN MALAWI

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

Civil society is yet to emerge as a proactive and vibrant body, and this applies equally to other important institutions of democracy. This often leads to 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 expressed recently by the chairman of the Malawi Electoral Commission is a case in point. Relations between the Electoral Commission and the donor community have been tense since the 1999 elections, each blaming the other for the administrative and logistical fiasco seen on that occasion.

However, of late, fundamental issues of concern emerge in most of the ongoing debates regarding donors' role and their impact on Malawi's fragile democracy. It is refreshing to observe a shift in approach which looks at the donors' role critically and raises issues of donor accountability, rather than simply viewing the donor as the sole protector and guardian of society and state.

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

Chapter 7

SUMMARY OF THE MAIN FINDINGS

With the introduction of a pluralistic constitution, democratic elections and a change of government in May 1994, the formal process of democratisation was completed. This means that democratic institutions have been put in place. Basic freedoms and social rights are comprehensively covered in Chapter IV of the constitution. In this respect the constitution stands out as a blueprint for other countries.

There have so far been no attempts to restrict fundamental human and civil rights by amending the constitution. Looking at socio-political practice, however, there are some serious constraints. 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 2001/02, a number of people died because the state was unable to manage and distribute strategic grain reserves properly, and wasted urgently needed food resources because of inefficiency and corruption.

Freedom of movement, thought, conscience and religion are respected and religious tolerance is outstanding. Religion has not been harnessed for ethnic interests and has not been politicised.

Democratic institutions such as the MHRC, the Ombudsman and the ACB, exist. The MHRC and the Office of Ombudsman play a major role in the protection and implementation of human rights. Their major constraint is funding since their budget application is usually significantly cut by parliament because of a lack of funds. There is usually another cut of between 30-50% from the approved budget, which makes it difficult to work effectively. This practice is 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 funds.

7.1 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 past eight years demonstrate that separation of powers has not corresponded with separation of personnel, and this in essence is tantamount to a concentration of power. Some individuals hold a number of positions, often leading to conflict of interest. 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 no 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 whereby 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 and personal loyalties seem to have played a role in this regard and have taken precedence over righteousness and fairness. This has caused concern and suspicion regarding the independence of the judiciary.

7.2 ELECTIONS

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

7.3 POLITICAL PARTIES

General elections in Malawi are well-supported 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 access to the electronic media. The competitiveness of parties is restricted by a limited perception of their long-term vision and programmes. In general, the opposition parties provide no programmatic alternative to government. The party manifestoes are very similar and there are no ideological differences. Even the major opposition parties command most of their support from their regional strongholds. They are financially weak and divided and are therefore not really able to perform the role of opposition effectively. The 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 issue caused fractures within the MCP and AFORD. Divisions in the opposition will prevail as long as there are power struggles at top leadership levels.

7.4 ECONOMY

With a nominal per capita income of US\$160, Malawi is one of the poorest countries in the world. Thirty per cent of the population earn incomes that are inadequate to assure basic caloric needs and life expectancy is at an average of 39 years.

This scenario is compounded as Malawi has one of the highest prevalences of HIV/Aids; in urban areas, the prevalence rate among women visiting prenatal clinics is estimated at over 30%. Water, 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 the population continues to grow at the high rate of 2.7% a year, while economic growth declines year on 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, can slip backwards. There is, however, space for the citizenry – through CSOs – to play a role in consolidating 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 government and donor agencies is imperative. The forthcoming elections will be the real test of Malawi's democracy.

Appendix

MALAWI DATA PROFILE

	1997	2000	2001
Population growth (annual %)	2.2	2.1	2.0
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 immunisation, measles (% of under 12 months)	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
Net primary enrolment (% relevant age group)	..	100.6	..
Net secondary enrolment (% relevant age group)	..	24.9	..

Environment

Surface area (1,000 km ²)	118.5	118.5	118.5
Forests (1,000 km ²)	..	26,010.0	..
Deforestation (average annual % 1990-2000)	..	2.4	..
Water use (% of total resources)	..	1,668.0	..
CO ₂ emissions (metric tons per capita)	0.1
Access to improved water source (% of total population)	..	57.0	..
Access to improved sanitation (% of urban population)	..	96.0	..

Economy

GNI, Atlas method (current US\$, billion)	2.1	1.7	1.7
GNI per capita, Atlas method (current US\$)	220.0	170.0	160.0
GDP (current US\$, billion)	2.5	1.7	1.7
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

	1997	2000	2001
Imports of goods and services (% of GDP)	35.3	38.5	38.0
Gross capital formation (% of GDP)	12.2	12.5	10.9

Technology and infrastructure

Fixed lines and mobile telephones (per 1,000 people)	4.4	9.1	10.6
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

Trade and finance

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
Net barter terms of trade (1995=100)	111.5	94.0	..
Foreign direct investment, net inflows in reporting country (current US\$, million)	22.1	45.0	58.4
Present value of debt (current US\$, billion)	0.0	1.5	1.5
Total debt service (% of exports of goods and services)	13.6	11.7	7.8
Short-term debt outstanding (current US\$, million)	23.5	78.4	46.2
Aid per capita (current US\$)	35.6	43.3	38.1

Source: *World Development Indicators database, April 2003*

Bibliography

MONOGRAPHS AND ARTICLES

- Africa Watch*. 1990. Where Silence Rules. The Suppression of Dissent in Malawi. New York et al.
- AfroBarometer*
- Chirwa, W/Kanyongolo, E/Patel, N. 2000. The State of Democracy in Malawi. Report for International IDEA-Sweden.
- Englund, H. (ed.). 2002. *A Democracy of Chameleons*. Stockholm.
- Erdmann, G. 2001. How democratic are Malawi's citizens? Results from a 1998 opinion survey, *Focus Africa*, 19, Hamburg.
- Kadzamira, ZD/Mawaya, ADG/Patel, N. 1998. *Profiles and Views of Political Parties in Malawi*, Zomba.
- Meinhardt, H. 2003-1994. Malawi, in: Institut für Afrika-Kunde et. al. (eds.), *Afrika Jahrbuch*, Hamburg (different issues).
- Meinhardt, H/Schubert, A. 2003. Evaluation Report of the EU Rule of Law Programme (unpublished, 70 pages).
- Meinhardt, H. 2002. Malawi, in: Baumann, H et al (eds.) *Die Verfassungen der anglophonen Staaten des subsaharischen Afrikas*, Berlin, pp. 283-294.
- Meinhardt, H. 2001. *Externe Akteure und Demokratisierung in Afrika*, Hamburg.
- Meinhardt, H. 2001a. How it began: External actors in the early phase of the democratic transition in Malawi, in: *Verfassung und Recht in Übersee*, 34(2), pp. 220-240.
- Meinhardt, H. 2001. *Verwaltungspapier Malawi*, Bad Honnef.
- Meinhardt, H. 1999. Malawi, in: Nohlen, D et al (eds.) *Elections in Africa*, Oxford, pp. 549-566.
- Meinhardt, H. 1997. *Politische Transition und Demokratisierung in Malawi*, Hamburg.
- Meinhardt H. 1993. *Die Rolle des Parlaments im autoritären Malawi*, Hamburg.
- Muluzi, B. 2002. *Mau Anga. The Voice of a Democrat*, Skotaville.
- Ott, M/Patel, N. 2000. *Malawi's Second Democratic Elections. Process, Problems, and Prospects*, Blantyre.

- Osei-Hwedie, B. 1998. The role of ethnicity in multi-party politics in Malawi and Zambia, *Journal of Contemporary African Studies*, 16(2), pp. 227-247.
- Patel, N. *Country Profile Malawi*, Blantyre.
- Phiri, K/Ross, K (eds.). 1998. *Democratisation in Malawi*. A Stocktaking, Blantyre.
- Poeschke, R/Chirwa, W. 1998. *The Challenge of Democracy in Malawi: Socio-Anthropological Conditions*, Lilongwe and Bonn.
- VonDoepp, P. 1998. The kingdom and beyond Zasintha: Churches and political life in Malawi's post-authoritarian era. In: Phiri, K/Ross, K (eds.) *Democratisation in Malawi: A Stocktaking*, Blantyre, pp. 102-126.

DOCUMENTS AND OTHER SOURCES

- Department of Local Government and District Administration. 2002. Malawi Local Authorities 2001/2002 Revised and 2002/2003 Budget Estimates, Lilongwe.
- International Bar Association. 2002. Report of a Mission to Malawi by the International Bar Association, London.
- Malawi Electoral Commission. 2001. Local Government Elections Report 2000, Blantyre.
- Malawi Government. 2002. The Constitution of the Republic of Malawi, Zomba.
- Malawi Government. 2002a. Decentralisation Process in Malawi: Progress report beyond the August 2001 Donor Round Table Conference – up to August 2002, Lilongwe.
- Malawi Government. 2000. Detailed Tables for a Poverty Profile of Malawi, 1998, Zomba.
- Malawi Government. 1995. Decentralisation in Malawi: Local Governance and Development, Lilongwe.
- Malawi Human Rights Commission. 2003. Human Rights Situational Analysis Report for the Years 2001 and 2002, Lilongwe.
- National Statistical Office. 2003. Quarterly Statistical Bulletin, March 2003, Zomba.
- National Statistical Office. 2001. Statistical Yearbook 2001, Zomba.
- Republic of Malawi. 2001. Review of the Decentralisation Process in Malawi, Lilongwe.
- Republic of Malawi. 1998. Local Government Act, 1998, Zomba.