

EISA gratefully acknowledges the generous financial support for this project from the Danish International Development Agency (DANIDA) and Swedish International Development Cooperation Agency (SIDA)



CONSOLIDATING DEMOCRATIC GOVERNANCE IN SOUTHERN AFRICA: MALAWI



NANDINI PATEL
Richard Tambulasi
Bright Molande
Andrew Mpesi



ISBN 978-1-920095-69-7



EISA RESEARCH REPORT No 33

CONSOLIDATING DEMOCRATIC GOVERNANCE
IN SOUTHERN AFRICA:
MALAWI

CONSOLIDATING DEMOCRATIC
GOVERNANCE IN SOUTHERN AFRICA:
MALAWI

NANDINI PATEL
Richard Tambulasi
Bright Molande
Andrew Mpesi



2007

Published by EISA
14 Park Rd, Richmond
Johannesburg
South Africa

P O Box 740
Auckland Park
2006
South Africa
Tel: 27 11 482 5495
Fax: 27 11 482 6163
Email: eisa@eisa.org.za
www.eisa.org.za

ISBN: 978-1-920095-69 -7

© EISA

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of EISA.

First published 2007

EISA is a non-partisan organisation which seeks to promote democratic principles, free and fair elections, a strong civil society and good governance at all levels of Southern African society.



*Cover photograph: Yoruba Beaded Sashes
Reproduced with the kind permission of Hamill Gallery of African Art,
Boston, Ma USA*

ACKNOWLEDGEMENTS

We thank EISA for giving us the opportunity to undertake this important exercise at such a critical juncture in Malawi's democratic evolution. Thanks go to all the respondents for taking the time to answer our detailed questionnaire and for showing such patience and diligence in the process. We are also grateful to Professor Susan Booysen for her valuable comments and input which have certainly enriched the document.

ABOUT THE AUTHORS

Bright Molande is a lecturer in English at Chancellor College. He has been a regular contributor to a Malawi daily newspaper on issues of governance.

Andrew Mpesi served as a research assistant for three years on the Norwegian Council of Universities Programme for Development Research and Education (NUFU) project, which researched the institutional context of the 2004 elections in Malawi. Mpesi has been involved in a number of other research activities dealing with a wide range of governance issues such as corruption and the impact of HIV / Aids on elections.

Dr Nandini Patel is a political scientist with 20 years' teaching experience in India and in Malawi. She is the co-founder and past coordinator of the Conflict Resolution Centre at Chancellor College, University of Malawi. She is also chairperson of the Institute for Policy Interaction, a non-governmental organisation dealing with governance and democracy. Patel has published a number of articles, reports and books on democratisation, with specific focus on political parties, elections and parliament in Malawi. She has observed elections in the SADC region and has written electoral updates for EISA.

Richard Tambulasi is a lecturer and head of the Political and Administrative Studies department at the University of Malawi. His areas of research include organisational change, management accounting, public management reforms, corruption, politics, sustainable development and local government. Tambulasi has published many articles in academic journals and books in his areas of specialisation.

PREFACE

This research report is the culmination of a study undertaken by EISA focusing on the state of democratic governance in the Southern African region. The programme, implemented under the generic theme 'Consolidating Democratic Governance in the SADC Region', has evolved over a four-year period spanning 2003-2006. The research aims to investigate the state of democracy and governance in the Southern African Development Community (SADC) region, posing a key question as to whether or not the region has undergone democratic transition and, if so, posing a related question as to whether or not the region is firmly set on the road to democratic consolidation. The four key variables for the assessment of the state of democratic governance in this study are: representation and accountability; citizen participation; local governance; and economic management and corporate governance.

Beyond just investigating the state of transitions and the institutionalisation of democratic governance, the principal goal of this programme is to evaluate the progress that is being made in the area of democratic governance in the SADC region, to identify problems encountered by various countries and to suggest appropriate policy options for enhancing democratic governance. The specific objectives of the programme are to:

- strengthen mechanisms for data collection, providing a reliable situational analysis of the state of governance in the SADC region;
- formulate generalisable trends of democratisation in the SADC region on the basis of informed perceptions of key opinion-makers in the countries concerned;
- develop relevant and appropriate research methodologies in the governance field that would not only be useful to EISA but, indeed, to other relevant research and policy advocacy institutions in the SADC region and beyond; and
- provide up-to-date information on comparative analyses of the governance arena in the SADC region in respect of representation and accountability; citizen participation; local governance; and economic management and corporate governance.

The critical entry point of this regional research enterprise is recognition that the entire African continent, and the SADC region in particular, has made tremendous strides towards multiparty democratic governance. It is now widely accepted that the SADC region has undergone a democratic transition away from authoritarian rule of the past – marked in the main by one-person rule, one-party rule and even military juntas of the 1960s-1980s – towards embracing and institutionalising some form of democratic governance. To be sure, although the SADC region has evidently made commendable progress in this regard, the region still faces a plethora of democratic deficits that need serious attention if democratic consolidation is to occur and endure.

This research programme therefore addresses the double-edged governance dilemma, namely: challenges facing the SADC member states towards consolidating democratic governance and improving the quality of democracy on one hand; and on the other hand, the danger of complacency following recent positive political developments in the region, which could lead to new forms of authoritarianism, or in fact a reversal to old forms of authoritarianism. Thus, a situational analysis of the state and quality of democracy in each SADC member state is a useful barometer to gather scientific evidence and make an informed judgement as to whether or not democratic governance is consolidating, or whether, behind the facade of democratic rhetoric, there are possibilities for reversals or a relapse into new forms of authoritarian rule.

The study is predicated upon thematic areas organised into four broad clusters as follows:

Cluster I: Representation and accountability

- The executive branch
- The legislative branch
- The judiciary
- The public service
- The security establishment
- Parastatals (public enterprises)
- Local government and decentralisation

- Traditional institutions of governance
- Gender equality in public institutions
- Leadership and governance
- Political parties
- Autonomous public institutions (such as the human rights commission, the public protector or ombudsman, the independent media commission or authority, etc.)

Cluster II: Citizen participation

- Civil society organisations
- NGO legislation
- Human rights culture (social and economic rights and political rights)
- Political participation
- Voting behaviour
- Political culture
- Political representation
- Elections
- Election administration
- Electoral system
- Election management body
- Gender and political participation

Cluster III: Local governance

- Nature of decentralisation
- History of local government
- Relations between central and local government authorities
- Local governance legislation
- Local governance institutions
- Local government elections
- Local government capacity (finance, human resource, infrastructure)
- Gender issues in local governance

Cluster IV: Economic management and corporate governance

- Development strategy
- Economic policy (macroeconomic framework)
- Social policy (social welfare strategies)
- Poverty reduction strategies
- Corruption and anti-corruption strategies
- HIV / Aids epidemic
- Budgeting
- External resource flows
- Public-private linkages
- Gender aspects of resource distribution

This first phase of the programme covered the following countries: Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

On behalf of EISA, I would like to extend our profound gratitude to the Swedish International Development Cooperation Agency (SIDA) in Harare, Zimbabwe as well as to the Embassy of Denmark in Pretoria, South Africa for their generous financial support, without which this programme would not have been successful. I am hugely indebted to Professor Susan Booysen of the University of the Witwatersrand, South Africa for reviewing all the manuscripts and providing useful feedback for improvement of the research reports.

We extend our utmost gratitude to the EISA research associates who worked tirelessly and with a deep sense of dedication and unflinching commitment. The country team leaders include Dr Zibani Maundeni (University of Botswana), Dr Tumelo Tsikoane (National University of Lesotho), Dr Nandini Patel (University of Malawi), Amedee Darga (Stra-Consult, Mauritius), Marcelo Mosse (Centre for Public Integrity, Mozambique), Phaniel Kaapama (University of Namibia), Bertha Chiroro (EISA, South Africa), Professor Daudi Mukangara (University of Dar es Salaam), Dr Patricia Jourbert (University of Swaziland), Professor Jotham Momba (University of Zambia) and Professor Llyod Sachikonye (University of Zimbabwe).

Thanks also go to EISA executive director Denis Kadima for his guidance throughout the programme implementation, as well as to Robyn Smith (field offices and programme support manager) for her splendid work in coordinating some of the programme activities, especially the mid-term review. In addition, I am most grateful for the work undertaken by my colleagues in the EISA Research Department who contributed enormously to the success of this programme: Patrick Masemola (research intern), Nkgakong Mokonyane (programme assistant), Sydney Letsholo (research assistant), Tebogo Sambo (library clerk), Beth Strachan (librarian), Dr Jackie Kalley (senior librarian), Victor Shale (researcher), Grant Masterson (researcher) and Bertha Chiroro (researcher). I would also like to thank Tim Hughes for the mutually beneficial collaboration between EISA and the South African Institute of International Affairs during programme implementation.

This series of research reports is dedicated to three colleagues who passed away during the course of this programme, namely Dr Joshua Mzizi of the University of Swaziland, Professor Alfred Chanda of the University of Zambia and Nixon Khembo of the University of Malawi. These researchers played an important role in the evolution of this programme at various stages of its implementation – may their souls rest in peace.

Dr Khabele Matlosa
Regional Programme Coordinator and Series Editor
March 2007

CONTENTS

List of acronyms	xv
Executive summary	xvii
1. INTRODUCTION AND BACKGROUND	1
Country context	2
Social composition	2
Economy	3
Political developments	4
One-party rule	5
Disintegration of the authoritarian regime and transition to democracy	7
Conclusion	9
2. METHODOLOGY	11
The research	11
Strengths and limitations of the research	11
3. LITERATURE REVIEW	13
4. REPRESENTATION AND ACCOUNTABILITY	18
Background to the political system	18
The executive	22
The legislature	30
The judiciary	41
Conclusion	45
5. CITIZEN PARTICIPATION	46
Scope and context of citizen participation	46
The state and civil society	51
The media	54
Public trust in democracy	57
Gender participation	57
Conclusion	59
6. LOCAL GOVERNANCE	61
Contemporary history of local governance	61
Legislative and institutional framework for local government	62
Major needs of local authorities in Malawi	67
Position and role of traditional leadership institutions	69
Representation, accountability and citizen participation in local governance	72
Conclusion	78

7.	ECONOMIC MANAGEMENT AND CORPORATE GOVERNANCE	79
	Theoretical and historical context	79
	External resource flows: Impact on economic policy and development	86
	Trade and aid	87
	Revenue mobilisation and taxation, budgeting and procurement procedure	88
	The public and private sector	90
	Forces behind economic policy formulation	92
	Public participation in economic governance	93
	Accountability in economic governance	95
	Social pressures on the economy	98
	Conclusion	99
8.	CONCLUSIONS AND RECOMMENDATIONS	101
	Notes	106
	References	110
	About EISA	114
	Other research reports in this series	118

LIST OF TABLES AND FIGURES

Table 1:	Some current key indicators in Malawi's economy	3
Table 2:	Cabinet size and composition 1994–2007	27
Table 3:	Seat distribution by party in parliamentary elections, 1994, 1999 and 2004	36
Table 4:	Representation by men and women in the elections 1994-2004	37
Table 5:	What does democracy mean?	58
Table 6:	Results of the 2000 local government elections	72
Table 7:	Representation of women	77
Table 8:	Economic trends – a macroeconomic picture	85
Table 9:	Foreign exchange rate, 2002-2006	85
Table 10:	Perceptions of corruption in Malawi based on the 2005 Afrobarometer survey	95
Figure 1:	Who prefers democracy?	58
Figure 2:	Do MPs and councillors listen to what people say?	66

LIST OF ACRONYMS

ACB	Anti-Corruption Bureau
ADC	Area development committee
AFORD	Alliance for Democracy
CCAP	Church of Central Africa Presbyterian
CCJP	Catholic Commission for Justice and Peace
CHRR	Centre for Human Rights and Rehabilitation
Comesa	Common Market for Eastern and Southern Africa
Congoma	Council for Non-Governmental Organisations in Malawi
CONU	Congress for National Unity
CSO	Civil society organisation
DAC	Development Assistance Committee
DEC	District executive committee
DPP	Democratic Progressive Party
EU	European Union
FDC	Forum for Defence of the Constitution
FPTP	First-past-the-post
GDP	Gross domestic profit
HIPC	Heavily Indebted Poor Country
HRCC	Human Rights Consultative Committee
IDEA	International Institute for Democracy and Electoral Assistance
IMF	International Monetary Fund
Macra	Malawi Communication Regulatory Authority
MAM	Muslim Association of Malawi
MCCCI	Malawi Confederation of Chambers of Commerce and Industry
MCP	Malawi Congress Party
MDP	Malawi Democratic Party
MEC	Malawi Electoral Commission
MEJN	Malawi Economic Justice Network
MGODE	Movement for Genuine Democracy
MP	Member of parliament
MRA	Malawi Revenue Authority
NCC	National Constitutional Conference
NDA	National Democratic Alliance
NGO	Non-governmental organisation

NLGFC	National Local Government Finance Committee
NUFU	Norwegian Council of Universities Programme for Development Research and Education
ODA	Overseas development assistance
ODPP	Office of Director of Public Procurement
PAC	Public Affairs Committee
Petra	People's Transformation Party
PPM	People's Progressive Movement
RP	Republican Party
SADC	Southern African Development Community
SADC PF	SADC Parliamentary Forum
SIDA	Swedish International Development Cooperation Agency
UDF	United Democratic Front
UNECA	United Nations Economic Commission for Africa
US	United States
VDC	Village development committee

EXECUTIVE SUMMARY

After more than a decade of change, transition, setbacks and some modest achievements, democracy in the Southern African Development Community (SADC) region offers many lessons as we move towards its consolidation. It is not only worthwhile but imperative to do a comprehensive analysis at this point in our political evolution. Various international institutions such as the Institute for Democratic and Electoral Assistance (IDEA) and the United Nations Economic Commission for Africa (UNECA) are undertaking projects to measure and assess democratic progress and consolidation, to discern the challenges confronting them and to take the necessary corrective measures and actions. This EISA study is one of the initiatives being undertaken by academics in SADC countries to assess critically the state of democratisation in the region.

Chapter 1 of the report sets out the context of Malawi in terms of its social composition, economy and the background to political developments leading up to the country's transition to democracy. Chapter 2 presents the methodology of this study, which comprises an expert opinion survey and desk research. A literature review follows in Chapter 3.

Chapter 4 deals with the evolution of the constitution and constitutionalism, and the principle of separation of powers between the three branches of government, their performance and the challenges they face. The observation here is that the democratic revival of the 1990s which brought democracy to the erstwhile authoritarian or dictatorship regimes also brought in the presidential, as opposed to the parliamentary, system of government as the preferred form. The rationale behind this is that democracy is guarded under such a system by limiting the presidential term and by the principle of separation of powers entrenched by the mechanism of checks and balances.

In the light of developments in the past decade, Chapter 4 also examines the extent to which the rule of law actually works in practice, and to what extent the separation of powers between the three arms of government is

being upheld in Malawi. Some of the major concerns and challenges discussed in this regard are the following:

- *Executive accountability.* The president enjoys total powers over the ministers, who can be hired and fired at his own will. This makes the ministers accountable to the president and to no one else. Although parliament can obtain accountability of ministers regarding the performance of their respective ministries, ministers cannot be removed by parliament for non-performance or any irregularity. Parliament in Malawi does not play a role in the appointment of ministers and there is also no mechanism for the collective responsibility of the cabinet.
- *Members of parliament (MPs) double as ministers.* In Malawi cabinet ministers are generally recruited from the ranks of legislators, although this is not an absolute requirement. Non-elected technocrats can serve as ministers. Since 1994 the practice has been to have most members of the cabinet from the national assembly. This doubling by ministers as MPs has been a debatable issue and it is generally believed to be an inappropriate practice.
- *Floor-crossing by MPs.* Floor-crossing has been contentious and MPs' justifications for doing so have often been debated and criticised. In such cases the speaker has invoked the controversial section 65 of the constitution to penalise defectors and to call for by-elections. The original section 65 authorised the speaker to declare a seat vacant if a sitting MP crossed the floor or voluntarily left his or her original party. The Mutharika government is keen to have the section repealed from the constitution because Mutharika's new-found party has only six legitimate members in the National Assembly plus more than 50 MPs whose support is claimed by Mutharika and his party but who have been poached from other parties. These MPs are liable to lose their seats by the application of section 65. Hence this government has a partisan political interest in repealing section 65.
- *Constraints faced by the legislature.* One of the more important functions of the legislature is executive oversight, and this task needs robust committees. However, the parliamentary committees in Malawi face several challenges and constraints, the main one being budgetary. A legislature strapped of funds can ill afford an adequate financial

basis for committee work and parliamentary facilities, while support functions are often inadequate. While the clerk and the parliamentary Development and Coordination Committee prepare the parliamentary budget every year, this is invariably cut by the executive. As a result, the ability of the legislature to perform its functions is severely undermined.

- *Independence of the judiciary.* The judiciary in Malawi has been largely independent and impartial, and in most cases has stood as the custodian of the constitution. However, there have been attempts to tamper with the independence of the judiciary. For instance, there was an attempt to impeach three judges for alleged misconduct and incompetence. This move was, however, successfully thwarted by internal and international pressure.

Chapter 5 analyses citizen participation through civil society organisations (CSOs) and the media. The transition to democracy created the space for civil society bodies to play a role in issues of governance. This new-found opportunity was grabbed by the civil society in Malawi, where many organisations emerged with human rights and democracy as their main agendas. However, even after a decade of experimenting with democracy the government and civil society have not yet established a partnership in the process of governance. The relationship between CSOs and government, especially in the area of democracy and good governance, has been tenuous and conflictual. CSOs often feel marginalised and sidelined in these processes. Government has also at times accused CSOs of interfering in matters of the state and of being partisan. In the wider sector, government perceives CSOs as lacking transparency, accountability and focus and as serving the interests of their donors. In all it can be said that the role of CSOs has been reactive rather than proactive and hence there is a great need to build a regular, healthy interaction between the two. Chapter 5 also examines the challenges CSOs face in performing their role effectively.

Chapter 6 discusses another dimension of citizen participation. This is participation through the institution of local government. We find in Malawi that the legal framework for local government is well established yet in practice it is far from satisfactory. Local government elections are

not held regularly and the resource allocation for and management of these elections are appalling. This only serves to widen the gap between the government and the people. On the issue of gender, the general feeling is that women do not participate effectively in local government activities and politics is still male dominated.

Chapter 7 deals with issues of economic governance. Malawi ranks among the 10 poorest countries in the world. Corruption is rife and is a major cause of poverty and economic backwardness. The Muluzi government from 1994 to 1999 was branded for its fiscal indiscipline and financial mismanagement. Its successor, the Mutharika regime, has managed to correct some of these wrongs. However, governmental accountability for economic setbacks is still minimal. Chapter 7 also explores issues of economic aid, debt and privatisation.

Chapter 8 outlines a number of recommendations. Some of these are as follows:

- The government must adhere strictly to the constitution.
- A separate constitutional court must be established.
- Separation of powers should correspond with a separation of personnel.
- The bloating of the cabinet should be discouraged.
- Inducing MPs into the executive should be discouraged.
- The appointment of ministers should be based on professional criteria.
- There should be a mechanism for ensuring collective accountability of the cabinet to the nation in general and the legislature in particular.
- There should be effective mechanisms for ensuring that necessary checks and balances can be carried out.
- Effective, adequate and affordable lower courts are needed.
- The traditional courts as enshrined in the constitution should be revived.
- The parliamentary reform programme that is under way should be implemented with diligence.

-
- Local government elections should be held periodically, diligently and efficiently.
 - A national debate on the concept of power is needed, targeting particularly the political elite.
 - Governance and democracy non-governmental organisations should form a network and send out unified and clear messages to the government.
 - The government should accelerate the implementation of its plans to establish large-scale irrigation in agriculture in order to stabilise this mainstay of the economy.
 - Wide consultations and dissemination of information are needed on trade agreements due to be signed.

INTRODUCTION AND BACKGROUND

After more than a decade of transition to democratic governance, measures are under way to assess how Southern African Development Community (SADC) countries are faring in this regard. It has become imperative to look beyond elections and to examine closely what goes on between elections. Various international agencies such as the United Nations Economic Commission for Africa (UNECA) and the International Institute for Democracy and Electoral Assistance (IDEA) have developed democracy assessment tools which are being carried out and compared from time to time.

This EISA study on the realities and challenges of governance in the SADC region focuses on four key thematic areas encompassing political and economic governance, namely:

- *Representation and accountability.* The focus here is on the three arms of government (the executive, the legislature and the judiciary), how they perform their roles, the challenges they face, the nature of the relationship between them, and how accountable they are to one another and to the citizens at large. The objective is to assess the effectiveness of the mechanisms to ensure government accountability.
- *Citizen participation.* Participation here is from the perspective of the role of civil society organisations (CSOs), non-governmental organisations (NGOs), the faith communities and the media. Political parties and elections as a key vehicle of participation are not included here as these issues have been dealt with intensively in separate EISA studies.
- *Local governance.* This section attempts to assess the extent and level of grassroots influence in the national decision-making process, taking into account the existing legal and institutional framework.
- *Economic management.* Issues of securing the basic necessities of life through social security nets, ensuring distributive justice, combating corruption and the fair utilisation of economic aid are addressed in order to capture elements of economic governance.

COUNTRY CONTEXT

Malawi is situated in the southern part of the East African Rift valley and covers an area of 118,484 km², of which 94,276 km² is land area and the remaining area comprises mostly Lake Malawi. Malawi is landlocked and is bordered by Mozambique to the south and east, Zambia to the west and Tanzania to the north. Malawi has a population of about 12.9 million (July 2005 estimate). The country is divided into Northern, Central and Southern regions, which are further divided into 27 districts: six in the Northern region, nine in the Central region and 12 in the Southern region. Administratively the districts are subdivided into 137 traditional authorities presided over by chiefs. The traditional authorities comprise villages, which are the smallest administrative units, and each unit is presided over by village headmen.¹

Social composition

Malawi's ethnic groups have distinctive languages and inhabit different parts of the country.

- The largest groups, which make up about 70% of the population, speak Chewa and Nyanja and live predominantly in the Central region.
- Some 10% speak Yao and live in the Southern region.
- Some 9.5% speak Tumbuka and live in the Northern region.
- Sena (2.7%) and Lomwe (2.4%) are spoken in the Southern region.
- A small group, the Tonga, represents some 1.7% of the population and lives in part of the Northern region.²
- There are a few thousand 'Europeans', mainly of British origin, including descendants of Scottish missionaries. There are also small numbers of Portuguese and Asians (mainly Indians) who are found mainly in the cities, while persons of mixed ancestry constitute a small minority.

English, an official language, is used in government and business. Chichewa (also an official language) and Chitumbuka are the two most widely spoken languages. Banda, who was a Chewa, chose Chichewa as the main national language, and it is taught in schools along with English.

Nationally, 79.9% of the population is reportedly Christian (the northern half of the country is virtually all Christian), 12.8% is Muslim and about 3.1% follow other religions, which include African traditional beliefs, Hinduism and Bahai. About 4.3% of the population reportedly follows 'no religion' but it is possible that most of these also follow traditional beliefs although, given the informal status of their belief system, this fact has not been recorded.³

Economy

Malawi ranks 166 out of the 175 countries in the world in terms of human development.⁴ The economy is predominantly agricultural, with this sector accounting for 38% of gross domestic product (GDP) and 85% of the country's export revenue. The share of agriculture in GDP has been steadily increasing, from 31% in 1994 to 38% currently, while the share of industry and services has decreased from 21% to 18% over the same period.⁵ The economy depends on substantial inflows of economic assistance from the International Monetary Fund (IMF), the World Bank and individual donor nations. The government faces strong challenges such as stimulating exports, improving education and health facilities, confronting the environmental problems of deforestation and erosion, and dealing with the problem of HIV / Aids. About 65.3% of the population live below the national poverty line; 41.7% live on less than US\$1 a day and 76.1% live on less than US\$2 a day.⁶ Table 1 provides some further key indicators in Malawi's economy.

Table 1: Some current key indicators in Malawi's economy

Total population	12.9 million
Population growth (annual %)	2.2
Life expectancy at birth, total (years)	40.5
Primary school completion rate	60.7
GNI per capita, Atlas method (current US\$)	160
GDP growth (average annual %)	2.6
Inflation rate (current %)	15.5

Source: World Bank, 'World Development Indicators for 2004 and 2005'. Washington: World Bank, 2005.

Malawi's economic reliance on the export of agricultural commodities renders it particularly vulnerable to external shocks such as declining terms of trade and drought. High transport costs, which can comprise over 30% of its total import bill, constitute a serious impediment to economic development and trade. Malawi must import all its fuel products. Malawi's economic development is further hindered by the paucity of skilled labour, the difficulty in obtaining expatriate employment permits, bureaucratic red-tape, corruption and an inadequate and deteriorating road, electricity, water and telecommunications infrastructure. Recent government initiatives targeting improvements in the road infrastructure and private sector participation in railways and telecommunications have, however, begun to render the investment environment more attractive.

Malawi had since 1981 undertaken economic structural adjustment programmes supported by the World Bank, the IMF and other donors. Broad reform objectives in this regard have included the stimulation of private sector activity and participation through the elimination of price controls and industrial licensing, the liberalisation of trade and foreign exchange, the rationalisation of taxes, the privatisation of state-owned enterprises and civil service reform. Malawi has qualified for Heavily Indebted Poor Country (HIPC) debt relief and is in the process of refining a poverty reduction strategy.

POLITICAL DEVELOPMENTS

Malawi's history as a formal entity with defined borders dates back to 4 May 1891 when the area was declared a British Protectorate and named British Central Africa. Later, in 1907, the area became known as Nyasaland. In 1953 Nyasaland was forcibly incorporated into the Central African Federation, also known as the Federation of Rhodesia and Nyasaland.⁷

The first notable challenge to British rule was the Chilembwe Uprising of 1915, when an African pastor, John Chilembwe, led a violent protest against forced labour. The uprising was brutally suppressed leading to the death of its leader and some of his followers. The independence struggle did not gather any real momentum until the 1950s when Nyasaland was forcibly merged with Rhodesia. A group of nationalists including Henry M Chipembere, William Kanyama Chiume and Dunduzu Chisisa gave

momentum to the independence movement. In 1958 Dr Hastings Kamuzu Banda returned to Nyasaland, and owing to his professional and educational eminence was given the leadership of the Nyasaland African Congress.⁸

After almost a decade of struggle against colonialism and the imposed federation, Nyasaland attained self-government in 1963 and full political independence from Britain on 6 July 1964 and came to be called Malawi.

One-party rule

The Nyasaland African Congress – which changed its name to the Malawi Congress Party (MCP) – managed to win all the seats for a new legislative council (except those few reserved for the white minority) in the 1961 election, which was to be the country's only free parliamentary election until 1994. After independence in 1964 Malawi continued using a parliamentary system of government following the British Westminster model. However, the April 1964 elections had to be cancelled after all members of parliament (MPs) were returned unopposed.

As early as 1961 the MCP was being moulded into one of the most powerful political parties in Africa. This paved the way for Banda's autocratic leadership, incorporating, for example, trade union leaders into the MCP hierarchy and thereby effectively blunting their political clout.⁹ In addition, the media was turned into a mouthpiece of the MCP and the government. 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. Banda ruthlessly crushed the 'cabinet crisis', which he perceived as a potential threat to his power.¹⁰

Banda consequently consolidated his authoritarian leadership system in two stages. The first was by adopting a new constitution for Malawi in 1966 through which the parliamentary and multiparty systems were abolished and a one-party state was formally established. In a second stage, Banda was declared president for life of the MCP in 1970 and in 1971 Banda consolidated his power and was named life president of Malawi, exercising the powers of the executive state president, a position that he held until 1994.

The one-party regime was known for its notorious censorship laws. These were carried out by the Censorship Board, which wielded extensive powers and ensured that Malawians did not have access to books, magazines and films featuring, among others, positive assessments of communism or unflattering discussions of the Malawian political economy.¹¹ By 1975 the Censorship Board had banned some 100 periodicals, 16 films and 849 books – including works by such renowned authors as Orwell, Baldwin and Soyinka.¹²

The human rights record of the Banda regime was appalling; the system of repression exacted a heavy price. Under instructions of the political leadership, the Malawi Young Pioneers (a military wing of the MCP), the Malawi Police and the MCP Youth League were empowered to detain anyone indefinitely without trial. Others were tried in traditional courts without legal representation. The government even passed laws allowing certain traditional courts to try all types of criminal cases and to impose the death sentence.¹³ Torture and appalling prison conditions were the order of the day, especially between 1965 and 1977, and detainees were subject to physical and mental cruelty.¹⁴

The Banda regime was committed to portraying the image of Malawi as a puritan, Presbyterian, disciplined and conservative country, and Banda used his position as an elder of the Church of Scotland to reinforce this image. Dissenting voices in the clergy were rudely rebuked by Banda, and the Christian Council of Malawi, the umbrella group of Protestant churches, found its role reduced to that of distributing aid and supporting the government. Muslims, who constituted about 12% of the population, were generally disliked by Banda, who expressed his aversion by, for example, stopping pilgrimages to Mecca and closing a Muslim primary school.¹⁵

The group to suffer the greatest invasion of human rights was the Jehovah's Witnesses, whose members refused to join the MCP and buy party cards. This was interpreted as disrespect for Banda and members were charged with treason. The group was declared illegal at the 1976 MCP annual convention and members became targets of massive repression with thousands imprisoned.¹⁶

Banda used the patronage system as an effective tool for repression. Unlike some other authoritarian leaders who allowed their clients to generate and use their own sources of income (by, for example, 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 the cabinet in order to avoid ministers becoming too powerful. In many cases, popular or overly powerful politicians found themselves victims of intrigues and ended up either dismissed or imprisoned or, in the worst cases, executed or murdered.

In spite of all this, Banda was a trusted friend of the West and due to his strong anti-communist stance was given generous 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. But in the late 1980s and early 1990s the winds of change began to blow across the globe, also engulfing the continent, and change became imminent in South Africa and the rest of the region.

Disintegration of the authoritarian regime and transition to democracy

The early 1990s saw important changes in Malawi's political scenario in response to mounting external and internal pressures. These changes culminated in a series of events in 1992. The first was the Pastoral Letter issued by eight Catholic bishops on 8 March 1992,¹⁷ which clearly and openly criticised the oppressive and exploitative nature of the Banda regime, thereby posing the most serious challenge to the government in its 30 years of existence. This was followed by student and worker demonstrations and strikes, and the return from exile of trade union leader Chakufwa Chihana, who was arrested on arrival in Malawi and became a symbol of the movement for political reform.

Two underground opposition groups were formed in late 1991. These were the United Democratic Front (UDF) and the Alliance for Democracy (AFORD). The UDF comprised mostly former MCP politicians who had fallen into disfavour with Banda years ago. Most of its members came

from the Southern region and were businessmen or entrepreneurs. AFORD was dominated by professionals and intellectuals mostly from the Northern region. AFORD and the UDF came into the open in September and October 1992 respectively and joined the discussion forum as a pressure group for the preparation of the national referendum that was held in 1993.

The Public Affairs Committee, organised by the churches and including the Muslim Association of Malawi, became a powerful engine for political reform. These internal forces were complemented by external forces when the World Bank Consultative Group Meeting (Paris Club) informed the Malawi leadership that further financial assistance would be linked to progress in terms of good governance and human rights.¹⁸

As a result, President Banda announced in October 1992 that a national referendum would be held for the Malawi people to choose whether they wished to continue with one-party government or to opt for a multiparty system.¹⁹ The epoch-making referendum was held on 14 June 1993, when the people of Malawi voted overwhelmingly (67%) for a multiparty system. Banda accepted the results of the referendum and undertook to hold elections within a year. Necessary legislation, such as the Parliamentary and Presidential Elections Act and the Political Parties (Registration and Regulation) Act, was passed to pave way for the May 1994 elections.

A cross-party National Consultative Council and National Executive Committee were appointed to oversee the transition to a multiparty government. Major reforms were taking place in the area of human rights. All political prisoners were released, the international community was invited to inspect the prisons and a general amnesty was declared to allow all political exiles to return to Malawi.²⁰ By the end of 1993 parliament had abolished the life presidency, detention without trial, the Forfeiture Act and the Decency in Dress Act – all integral parts of the former system of repression.

The National Constitutional Conference (NCC), which comprised all seven registered political parties, was constituted to work on drafting a

constitution. A democratic constitution was drafted within a few months and was passed by the one-party parliament just a day before the first multiparty presidential and parliamentary elections took place on 17 May 1994.

The discussion on democracy at the time was very much focused on the institutions of democracy within the liberal democracy paradigm and was driven by an urge to get rid of an authoritarian regime. The democracy debate was thus directed towards securing and safeguarding basic rights and ensuring that authoritarianism could never re-emerge.

Alternative definitions and forms of democracy were not discussed in Malawi, and a liberal democracy with the principle of separation of powers with adequate checks and balances among the three arms of government was thus the essence of the constitution making.

Banda and the MCP, having won about one-third of the votes cast, conceded defeat in the 1994 elections and congratulated Bakili Muluzi and the UDF on winning the election with about 47% of the vote. The third candidate, Chihana of AFORD, scored about 19%. While the UDF won most of its votes in the Southern region, the MCP mobilised support in the Central region and almost the entire votes from the sparsely populated Northern region went to AFORD. The voter turnout of 80% was even higher than in the referendum (67%) and showed that the political parties were able to mobilise their supporters, even in the rural and remote areas, in large numbers.²¹

CONCLUSION

With the introduction of competitive democratic elections, a pluralistic constitution and change of government in May 1994, the formal process of democratisation in Malawi was completed. The Malawian case is interesting in the sense that the party that was associated with the independence struggle and which ruled for decades after attaining independence was defeated at the polls and another party came to power through the ballot. Furthermore, since no party could claim an absolute majority in the National Assembly there was no dominant party system, as there is in other countries in the SADC region.

The processes at work from 1992 to 1994 ensured that democratic institutions were put in place. There was of course much excitement and euphoria and a strong feeling of victory at the time. However, the nation soon realised that it was only the beginning of another battle – namely, sustaining and nurturing its hard-won democracy.

METHODOLOGY

THE RESEARCH

The research approach comprised qualitative methods. The core of the research involved substantial desk work, including consulting books, using pertinent findings from earlier research reports and an analysis of government policy documents. The data is thus drawn from a wide range of sources, both domestic and international, as can be discerned from the list of references used for this study. Data analysis was directed by the four project themes – representation and accountability, citizen participation, local governance and economic governance – in a bid to establish how these areas are accelerating or challenging the consolidation of democracy in Malawi.

An expert opinion survey was conducted in which 25 individuals from a cross-section of Malawian society were interviewed on a range of issues. This group included four senior officials from the civil service, six distinguished civil society personalities, four people from the private sector, two from trade unions, four representatives of political parties and five academics.

The study also draws on data from the political culture survey conducted by the Norwegian-supported NUFU project from 2003 to 2006, which was a research collaboration between the University of Malawi and Norway. Findings from Afrobarometer surveys have also been used to augment points made in the report.

STRENGTHS AND LIMITATIONS OF THE RESEARCH

This research, like most other assessments of democracy carried out today, is based on indicators and patterns that are rigidly cast in the prototype of liberal democracy. This narrows the scope and form of democracy to one particular model and this study should therefore be considered within this scope and context.

The study comes at a time when much attention has been paid to the assessment and evaluation of the 10-year democratic dispensation in

Malawi which started in 1993-94. Since a number of organisations were holding workshops and conferences on this theme, the findings and proceedings of these events provided valuable input for this project and helped us to identify areas that required more attention.

The research team comprised members with backgrounds in social science and the humanities, and this brought in diverse perspectives when it came to analysing the social aspects of democracy. A major setback to this project was the sad and untimely death of the team leader, Nixon Khembo, who started the project on a sound footing and who completed much of the research. Although the data-collection aspect of the project, especially the key informant interviews component, suffered from the loss of Khembo, the team carried on and completed the work he had begun.

LITERATURE REVIEW

A significant work when it comes to our study is Bujra and Adejumobi's *Breaking Barriers: Democracy, Civil Society and Good Governance in Africa*, which deals with the fundamental issue of democracy and the need to differentiate liberal democracy and social democracy.²² While it states that democracy is essential to good governance, it more importantly stresses the fact that the form of democracy practised in different social contexts – liberal or social – is equally fundamental. Unfortunately, the hegemony of the liberal capitalist ideology in the context of globalisation and post-Cold War politics has thrust liberal democracy to the fore of the political agenda in the world. However, for democracies that have emerged as a product of the interplay of several factors and without much debate on the form of democracy adopted, it is necessary to reflect on this and to adapt democracy to suit the specific country context and conditions, particularly from the perspective of delivering public goods more equitably and fairly.

Bujra and Adejumobi²³ argue that issues of democracy and good governance have emerged as the second-generation reforms supported by developmental partners in Africa, following on from the structural adjustment programmes which were the first-generation reforms. It was contended that macroeconomic reforms were not working in an unstable and unfavourable environment and that international development partners have thus placed particular focus on governance issues and have developed indicators.

UNECA, for instance, has developed a good governance monitoring project which centres on three issues – political representativeness, institutional effectiveness and economic management – using the following set of indicators:

Political representativeness

- structure
- depth of representation
- equity in representation

- rights of opposition
- civil and political rights

Institutional effectiveness

- rule of law
- independence of judiciary
- efficacy of law enforcement agencies
- oversight mechanisms for the main branches of government
- levels of decentralisation
- strength and involvement of civil society in the policy process

Economic management

- role of the private sector
- fiscal discipline
- efficient and equitable revenue system
- transparent and credible procurement system
- budgetary disaggregation
- accountability in resource management

The World Bank's emphasis on democracy being essential for good governance influenced the donor community to develop political reform programmes, and this subsequently became a condition for World Bank and IMF loans as well as other bilateral aid. The purpose of this reform programme was to introduce liberal democracy in African countries. The assumption was that liberal democratic institutions were essential not only for economic development but also for the emergence of a democratic society and for the development of good governance. But how are African democracies performing after more than a decade of these reforms?

Bujra and Adejumobi raise a voice of caution in our attempt to assess democratic governance through indicators. They point out that it is imperative to bear in mind the limitations, such as teleology, referring to the unilinear process of political development being created by the modernisation theory. Virtually all these indicators are prototypes of liberal democracy. The second limitation is that of quantification – trying to measure a process such as governance that is highly subjective and

qualitative. The third limitation is that of problems of data collection in Africa, which does not present a well-defined social milieu from which reliable data can be gathered.

The above concerns hold great relevance in the context of Malawi and also to a considerable extent in the regional context. The process of governance is far too complex and involves an interplay of diverse actors and forces, with the result that the utility of the approach of adopting a set of indicators can be limited and not multidimensional.

Another source from which this report draws some valuable guidelines is the 2005 article by Ambassador Tesfaye Habisso of Uganda on *The Challenges of Developing Democracy in Africa*. He poses such pertinent questions as 'When does a democratising state become a mature democracy?' and 'When can its democracy be termed consolidated?' Consolidation is essentially a more important process than transition. Habisso makes a very important observation in that 'a government may be able to transition to democracy, but if it does not consolidate its democracy it may relapse into an authoritarian or other non-democratic form of government'.²⁴ He identifies factors that are key to consolidating democracy in addition to holding elections. These include:

- conditions for the development of a free and lively civil society;
- a relatively autonomous political society;
- throughout the territory of the state all major political actors, especially the government and the executive, must be effectively subjected to a rule of law that protects individual freedoms and associational life; and
- an institutionalised economic society.

These challenges are real in Malawi and also in most of its neighbouring countries: while democracy has created space for a free and lively civil society, that space has not been fully and justly utilised due to a lack of capacity and a long-term vision.

Habisso's essay emphasises the point that examining electoral democracy in Africa must also include elements such as:

- the failure so far of African elites to remould and redesign education in Africa so as to factor in African traditions, cultures and languages, and to spread literacy and reading material to the masses of African people;
- the failure of African elites to formulate African-centred solutions for the severe crises of mass unemployment and illiteracy; and
- the failure of African elites to show a genuine commitment to democracy and to embrace its universal values as well as its rules, procedures and ethics.

All this does not mean that Africa is not ready for democracy. On the contrary, Habisso stresses the urgent need to confront the daunting challenges along the road to democracy that African elites need to face rather than to perpetuate one-party rule in the name of democracy.

Another important aspect in any discussion on governance and democracy in Africa is the 'state' itself. This is because successful democratisation requires a basic level of 'stateness'. In the words of Linz and Stepan,²⁵ no modern polity can become democratically consolidated unless it is first a state that has at least:

- political stability;
- governmental effectiveness;
- regulatory quality;
- rule of law; and
- control of corruption.

Debate about the weakness of the state has been ongoing. In the book *African Perspectives on Governance* edited by Goran Hyden, Dele Olowu and Hastings W O Ogendo,²⁶ very pertinent observations have been made on 'state', 'regime', 'policy' and 'governance'. The book points to the limitations of Joel Migdal's²⁷ observation that there is a direct and positive correlation between a weak state and a strong society in that the weaker the former, the stronger the latter. Hyden and his co-authors find this too simplistic and insufficient for understanding the African context in that in Africa a weak state does not necessarily imply a strong society, and the fact that when a state lacks capacity the civil society will also lack capacity.

The book highlights the fact that civil society itself is undeveloped and weak and thus lacks the capability to implement policy. Most groups, particularly the vulnerable ones, find themselves in conditions where development is not promoted because of an inadequate state performance in the past and a current weakness of the non-governmental organisations (NGOs). What has been further pointed out is that the state is weak not only in terms of capacity but also in terms of legitimacy. A major reason why so many political systems in Africa have experienced turbulence is that the crisis of the state has been accompanied by an equivalent crisis in the legitimacy of the regime.

The above observation on ‘weak state and strong society’ points to the fact the direct correlation between ‘weak state and strong society’ is not so direct in all societies. There are cases where both are weak and where one is therefore unable to draw any firm conclusion. An example is the African scenario, where both the state and the civil society are ridden with myriad problems.

CONCLUSION

The anxiety over the fragility of democracy and the fears of reversal to authoritarianism is real in a number of democracies in the region – including Malawi. Thus, while on one hand there have been some concrete achievements, such as a good written constitution and periodic elections, democratisation cannot be taken for granted. There can be serious setbacks which can derail the process.

This report analyses the functioning of a number of institutional building blocks for democracy in Malawi and assesses how stable and functional they are. The report does not delve into issues pertaining to ‘stateness’ and ‘nationhood’ – although these are important – but focuses mainly on governing institutions and civil society. How far civil society is able to contribute to the effectiveness of the state is a very valid question for most African states. In spite of having elected governments there is a legitimacy crisis in many countries, which leaves a wide gap between the government and the people.

REPRESENTATION AND ACCOUNTABILITY

The democratic revival of the 1990s that brought democracy to former authoritarian or dictatorship regimes also introduced a presidential system of government rather than a parliamentary system. The rationale behind this has been the limitation of a president's term of office and the principles of a separation of powers entrenched by the mechanism of checks and balances as a stronger way to guard democracy.

In the light of developments in the past decade, this chapter examines the extent to which the rule of law and the principle of the separation of powers actually work in practice in Malawi in relation to the three arms of government.

BACKGROUND TO THE POLITICAL SYSTEM

The constitutional framework

Malawi's 1994 constitution ranks among the liberal constitutions in the world. Basic rights and freedoms are guaranteed in Chapter IV, sections 15-46. Chapter VII provides for periodic competitive elections, while chapters VI, VIII and IX deal with the composition and powers of the executive, legislative and judicial branches of government, ensuring the separation of powers between them. Mechanisms for checks and balances will be discussed in the following sections.

The constitution establishes a presidential form of government with the president as the chief executive with a limited term of office. However, it can be argued that the constitution vests extensive powers in the president, who is head of state, head of government and commander-in-chief of the armed forces.

Malawi has a unitary system of government with a central government at the top and local government at the grassroots – although the local government system is not yet entrenched. For the purposes of administration, the country is demarcated into three regions – North, South and Central – but these do not have any legislative or judicial powers.

Challenges to constitutional governance

Constitutionalism effectively means adherence to both the letter and the spirit of the constitution. There is no constitutionalism in a state if the actual behaviour of those in governmental structures, other state agencies and the rest of the actors in the political arena go against the underlying principles of the constitution. In other words, the government should not regard itself as being above the law but in fact should be the first to abide by the rule of law.

In the case of Malawi – as well as a few other countries, such as Zambia – constitutions have been amended, or serious attempts have been made to amend them, in order to satisfy the personal short-term interests of those wielding governmental powers. Lack of constitutionalism may be due to a number of reasons, including:

- a genuine rejection of the principles and rules of a constitution that has been imposed rather than having been evolved by the state itself;
- political expediency; and
- ignorance of the relevant constitutional rules and principles.

Whatever the reason, a lack of constitutionalism eventually erodes the authority of a formal constitution.

Since Malawi's constitution came into force in 1994, there have been several glaring instances of unconstitutional state actions, including:

- violations of human rights, such as the right to demonstration and freedom of expression, which came under particular attack in, for example, 2002-03 when there was an attempt to extend the presidential term;²⁸
- breaches of procedure by the executive in the appointment or dismissal of senior officials, including the appointment as Inspector General of Police of Mar Nangwale, who assumed office before parliament's Public Appointments Committee had approved the appointment, and the dismissal of Army Commander Chimboyo and Director of Public Prosecutions Assani; and

- the amendment of vital sections of the constitution without adequate consultations, such as the repeal of the recall provision contained in section 64 and the amendment dealing with floor-crossing by MPs contained in section 65.

Such amendments may serve the short-term political agendas of political parties or politicians, but they do not serve the public interest.

Measures for upholding and defending the constitution

The years between 2000 and 2004 witnessed several covert and overt attempts by the regime to subvert the constitution. These included the repeal of the section on the senate, the amendment to section 65 dealing with floor-crossing by MPs and the attempt to extend the presidential term of office. These and similar moves prompted civil society to keep a close watch on the government, making it more a watchdog than a partner in the governance process.

In their successful campaign against a third term for former president Bakili Muluzi, civil society, the church and the media confronted the government. In 2005-06 the government was challenged to adhere to the constitutional requirement for local government elections. There is clearly a lack of political will to hold these elections.

The system of government – parliamentary or presidential?

Malawi can be classified as a presidential system, with section 89 of the constitution conferring extensive powers on the incumbent of the office of president. The functions of head of state and government are vested in the same person. Between elections a president can be removed from office only through the application of impeachment procedures, which normally require a two-thirds majority in parliament (section 86). The president is directly elected by the electorate with a tenure limited to a maximum of two consecutive terms. The president is at liberty to appoint and dismiss ministers without interference from the National Assembly.

The Malawi constitution is sometimes described as a hybrid creation, incorporating elements of both presidential and parliamentary types of government.²⁹ It is noteworthy that when the provisional constitution of

May 1994 was reviewed, the dangers of hybrid governmental structures were signalled. It was stated that:

in attempting to craft distinctive mechanisms to strike the proper balance, there are a number of possible pitfalls, including the possibility that power will be diffused too widely [with the effect that] the government will not be able to function, the possibility that too much power will be left in the hands of one person or branch and the possibility that the structures will appear and perhaps be intended to disperse power but that in fact power will remain consolidated in the hands of one person or branch.³⁰

Practices in the past 13 years have proved that these warnings were not unfounded. The erosion of the spirit of the constitution in the conduct of government emerges as one of the main concerns facing Malawi's democracy. Apprehensions about a parliamentary system seem to have been prevalent at the time of the transition to multiparty democracy. It was feared that the leader of the ruling party with access to state resources could easily find ways and means to stay in power forever. By contrast, a presidency for a fixed term of office laid down in the constitution was felt to be a safeguard against dictatorial tendencies. As a result, the principle of the separation of powers with adequate checks and balances seemed appealing and appropriate.

However, one could equally argue that the constitution gives ample scope for executive dominance. For instance, section 94 dealing with the appointment of cabinet ministers confers upon the president the power to appoint and dismiss ministers and deputy ministers and to fill cabinet vacancies without the prior approval of the National Assembly. In the same vein, section 97 of the constitution dealing with ministerial accountability states that all ministers shall be responsible to the president, and not to parliament, for the administration of their departments.

Constitutional bodies

Chapters X, XI, XII and XIII of the constitution provide for four specific institutions that are to function independently of the government. These are the Law Commission, the Office of the Ombudsman, the Human Rights

Commission and the National Compensation Fund. The Ombudsman's office has been one of the most active ones, being approached by a range of institutions and individuals for a host of issues. Sometimes issues that are outside the mandate of the Ombudsman's office have been brought to it, indicating the accessibility of that office. The Human Rights Commission has been releasing periodic reports on human rights issues, has handled cases and, with time, has gained more independence and strength. It was the responsibility of the National Compensation Fund to compensate victims of the atrocities of the previous regime. The fund was established for a period of 10 years and was disbanded after that period. The Law Commission has undertaken technical reviews of the constitution. In March 2006 and again in April 2007 it held national constitutional review conferences. Over the years, the commission has served as a forum for constitutional issues and debates.

THE EXECUTIVE

Composition and structure

Articles 78-102 of the constitution vest executive power in the president, who is at the same time head of state, head of government and commander-in-chief of the defence force. The designation of the president as both head of state and head of government makes this office enormously powerful *vis-à-vis* the entire government and state institutions.

The executive set-up is hierarchical with the president at the apex, followed by the vice-president, who is elected at the same time as the president but who may be from the same or a different political party. Then there is a cabinet comprising ministers appointed by the president. The president is free to choose ministers from anywhere, but the practice has generally been to draw them from the legislature.

The political executive is assisted and supported by the non-political executive headed by two chief secretaries, one for the president and cabinet and one for the public service. There is a whole range of bureaucracy in a hierarchical order ranging from principal secretaries, who are the controlling officers for ministries, to heads of government departments and various grades of civil servants.

Election of the president

The president is elected by a majority of the electorate through direct, universal and equal suffrage. Section 80(6) of the constitution stipulates that persons may be nominated as candidates for the presidency if they are citizens of Malawi and have attained the age of 35 years. However, certain categories of people are constitutionally barred in terms of section 80(7) from selection as presidential candidates. They include:

- those declared in terms of the law as undischarged bankrupts under the law;
- those convicted of a crime involving dishonesty or moral turpitude in the preceding five years;
- those who owe allegiance to a foreign country;
- those who hold public office or are MPs (although they may resign those positions to run);
- those serving in the defence force or the police service; and
- those convicted of violating any law relating to the election of the president or MPs in the seven years preceding the election.

Before running for the office of president, candidates are required to declare the names of their vice-presidential nominees. There is no requirement for the two to stand on a party ticket, and an independent candidate may run for president. Where a candidate chooses to stand on a political party ticket there is no requirement for his or her running mate to belong to the same political party. Election to the offices of president and vice-president is done concurrently with the election for seats in the National Assembly. Although article 38(3) of the constitution stipulates that a president cannot run for more than two consecutive terms, an unsuccessful attempt was made in 2002-03 to extend the president's term of office.

Executive duties, responsibilities, powers and functions

Article 89 of the constitution stipulates that:

1. The president shall be responsible for the observance of the constitution and shall as head of state defend and uphold the constitution as the supreme law of the land.

2. The president shall provide executive leadership in the interest of national unity in accordance with the constitution and the law of the republic.
3. The president shall not hold any other public office and shall not perform remunerative work outside the duties of his or her office and shall fully disclose all of his or her assets and business interests upon election.
4. The president and members of the cabinet shall not use their offices for personal gain or place themselves in a situation where their material interests conflict with the responsibilities and duties of their offices.

In practice, these responsibilities have been compromised in varying degrees. There have been instances where the president has spearheaded the subversion of the constitution by pushing for constitutional amendments (for instance sections 64, 65 and others that have been guided purely by narrow and personal gains). Furthermore, the president as the chief executive has not provided the much needed responsibility and accountability during critical times, including the food crisis in 2002 and again in 2005. The executive has also not performed well in its task of building independence between the three arms of government but has often tried to establish its own dominance and control over the other two arms. This can be seen in the analysis in the subsequent sections of this report.

The powers and functions of the president are outlined in detail in Article 89 of the constitution: 89(1) deals with the promulgation of and assenting to bills duly passed by parliament, while Article 89(3) stipulates that immediately before the consideration of the official budget the president shall each year attend parliament and address parliament on the state of the nation, on the future policies of the government as well as on the policies of the government for the previous year; and that he shall respond to questions.

The state of the nation address by the president has been a regular feature in Malawi and the leader of the opposition in the National Assembly responds to the address. The president's address receives wide media coverage and generates debates and comments from the public.

The president also has a number of quasi-judicial functions. These include pardons for convicted offenders, stays of execution of sentence and reductions or remissions of sentences – all in consultation with an advisory committee on the granting of pardons, with the composition and formation of this committee being determined by an act of parliament.

The executive powers of the president include the power to convene and preside over meetings of the cabinet, to confer honours and to make such appointments as may be necessary in accordance with powers conferred upon him or her by the constitution or any act of parliament. As the head of state, the president has the power: to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers; to negotiate, sign, enter into and accede to international agreements; or to delegate such power to ministers, ambassadors and high commissioners. The powers and functions of the president shall be exercised personally or by a member of the cabinet or by a government official to whom the president has delegated such powers in writing.

The cabinet shall exercise the powers and functions assigned to it by the constitution or by an act of parliament and shall be responsible for advising the president with respect to the policies of the government and with respect to such other matters as may be referred to it by the president. The president enjoys total powers over the ministers, who can be hired and fired at the will of the president. This makes the ministers accountable to the president and to no one else. Although parliament can obtain accountability of ministers regarding the performance of their respective ministries, ministers cannot be removed by parliament for non-performance or irregularity. The Malawi parliament does not play a role in the appointment of ministers and there is also no mechanism to obtain the collective responsibility of the cabinet.

Appointment of ministers

In Malawi, cabinet ministers are generally recruited from the ranks of the legislators, although this is not an absolute requirement as non-elected technocrats can serve as ministers. Since 1994 the practice has been to appoint most members of the cabinet from the National Assembly.

This doubling by ministers as MPs has been a debatable issue and it is generally contended to be an inappropriate practice. The arguments for this position take two forms. First, the practice is objectionable in principle. It negates the notion of separation of powers laid down in the constitution. When ministers are doubling as MPs, a conflict of interest arises. It is not possible to serve the executive and the legislature at the same time. It becomes starkly unacceptable when nearly one-quarter of the MPs are also cabinet members. Second, doubling is unacceptable on pragmatic grounds. It is considered impossible to fulfil duties as both ministers and MPs simultaneously. Ministers are likely to neglect their constituencies because their ministerial duties are so demanding. Ministers should also serve the entire country, not only their constituencies.

There is another school of thought favouring the practice of taking a more pragmatic approach: doubling is acceptable as long as the individuals involved are able to distinguish between their dual roles and keep them separate. Furthermore, it is an advantage for a minister to be an elected MP because this will ensure close contact with the MP's constituency. In a survey conducted in 2003 on MPs' attitudes to some of these issues it was argued by some MPs that ministers would be better placed to access resources for their constituencies than ordinary MPs. By contrast, non-elected ministers would be detached from the grassroots they are expected to serve. Technocrats are accountable to the president only, not to the constituents and as a result they tend not to be respected.

Offering ministerial positions has been used as a tool to lure and thereby weaken the opposition. This has been so since 1994 when the cabinet was reshuffled to accommodate members from coalition parties other than the incumbent party, the UDF. Furthermore, the position of second vice-president was created by a constitutional amendment (Act No 31 of 1994) to accommodate Chakufwa Chihana, the president of AFORD, the UDF's coalition partner. Chihana was also appointed minister for irrigation and water development. The legality of this constitutional amendment was questioned. Some members of civil society threatened to take the matter to court. John Tembo (MCP), Kamlepo Kalua (Malawi Democratic Party – MDP) and the secretary-general of the Law Society of Malawi declared as unconstitutional the creation of the office of second vice-president.

Apprehensions were expressed that this move might be indicative of the conflation of executive and judicial powers and, *ipso facto*, an attempt to return to dictatorship.³¹

The enlarged size of the cabinet at the same time also raised concerns from the parliamentary opposition as well as from the general public and the donor community. The number of cabinet ministers and deputy ministers rose from 22 in May 1994 to 35 (28 ministers and seven deputy ministers) in September 1994. It also became a trend to draw members of the cabinet from the National Assembly, which reinforced the executive dominance over the legislature. The cabinet remained large and peaked in 2003/04 with 46 ministers and deputy ministers (see Table 2). The bloated size of the cabinet not only increased public expenditure by the Office of the President and Cabinet, it also tilted the balance of power in favour of the executive.

Table 2: Cabinet size and composition 1994–2007

Year	Number of ministers	Ministers doubling as MPs	Ministers not elected MPs
1994 (first cabinet)	22	11	11
1994 coalition (cabinet of UDF and AFORD)	35	23	12
1995	33	22	11
1996	33	23	10
1997	37	34	3
1998	30	27	3
1999	30	27	3
2000	33	26	7
2001	37	30	7
2002	40	34	6
2003	46	38	8
2004	30	25	5
2005	33	30	3
2006	38	38	0
2007	42	42	0

Source: *Hansard*, various issues

The civil service

Thousands of public servants keep the machinery of government running by carrying out the day-to-day administrative tasks. Chapter XX of the constitution deals with the civil service in sections 186-194. In addition to the constitution, the civil service is also guided by the Public Service Act (Act No 19 of 1994). Overall, slightly more than 135,000 civil servants work at various levels of the government machinery – from government headquarters at Capitol Hill in Lilongwe to regional, district, area, field and village offices. Civil servants include teachers, police officers, the army, health service personnel, agricultural extension staff, community development assistants and others working in various ministries and government departments. The Civil Service Commission recruits civil servants to fill vacancies.

Civil servants work at various scales in a hierarchy determined by seniority, which determines their salary scale. As the civil servants constitute the permanent component of the executive, they have to serve the government of the day irrespective of their political affiliations. In other words, civil servants are expected to be politically neutral. Members of the civil service are required by the constitution to exercise their functions, powers and duties as ‘impartial servants of the general public’. However, the expert opinion survey indicated that public services are not accessible to those who need them the most.

The civil servants in Malawi have exercised their right to form trade unions and have carried out a number of mass actions. The latest one was in 2005 when thousands of civil servants took to the street as they claimed that the formula devised for their pensions was unacceptable. The civil servants’ trade union is well organised and represents the largest workforce in the country.

The problem of corruption

Public officials, especially MPs, are required in terms of section 213 of the constitution to declare their assets shortly after they take office. The section states that the National Assembly shall specify the grades and positions of officials required to disclose their assets. This provision is not vigorously applied and its implementation mechanisms are also rather unclear.

There is a tendency not to separate public office from personal business and family interests of the office-holders. This is commonly referred to as the 'politics of poverty'. Access to power or public office is seen as a means of escaping poverty and creating economic opportunities for some individuals.

The Anti-Corruption Bureau is responsible for investigating corruption and prosecuting its perpetrators. By January 1998, or less than a year after its launch in March 1997, the Anti-Corruption Bureau had received a total of 3,100 written reports and complaints on corruption.³² None ended up in prosecution and conviction. In the majority of the cases members of the Ministry of Education were accused of bribery or other administrative malpractice in the selection of candidates for secondary school education. Also implicated were traditional leaders or chiefs (who were alleged to be corruptly selling tribal land to the urban elite and politicians), the police service, the departments of Customs and Excise and Immigration, and the ministries of Health, Transport and Communication.

The Malawi government is estimated to lose more than MK22 million a year in corruption. Other cases of alleged fraudulent and administrative malpractice involved government officials, including ministers, falsely claiming housing allowances or expenditure on hotel accommodation and meals when they have official accommodation in town.

A gradual loss of professional ethics has been noted in the civil service in the past 10 years. It has been claimed that 'Banda's civil service' was relatively honest, disciplined, of high status, well-paid, professional and hardworking. Today, the bulk of the bloated civil service is said to be lax, demoralised, underpaid, distracted by private business activities and more easily corrupted.³³ The civil servants, like their political bosses, see the state as a means for self-enrichment and their positions as a means to access state resources.

It is a common perception that corruption is more pervasive now at all levels of the civil service than it was during the one-party regime. This could, however, be because corruption is now more visible as cases are being openly reported and the problem is discussed publicly.

Challenges facing the executive

In spite of its authority and its scope for performing wide-ranging functions, the executive faces numerous challenges, including:

- *A lack of good working relations with parliament.* A hallmark of Malawi's democracy has been that parliament never had a single party with a clear majority. While this is good in the sense of having pluralism and space for opposition parties, it has also provided a theatre for power struggles between the executive and the legislature. The executive has found it difficult to develop a harmonious relationship with the legislature.
- *Inadequate resources and capacity.* The lack of adequate resources has been a great challenge. About 40% of Malawi's budget is donor funded, which explains the country's lack of self-sufficiency or capacity to run its economy. Inadequate capacity applies both to infrastructure and human resources. The high rate of mortality among people of working age due to inadequate access to health services is a major restricting factor. As pointed out earlier, the calibre of the civil service has deteriorated, thereby undermining the country's policy-making capacity.
- *Bad planning.* The food shortage of 2002 which took a high toll of lives is a glaring example of bad planning. In that case, the country sold its food reserves to another country. It further revealed a high level of corruption, with the perpetrators of the corruption having still not been brought to account. The 2004-05 fertiliser subsidy case provided an example of election promises not working out in practice.
- *Corruption.* This problem is entrenched and widespread, with the institutional mechanisms proving inadequate, leaving the perpetrators unpunished and attracting others to follow their example.

THE LEGISLATURE

Composition

Sections 48-74 of the constitution established a strong legislature to match the strong executive so that it could effectively perform its duty to check the executive. It envisaged a bicameral legislature of a National Assembly and a Senate. The framers of the constitution had carefully thought out the

composition and functions of the two chambers as being distinct yet complementary. They stipulated that the National Assembly should be a *directly* elected chamber, whose primary purpose was legislative, with the power to debate and process public bills coming from the government, private bills emanating from individual MPs and interests outside parliament, and bills remitted from the Senate. The National Assembly was also mandated to debate and vote on motions regarding any matter, including indictment and conviction of the president or vice-president by impeachment.

The Senate was conceived as an *indirectly* elected chamber whose primary purpose was to be deliberative, with the power to scrutinise, amend, confirm or remit bills from the National Assembly, to debate any issue on its own, and to vote on motions in respect of any matter, including motions to indict or convict the president or vice-president by impeachment. It was proposed to be a body of 80 members representing: each district and elected by the district councils; a chief from every district being elected by a caucus of chiefs; and 32 senators to be elected by a two-thirds majority of sitting members of the Senate based on nominations from interest groups, including representatives from women's organisations, the disabled, the trade unions and the business, education and farming sectors. Persons elected would have been recognised for their outstanding services to the public or making a major contribution to the social, cultural or technological development of the nation, and representative of the major faith communities in Malawi.

Unfortunately, however, the Senate never came into existence. In 2001, the sections of the constitution dealing with the Senate were repealed by a constitutional amendment, ostensibly on the grounds that a Senate would be too expensive to maintain. There were strong reactions from political parties and CSOs against this move, because the Senate was perceived as enhancing the principle of separation of powers by providing another channel of representation from below.

Since the abolition of the Senate, the Malawi parliament has become unicameral, which means that all debates take place in the National Assembly. The Assembly currently consists of 193 members elected directly

by the registered voters on a first-past-the-post (FPTP) system in single-member constituencies. A person is qualified to stand for election to the National Assembly if he/she is a citizen of Malawi and has reached the age of 21 at the time of nomination. Furthermore, he/she should be able to speak and read English well enough to take an active part in the proceedings of the Assembly, and be a registered voter. A person shall be disqualified from nomination or election as an MP if he/she has been declared to be mentally incompetent or has, within the previous seven years, been convicted of a crime involving dishonesty or moral turpitude, or holds any public office (except a ministerial post or appointment).

The structure and administration of the legislature

The National Assembly determines and controls its internal procedures and arrangements. These are laid down in the standing orders, which determine who sets the agenda, what procedures to follow, how frequently and when to summon the house for sittings, how to organise question sessions, whether or not to allow media coverage and so on. The quorum of the National Assembly is formed by the presence, at the beginning of any sitting, of at least half plus one of the members entitled to vote, including the speaker.

Parliamentarians enjoy certain immunities and privileges. Every MP is privileged from arrest while going to, returning from or in the precincts of parliament. Similarly, MPs are not liable for any other action or proceedings in any court, tribunal or body other than parliament itself in respect of utterances in the Assembly.

Roles and functions

Legislatures generally perform three main functions, namely law-making, representation and oversight. Section 66 of the constitution stipulates that the National Assembly shall be a directly elected chamber whose primary purpose shall be legislative. Subject to the constitution, the Assembly has the power to:

- receive, amend, accept or reject government bills and private bills;
- initiate private members' bills on the motion of any member and to amend, accept or reject private members' bills;

- debate and vote motions in relation to any matter including motions to indict and convict the president or vice-president by impeachment;
- exercise such other functions and powers as are conferred on it by the constitution; and
- take all actions incidental to and necessary for the proper exercise of its functions.

In order for the legislature to perform its oversight role effectively it is imperative that the parliamentary committees function effectively. However, only seven key committees, including Public Accounts, Legal Affairs and Public Appointments, are at present functional. Committee work depends on donor funding, which is not the best situation to be in if democracy has to be vibrant. Another instrument for seeking executive accountability is the right of parliament to question ministers. This right has not been fully exploited by MPs in Malawi. Members of the executive do not feel bound to answer to parliament as they are appointed by, and can be only removed by, the president.

MPs find their representational function quite demanding, especially where the constituents expect personal favours from the MPs in keeping with the country's neo-patrimonial culture. Constituents generally feel that their MPs are not seen often enough in the constituency and are thus not fulfilling their responsibilities diligently.³⁴ The expert opinion survey also reinforces the point that MPs are not easily accessible to their constituents.

The structure and administration of the legislature

The day-to-day work of the National Assembly is managed by the secretariat of parliament led by the clerk of parliament. The office of the speaker has a special position as both the leader of the house and an integral part of the secretariat.

Office of the speaker

The speaker, assisted by two deputy speakers, presides over the Assembly in session. The speaker is elected by majority vote of the MPs from within their own ranks. Although the speaker is an elected MP, he/she shall not

be subject to the control, discipline, authority or direction of his/her party or any other party in the discharge of his/her duties as speaker.

Since the speaker is an elected MP, the question has been raised whether he/she will act objectively and impartially. It is a widely held view that the speaker cannot be impartial as long as he/she remains a politician. The case has been made for the appointment of the speaker on professional merit without party affiliation. The speaker should be a professional thoroughly conversant with the procedures of the house. This not having been the case may have caused the speaker's office to be compromised because party allegiance has tended to take precedence over impartial professionalism.

During the 1999-2004 term there were several instances when the neutrality of the office was put to the test. There was, for instance, selective application by the speaker of the section 65 floor-crossing procedure in that only MPs who had fallen out with the ruling party had their seats declared vacant.³⁵ Other instances of the speaker's blatant partisanship were the arbitrary dismissal of MP Chakwamba from the house for poor attendance without following the correct procedure, and the naming of John Tembo as leader of the opposition when MP Chakwamba already held that position.³⁶

The clerk

In the administration of the business of the house, the speaker is assisted by the clerk who is a public officer. The clerk is responsible for the distribution of relevant documents to the MPs and for the safekeeping of all the papers and records of the house, including the official report of the proceedings as nearly as possible word-for-word and published as Malawi's *Hansard*.

Leaders of the house and the opposition

The leader of the house is a cabinet minister responsible for government business in the house and recognised by the speaker as such. He/she is the spokesperson of the government in the house and liaises with the opposition whenever necessary. The leader of the opposition is the parliamentary leader of the largest party, elected by the MPs of opposition parties who are not in coalition with the government party, and is

recognised as such by the speaker. He/she is the spokesperson of the parliamentary opposition and is responsible for conferring with the government side on matters of common interest.

Party caucuses and whips

Strictly speaking, party caucuses do not feature in the formal parliamentary set-up (nor do parties for that matter). Even so, they play an important semi-formal function. All parliamentarians from the same political party form a caucus. Ideally, the functions of the party caucuses are to ensure cohesion within party ranks on policy matters after a free exchange of views, and to impose a measure of discipline on the party group. Caucus meetings are called and chaired by the party whips – normally before a sitting when the agenda is known or during a sitting if need be.

Each party caucus has a chief whip who is appointed by the party leadership to look after the conduct of party members in relation to the business of the house or its committees. The whips are tasked to maintain party discipline and coherence on policy matters and behaviour in the house. The imagery of a ‘whip’ is used to indicate that this person’s task is to keep the rank-and-file party members from straying from the party line. Some parties maintain stronger internal discipline than others. On occasion some MPs break rank with the rest of the party caucus.

The size and role of the opposition

From the information in Table 3 (*next page*) it can be seen that there has been no dominant party in Malawi since 1994. The opposition parties always received a sizeable share of the vote. The 2004 parliament is the most diverse and vibrant one in the last decade.

Opposition parties in Malawi have normally been at their strongest immediately after elections (as shown in Table 3). The first post-1994 session of parliament demonstrated the strength of the opposition on a number of issues, such as the election of the speaker of the Assembly, Rodwell Munyenemba from AFORD, and both deputy speakers from the MCP. Furthermore, the opposition was well represented in all seven parliamentary committees and all of them were chaired by opposition MPs. These facts attest to the formidable strength of the opposition parties –

something that at the time was the envy of the whole Southern African region.

This parliamentary constellation proved a threat to the minority UDF government. The opposition was too strong and as a consequence the government could not conduct its business and get bills passed. Foreign donors expressed concern about a weak executive, which might have serious repercussions for political stability. Despite their immediate post-election strength, however, opposition parties have tended to lose power and vigour due to defections or floor-crossing by their MPs and also because of the formation of coalitions.

Floor-crossing

Party defections have been contentious and their justification has often been debated and criticised. In such cases the speaker has invoked the controversial section 65 of the constitution to penalise the defectors and call for by-elections. The original section 65 authorised the speaker to declare seats vacant when sitting MPs crossed the floor or voluntarily left their original parties. The amendment of this section³⁷ and its subsequent

Table 3: Seat distribution by party in parliamentary elections, 1994, 1999 and 2004

Party	1994	1999	2004
Alliance for Democracy (AFORD)	36	29	6
Congress for National Unity (CONU)	0	0	1
Malawi Congress Party (MCP)	56	66	58
Movement for Genuine Democracy (MGODE)	0	0	3
National Democratic Alliance (NDA)	0	0	8
People's Progressive Movement (PPM)	0	0	6
People's Transformation Party (Petra)	0	0	1
Republican Party (RP)	0	0	15
United Democratic Front (UDF)	85	93	49
Independents	0	4	40
Total	177	192	187

application generated concern and anxiety. It appeared that MPs who had fallen out with the ruling party leadership became victims of this section.³⁸ The Mutharika government is keen to have the section repealed as Mutharika's new-found party has only six legitimate members in the National Assembly and over 50 MPs from other parties whom he and his party claim now support him. The opposition view is that these MPs have been 'poached'. As these MPs would lose their seats if section 65 were applied, the present government would like section 65 to be repealed.

Representation of women

Gender equality is enshrined as the first principle of national policy in the constitution, and any discrimination based on gender is prohibited. This principle further suggests that legislation should be passed to eliminate the customary and traditional practices that discriminate against women. The Senate was intended to be a major means of redressing the gender imbalance in political decision-making, but this opportunity was lost with the abolition of the Senate. However, women have progressively improved their representation and participation in the National Assembly although the number is still quite below the recommended SADC benchmark of 30%.

Table 4: Representation by men and women in the elections, 1994-2004

Elections	Men	Women	Total
1994	167	10 (6%)	177
1999	174	18 (9.3%)	192
2004	160	27 (14.4%)	187

Source: *Government Gazette*, 1994, 1999 and 2004.

Challenges facing parliament

Although the constitution has established a presidential form of government based on the principles of separation of powers, there have been digressions from the established norms and procedures. The National Assembly faces myriad problems emanating essentially from two sets of key variables:

- *Structural (legal and political system) problems that exist both within and outside the National Assembly that have shaped its development:* The hybrid nature of the system – with its elements of presidential (congressional) and Westminster forms of government – has directed parliament and the executive into a relationship that requires a mutual acceptance of each other's authority and a respect for each other's roles.
- *Cultural problems:* These include excessive respect for those in authority, the politics of patronage politics, 'poaching' MPs and floor-crossing.

Oversight of the executive, which is one of the most important functions of the legislature, requires robust committees. The parliamentary committees face several challenges and constraints, the main one being budgetary. A legislature strapped of funds can hardly afford to provide an adequate financial basis for committee work. Parliamentary facilities and support functions are often inadequate. While the clerk and the Parliamentary Development and Coordination Committee prepare the parliamentary budget every year, this budget is invariably cut by the executive. As a result, the ability of the legislature to perform its functions is hampered.

In the absence of adequate domestic funding, international donors have provided some of the shortfall. It is unfortunate that the country's law-making body should have to solicit external funding to be able to operate properly. It is particularly unfortunate that the only committees that are able to work are those that receive foreign funding, while the others remain dormant. Such donor dependency does not augur well for the country's independence.

The calibre and dynamism of committee chairpersons are also important; likewise their educational level, their knowledge of the substance of their committees' briefs and their command of procedure are significant. Chairpersons who are dynamic and proactive might attract additional funding from external sources. But without sufficient funding, many of the committee chairpersons become demoralised. The qualifications of regular members also affect the quality of committee work.

The functioning of the committee system is also adversely affected by breaches of reporting procedures. After inter-party deliberation within the committees, reporting back to the full Assembly is not always allowed. Despite the cross-party composition of the committees, these do not seem to enjoy the confidence of the full house. As a result, debates are repeated and valuable time is wasted.

Among other challenges facing parliament is the duration of sittings. A major constraint on parliamentary work is the frequency and duration of sittings. There is general agreement that the duration of sittings is grossly inadequate – only 70-100 days a year. By comparison, in neighbouring Zambia, parliament has sat for 220-290 days a year since that country achieved democracy in 1991. The stated reason for the brevity of sessions is ‘lack of funds’. Although the budget allocations for the National Assembly are protected in principle, it often happens that the meagre monies set aside are reduced by the executive or arrive erratically, thus further hampering the work of the Assembly.

Waivers of the standing orders that require a bill to be sent to MPs 28 days before its first reading have been frequent. Even in the case of the national budget, which is a complex and important document, waivers have been given. The house may decide to waive the rule if such waiver is recommended by the Business Committee. The cited justifications include urgency, time constraints and postal delays. The composition of the Assembly means that the opposition has little choice but to go along with the waivers. Such waivers may occasionally be justified and acceptable. While recognising that democratic rules should be adhered to, some flexibility is called for in applying the rules. But the frequency of waivers represents an infringement by the executive on the powers of the legislature to hold the former to account. The MPs are thus disadvantaged in the exercise of their duties because they get too little time for research, for speaking to experts on technical issues and for consulting their constituents. The result is brief and uninformed debates.³⁹

It is thus evident that the assertiveness of parliament *vis-à-vis* the executive is determined not only by the formal definition of its powers but by internal constraints. The degree to which formal powers become a reality depends

effectively on available resources and the internal organisation of parliament.

Parliamentary reform process

The administration of the Malawi parliament has worked on solutions to the challenges listed above and has undertaken an analysis in the Malawi National Assembly's 'Strategic Capacity Development Plan 2004-2008' adopted in 2003. Some of the areas identified are critical for an effective parliament.

- Parliament should have a fixed sitting calendar instead of meeting only when funds have been made available or the executive has had an item to pass through parliament.
- Parliament should regulate its own finances. At present, parliament is dependent on the executive.
- All the parliamentary committees should be functional. Only seven of the 13 committees are functional.
- The secretariat of parliament should be strengthened. Parliament has too few researchers and committee clerks.

It is critical that parliament should drive its reform process forward.

Links with other parliamentary forums

The National Assembly of Malawi is a member of the SADC Parliamentary Forum (SADC PF) and the Pan-African Parliament. MPs from Malawi participate in thematic workshops of SADC PF and observe elections in the region as part of the forum. Five MPs attend the Pan-African Parliament when it is in session, and also serve on its committees.

Public image of parliament

The public are sceptical and even dismissive of their elected representatives.⁴⁰ This is partly due to the public's high expectations of the government: people tend to think that parliament has all the powers to deliver services to them but that it is not delivering.

Another reason for the negative image of parliament is the way the media portrays parliament. The media tends to overlay the negative side and

downplay the positive side. A case in point was the budget session of 2004 where the media blamed parliamentarians for not debating and passing the budget while the reality was that parliament had not until then received the budget documents and was therefore not in a position to discuss them. The media would also report that millions of Malawi kwacha have been 'blown' by a sitting of parliament – almost indicating that the sitting was a waste of resources. A positive development has been the inauguration of live radio broadcasts of parliamentary sittings. These help to confirm that there are two sides to every story.

THE JUDICIARY

Composition and powers

In articles 103-119, Section IX of the constitution establishes the independence and jurisdiction of the courts and the judiciary. The judiciary is composed of the Supreme Court of Appeal, the High Court and the magistrates' courts. Articles dealing with the composition and structure of the courts provide that:

- the chief justice shall be appointed by the president and confirmed by the National Assembly by a majority of two-thirds of the members present and voting;
- all other judges shall be appointed by the president on the recommendation of the Judicial Service Commission;
- magistrates and persons appointed to other judicial offices shall be appointed by the chief justice on the recommendation of the Judicial Service Commission and shall hold office until the age of 70 unless they are removed in terms of section 119;
- persons shall not be qualified for appointment as judges unless they are or have been judges of a court having unlimited jurisdiction in criminal or civil proceedings or unless they have been entitled to practise as legal practitioners or advocates or solicitors in such a court for not less than 10 years; and
- the regulation of judicial officers shall be through the Judicial Service Commission, whose powers and jurisdiction are conferred on it by the constitution or, subject to the constitution, by any act of parliament.

The traditional courts

These courts were previously under the direct control of the executive. Partly because of the expansion of the jurisdiction of these courts to include all manner of serious charges such as theft by a public servant, treason and murder, President Banda kept the judiciary under his control. Suspects were tried against their will and appealed in vain to conventional courts. Today, however, magistrates' courts within the formal court structure administer customary or traditional law.

At the national constitutional conference in February 1995, a caucus of traditional chiefs lobbied for the restoration of their judicial power – albeit not over criminal matters – and for their integration into the formal court system.

The current constitution goes some way towards facilitating this by providing that 'parliament may make provision for traditional or local courts presided over by lay persons or chiefs' (section 110(3)). In practice, however, such courts have not been established and disputes requiring the interpretation of customary law are settled by informal arbitration by traditional authorities or by formal judicial proceedings presided over by magistrates.

Access to justice by the citizenry

The ability of the judiciary to administer justice is affected by the ease with which all the country's citizens have access to the courts. Among the main factors that affect citizens' accessibility are:

- the awareness of judicial functions;
- the distances that people may have to travel to reach a court;
- the cost of judicial proceedings; and
- the language used by the courts.

In Malawi, these factors have a particularly significant impact due to the low levels of awareness of state institutions and their functions among the majority of the population, the small number of courts, particularly in rural areas where the majority of people live, the general lack of financial resources among the majority of the population, and the use of English as the language in which judicial proceedings are conducted.⁴¹

Another factor affecting the delivery of justice by the courts is the access by judicial personnel to the resources they need to conduct judicial proceedings effectively and speedily. Such resources include court premises, stationery, legal texts and other legal literature and equipment such as typewriters, computers and telephones. Owing to the limited funds available to the Malawi government, state institutions such as the judiciary often have inadequate resources. One consequence of this is an inevitable delay in processing cases, which in turn undermines the ability of the judiciary to administer justice effectively and efficiently.

Electoral role of the courts

The judiciary plays a critical role in the political arena in general and in the electoral process in particular, where it is involved in:

- the registration and compilation of voters' rolls;
- the nomination of candidates;
- disputes relating to campaigns, particularly the monopoly of the state media by the party of the incumbent president;
- the polling process;
- the vote count and establishing the integrity of results; and
- the process of converting the electoral mandate into the political process.

The use of courts in the electoral process was more visible in the 2004 elections when even the results of the party primary elections were taken to court. This indicates both the inability of the parties to handle such cases and the respect and credibility of the courts in the eyes of the parties and the candidates.

Although the results of the last two elections were contested in court, governments were formed during the judicial process and, after some initial uncertainty, these governments ran smoothly without jeopardising the country's political stability.

Challenges to judicial independence

As already indicated, the independence of the judiciary is guaranteed by the constitution. The courts and presiding officers have exclusive juris-

diction ‘over all issues of judicial nature’ (section 103(2)) and are mandated to perform their duties free of ‘influence and direction of any other person or authority’ (section 103(1)). It is furthermore up to the judiciary to decide ‘whether an issue is within its competence’ (section 103(1)).

Despite this, however, the judiciary faces a number of challenges to its independence. Although, as already indicated, the president appoints the chief justice, subject to confirmation by two-thirds of the National Assembly, there is no provision for the possibility of the chief justice failing to get the necessary two-thirds support in the National Assembly. And although parliamentary ratification of the appointment of other judges is not required, the president still does not act completely independently as he acts on the advice of the Judicial Service Commission (section 111(2)).

Another form of potential interference is the president’s power granted to him by the constitution to remove any judge of the High Court and appoint him or her to some other public service position ‘where the president considers it desirable in the public interest’ (section 119(7)). Although such removal would require the consent of the judge concerned, it would put unnecessary pressure on any judge approached by the executive branch in this regard.

However, it is not only the executive which may threaten judicial independence.⁴² On some occasions parliament has been the source of pressure exerted on the judiciary. In September 2000, for example, the High Court granted an application by the disputed leader of the opposition MCP, Gwanda Chakuamba, who was seeking a judicial review of the decision of the National Assembly to suspend him from the National Assembly for one year. The speaker of the National Assembly was quoted in the media as suggesting that parliament might take action against the judge in question.⁴³

Indeed, in a letter dated 27 September 2000, addressed to the chairperson of the Public Appointments Committee, the speaker stated that he found the decision of the judge ‘extremely perturbing’, and called on the committee to investigate whether the judge had, among other things, displayed in his ruling incompetence and lack of independence.

The most severe challenge to judicial independence was the parliamentary petition for the removal of three judges. A majority of MPs – 113 out of the 193 members – signed the petition in the Assembly's November 2001 sitting. 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 stated that 'the action to dismiss the judges flies in the face of the 1994 Constitution of Malawi, the African Charter on Human and Peoples' 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 International Commission of Jurists was that some politicians had been over-sensitive to judicial pronouncements and this over-sensitivity had led to the action for the removal of judges whose decisions were found to be unpalatable. The president eventually pardoned the judges and abandoned the impeachment.⁴⁴

The record indicates that the judiciary has a fair record of impartiality and independence, and as custodian of the constitution and democracy. A majority of those consulted in the expert opinion survey support the view that the judiciary has stood firm against political pressures.

CONCLUSION

While the constitution endeavours to put in place an effective separation of powers system which should be working on the principles of checks and balances, the balance is tilted in favour of the executive. The period from 1994 to 2004 has proved to be one of executive highhandedness. This is attributable partly to the constitutional dispensation and partly to the tradition of excessive respect for authority. The legacy of a one-party state and the characteristics of Malawi's neo-patrimonial tradition are still evident. There have been a number of amendments to the constitution that have been detrimental to the spirit of democracy and constitutionalism. The wide gap between the government and Malawi's citizens is confirmed by various surveys, as is the institutional vacuum between the two. Each branch of government faces severe challenges in terms of resources and capacity. While much has been achieved since 1994, a reversal cannot be completely ruled out.

CITIZEN PARTICIPATION

This chapter looks at democracy from the citizen's perspective and considers the influence of people and their organisations on the governance process. It asks how strong and effective CSOs are in making an input into policy-making, in adequately representing people's concerns and demands, and in narrowing the gap between the government and the governed.

SCOPE AND CONTEXT OF CITIZEN PARTICIPATION

Scope of citizen participation in the Malawian context

As in any other emerging democracy, the principles of democratic participation in Malawi are slowly but surely evolving into a culture. This is especially true with respect to people's participation in central government decision-making and national political affairs. Otherwise, one may wish to argue, there have always been various levels of political participation in African traditional societies and the whole notion of 'citizen participation' may not have come with multiparty democracy *per se*.

In terms of the consolidation of democracy, citizen participation takes place against the backdrop of an emergence from a one-party state, in which decision-making was top-to-bottom and people who attempted to dissent were often stifled in different ways. In the current political dispensation it would be correct to say that the citizens' participation in the governance process has improved.

Citizen participation is constitutionally guaranteed in the present political dispensation. The constitution provides guidelines on how best citizens can participate. Citizens have the right to vote in five-yearly elections, which means that they can hold their representatives accountable, and they have the right to form and join any other association, political or non-political.

In this chapter we examine the level of citizen participation by exploring the role of CSOs and the media, and highlighting their achievements and shortcomings in influencing policy-making. Attention has also been paid to women's participation.

Civil society organisations: Emergence and growth

In democracies, non-state actors such as CSOs and the media often act as a valuable bridge between people and their governments. By virtue of their being *civil* societies, they appear to be aligned with civic masses, that is, the people themselves. They normally belong to the people by philosophy and in practice. In their intermediary role, the participation of CSOs and the media becomes a yardstick of the participation of the citizens. Thus, the effectiveness of these institutions is a key factor in assessing governance.

An avalanche of CSOs emerged in Malawi after 1994, many with financial aid from donor governments and institutions avowed to the consolidation of democracy. NGOs involved in governance issues were a totally new phenomena. The main CSOs in the field of human rights include the Public Affairs Committee (PAC), the Civil Liberties Committee, the Centre for Human Rights and Rehabilitation (CHRR), the Centre for Advice, Research and Education on Rights and the Catholic Commission for Justice and Peace (CCJP). Other CSOs deal with specific needs of the other sectors of the society. These include the Society for the Advancement of Women, the Association for the Progressive Women, the Disabled Persons Association of Malawi and Youth Net and Counselling.⁴⁵

The emergence of several organisations working in the same field created a need for coordination so as to reduce conflict and duplication of effort. Several networks and umbrella bodies were formed and continue to be formed. Perhaps the most important is the Council for Non-Governmental Organisations in Malawi (Congoma),⁴⁶ whose main function is to promote and facilitate coordination, collaboration and cooperation between the NGO community, the government, the donor community and the commercial sector. By 1999, or after only five years of democratic dispensation, Congoma had registered some 200 CSOs.

Over time, CSOs realised the need to form networks and to coordinate their activities in order to have a greater impact. The Human Rights Consultative Committee (HRCC) provides a liaison for CSOs concerned with human rights and good governance. The HRCC's mission is to have a network of human rights NGOs committed to the promotion and

protection of human rights for the benefit of Malawian society through advocacy, monitoring, information sharing, capacity building and resource mobilisation.⁴⁷

CISANET coordinates CSOs involved in the agricultural sector, CURE is an umbrella body for environmental CSOs, Fedoma is a network for organisations dealing with disabled people, the MCCTU is a congress for trade unions, the Malawi Gender Coordination Network coordinates the efforts of some 37 women's organisations. Other CSOs have specialised in the sector of education. According to the 1999 Congoma directory, 56 NGOs were listed as implementing education and skills training programmes in the country.⁴⁸ CSOs in education have networks such as the Association of Christian Educators in Malawi and the Civil Society Coalition on Basic Quality Education. The Malawi Economic Justice Network (MEJN) is an umbrella body of CSOs and NGOs involved in economic advocacy and lobbying.⁴⁹

Over the years these networks have come to play a role in policy-making, especially in the budgetary process. They prepare budget analysis from their diverse perspectives. While they are able to gather information from the grassroots and reflect their needs, these bodies are visible mainly in urban areas, so that there is a dire need to establish a rural presence.

In a number of cases, CSOs have proved to be effective in mobilising public opinion on critical issues of governance and human rights. They have to a certain extent succeeded in influencing the government. As has been noted, the activities of some of these bodies are driven by the donors' agendas and are thus called donor-driven rather than self-driven. This applies both to their finances and to their activities. The sustainability of these bodies is therefore a matter for concern.

Faith communities

The churches also occupy the same intermediary position. While most NGOs were formed after the 1994 transition from one-party state to multiparty political governance, the church and the media were immersed as key actors in the transition process itself. They continue to be increasingly vocal politically. At times they tend to hold diverging and conflicting views over

issues. For instance, the Church of Central Africa Presbyterian (CCAP), which has three synods in Malawi, can openly differ in their political positions without necessarily dividing the church.

A discussion of the role of religious institutions in the democratisation process in Malawi should probably begin with the recognition of the Catholic Pastoral Letter issued by the Catholic Institute of International Relations in 1992, and the activities of the Public Affairs Committee (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. The PAC is thus an umbrella organisation hosting diverse denominations, including the Muslim Association of Malawi (MAM). In the past 10 years, the PAC has been engaged in three main areas: advocacy, mediation and civic education, although from 1992 to the end of the first term of the new government its role was mainly confined to the first two of these areas. It played a role in the Presidential Committee on Dialogue in the transition period of 1992-94, as well as at roundtable conferences involving government, political parties and NGOs to discuss issues of tolerance, reconciliation and accountability. The PAC also tried to mediate in the 1996 parliamentary boycott by the opposition parties as well as in the civil servants' strike.

The Catholic Church, in particular, has been an astute observer of political trends and an active participant in the political scene. It has been open and strong in its periodic criticism of the government on issues such as corruption at high levels, harassment and intimidation of government officials who do not toe the party line, and disbursal of state funds to party supporters. Following the report by the parliamentary Public Accounts Committee that exposed the government's misuse of funds, the CCJP issued a strongly worded letter condemning the financial mismanagement as well as numerous forms of political abuse by the ruling party.

In the wake of the passage of controversial constitutional amendments in 2001, such as the amendment to section 65 (the Defection Bill), the NGO Bill, and the increasing number of incidents of violence arising out of political intolerance, the PAC held a meeting with the president. The PAC

particularly appealed for the reinstatement of two opposition MPs who were unseated on the application of the amended Defection Act. Subsequently the two MPs were reinstated by court order.

The issue of the bid for a third term for President Muluzi saw a heightened role of the church, to an extent and magnitude comparable to its role in 1992-93. The PAC came out with a series of press releases on the issue. The Malawian Council of Churches, a protestant grouping of Christian denominations, followed with a firm and clear stand against the third term. The Church Development Coordination Committee, an inter-denominational group, held two major gatherings in early 2003 on the issue of attempts to extend the term of office of the president. These were attended by prominent opposition party leaders and drew large crowds. In the company of a number of prominent political leaders, the clergy made strong and forceful arguments against such attempts.

The MAM supported the bid to keep the president in office, thereby infuriating the PAC which opposed the bid. This caused tension between the MAM and the rest of the PAC members. A new pressure group called the Forum for the Defence of the Constitution (FDC) was launched in October 2002, primarily to uphold the constitution and to ensure that the incumbent president did not contest the 2004 election. The FDC, chaired by Reverend Gunya of the Blantyre synod, was formed on the initiative of the CCAP and included prominent members of other CSOs. The forum's activities were supported by the PAC.

The firm and critical stand of the church against the third term brought into the open tensions between the church and the government that had been brewing for a long time. The president's response to the delegation of CCAP leaders on the issue of nurturing democracy in Malawi was defensive and abrasive. Senior members of the ruling party started accusing church leaders of being partisan and politically ambitious. In advance of the 2004 elections the opposition political parties attempted to form a coalition called the Mgwirisano coalition, in which some prominent members of the clergy played a leading role. This further antagonised the government, which then began questioning the fundamental role of the church by saying that the church's sphere of activity was spiritual and not

political and that it should therefore not meddle in politics. All the arguments and counter-arguments put the spotlight on the role of religious bodies in politics.

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, the legislature and political parties at the national level – there should be significant limits to its grassroots civil society activism.⁵⁰ These limitations are traced to the religious framework of the church, the organisation of the clergy and the class character of the clergy themselves. However, there is a great potential for the clergy to play a more active political role at the local level owing to their elevated status in local communities and their affiliation to larger and powerful religious organisations at the national level.

THE STATE AND CIVIL SOCIETY

Legal framework of CSOs

While the Malawi constitution provides for the existence of CSOs, the government not only encourages the existence of NGOs but also acknowledges the important role of CSOs.⁵¹ Most NGOs in Malawi are registered under the Trustees Incorporation Act of 1962 through the registrar-general's office. Others are registered through the registrar of companies. Both these offices fall under the Ministry of Justice. In addition to this, the government passed the Non-Governmental Organisation Act (NGO Act) in 2001. This stipulates that all NGOs must register with the NGO board and Congoma. Members of the NGO board are drawn from Congoma through elections held during its annual general meeting. There is ex-officio representation of the government through bodies such as the Gender, Youth and Community Services. The NGO board is a regulatory body for all NGOs operating in the country, and it receives audited accounts and a list of their activities on an annual basis.

While not cumbersome, the registration process for NGOs is expensive. Three steps are necessary:

- To register as a company limited by guarantee or as a trust

under the Trustees Incorporation Act costs about MK10,000 and MK15,000 respectively.

- To register as an NGO with Congoma costs MK12,000 a year.
- To register as an NGO with the NGO board costs MK18,000 a year.⁵²

This means that an NGO has to find a minimum of MK40,000 in registration fees for the first year. Another MK40,000 will be required for statutory auditors' fees and a minimum of MK10,000 will be required to pay the NGO's accountants. A new NGO will therefore need to spend about MK100,000. Some NGOs find these amounts extremely difficult to find, while others it impossible. Sustainability and continuity are thus difficult issues for NGOs in Malawi.

The NGO Act is seen by many in the NGO community as a government control mechanism. A CSO is required to supply the government with:

- a certified copy of its governing instrument;
- an account of its activities during the previous year and the activities it plans for the current year;
- its address and telephone and fax numbers;
- details of its trustees, directors, office bearers and auditors;
- its last available audited financial statement; and
- details of all its sources of funding.

While CSOs must commit themselves to not becoming involved in partisan politics, the government does not in practice censor their activities.

NGOs are required to be members of Congoma before registration, and must also obtain a letter of permission to operate from the parent ministry, which must review the application and act upon it. In order to be registered, a minimum of two of its directors must be Malawian citizens. The registration body has the power to reject or deregister any organisation 'if there are sufficient and satisfying reasons to do so'.⁵³ The Ministry of Gender, Women, Youth and Community Services is charged with responsibility for CSO affairs.

A consortium of CSOs raised objections to the NGO Act, and the issue resurfaced in May 2002 when the ministry accused some CSOs of forming associations without informing the government, in contravention of the act. The CSOs' position was that the act had to be objected to as it was not in line with the spirit of the constitution.

Civil society's influence on policies and programmes

Democratisation has paved the way for CSOs to participate in policy-making. One way is by making submissions to government when legislation is being formulated. They may lobby the relevant ministry or the relevant parliamentary committee. Invitations for submissions are sometimes placed in the newspapers. However, many commentators are sceptical of this procedure, saying that it is merely window-dressing and that the resultant legislation rarely takes notice of CSOs' concerns.

Indeed, the MEJN, a civil society network on economic affairs, has several times reported that the government generally ignores contributions made by CSOs during pre-budget consultations. Specifically, the MEJN told the newspapers that the government did not invite them to the 2006/7 pre-budget consultations. The minister of finance's response was that 'maybe they wanted a special invitation which my ministry could not issue . . . they think they are important but I can assure you they are not'.⁵⁴

Civil society's role in securing democracy and constitutionalism

CSOs can also influence events through mobilising public opinion for or against a certain policy. In so doing, they promote accountability and responsibility. Most CSOs fought very hard against the proposed amendment of the constitution that would have allowed a third term for President Muluzi. Both the main Christian churches in the country – the CCAP and the Catholic Church – joined forces with other CSOs by lobbying MPs and organising demonstrations on this issue.⁵⁵ President Muluzi banned all demonstrations, either for or against the third term, thus significantly curtailing the CSOs' room for manoeuvre. Regardless of the declaration by the High Court that the presidential ban was illegal, members of the FDC, a consortium of CSOs and churches, were stopped by the police from holding an anti-third term demonstration.⁵⁶

The relationship between government and NGOs evolved historically from the period when the colonial government was somewhat indifferent to the activities of CSOs, to one that was based on suspicion and mistrust during the MCP regime. The advent of the multiparty system then opened the floodgates for NGOs, especially in areas of governance. If there had been a more gradual increase in the number of these organisations, there might have been time for both sides to adjust to and collaborate with each other.

The present relationship between CSOs and the government, especially in the area of democracy and good governance, is tenuous and often conflicting. Quite often, state institutions and CSOs have had differences over the management of state resources, consultations in policy-making and legislation. CSOs often feel that they are being sidelined in these processes.⁵⁷ Government has at times accused CSOs of interfering in matters of the state and of being partisan. In the wider sector, government (all governments since 1994 not only the current one) perceives the CSOs as lacking in transparency and accountability and as serving the interests of their donors.

It can be said that the role of CSOs has generally been reactive rather than proactive and that there is therefore a need to build a regular, healthy interaction between the two. The issue of sustainability facing the NGOs is real.

THE MEDIA

The private media also mushroomed around the time of the transition to democracy. The number of publications and other media has since continued to multiply. While the media is effective, some media companies have been less than ethical, and greater adherence needs in some cases to be made to the standards of the Malawian Media Council. Their participation in the anti-corruption fight has been notable, with *The Nation* in particular having played the whistleblower in a number of corruption cases. Less praiseworthy have been cases of chequebook journalism, involving receiving payments to take sides on contentious issues. Thus, while they fight corruption, people have pointed at instances of corruption within the media houses.⁵⁸

In general, however, the instances of unprofessionalism are compensated by the growing effectiveness and maturity of the media in their contribution to the consolidation of democratic governance in Malawi. The media have been vigilant in criticising and exposing aspects of government policy and activities and in providing a public forum for issues of governance. While the media continues to change from the soft image it had during the Banda and Muluzi periods, there are some challenges in the move towards a more liberal media environment. A major challenge remains the limited access to information from public bodies, while the Parliamentary Information Act has yet to be revised to create a more liberal environment.

Electronic media

Until 1994 there was no press freedom. Government tightly controlled all print and broadcast media. During the 1992-94 transition period there was an explosion of independent media as President Banda's regime came to an end and many took advantage of the relaxation of government structures. Following the adoption and publication of the Malawi Government Communication Sector Policy Statement, a communication law was passed in 1998 creating the Malawi Communication Regulatory Authority (Macra). Macra is mandated to manage and regulate television, radio and data frequencies. It issues licences to broadcasters and internet service providers. Currently, there is one state television station, TVM, and one satellite television service which is operated by the South African company Multi-Choice. The Malawi Broadcasting Company operates two radio channels, while private commercial radio stations include Capital FM, Power 101, MIJ FM, Joy Radio and Zodiac. Community radio stations include Radio Maria, Radio Alinafe, Radio Islam, Nkhotakota Community Radio, Dzimwe Radio, African Bible College Radio and Radio Tigabane.

The opening up of the private media industry in Malawi has given listeners and viewers a wider choice of information. Nowadays, people are able to oppose and criticise the government in the private media. Apart from the state-owned media, people now get news on national issues from the privately owned radio stations. This makes a great contribution to the democratisation process because people are able to get news which is not always broadcast by the government stations. It also means that Malawians can compare versions of the same news item.

Print media

There are at present two daily newspapers in Malawi, *The Nation* and *The Daily Times*. *The Nation* is owned by former minister in the Muluzi government, Aleke Banda, who is currently leader of the People's Progressive Movement, and *The Daily Times* is owned by long-time minister in the Banda regime, John Tembo, who is now the leader of the main opposition, the MCP. Both these major papers have criticised the government and the parties associated with their respective proprietors to varying degrees. Moreover, they often publish critical features, letters and guest editorials.

The Chronicle, an independent weekly publication owned and edited by Rob Jameson, ran into financial difficulties and has now closed. Independent monthlies include *The Lamp*, run by a Catholic order, the Montfort Missionaries. It should be noted, however, that 'independent' in the Malawian context can often be interpreted as anti-government rather than non-government.

On several occasions in recent years the government has been in conflict with the media. It has arrested journalists for reporting on issues which the government feels are likely to cause public disorder. At times journalists have been detained for merely reporting on someone in high government office.⁵⁹ Under the UDF Muluzi government, the late Horace Somanje and Mabvuto Banda had cases brought against them for writing an article urging the army to take over the government. In another incident, the army raided *The Daily Times* offices and destroyed computers after an article had appeared reporting the high prevalence of HIV among soldiers.

On 20 May 2002 a group of UDF young democrats invaded the offices of *The Daily Times* in Blantyre while the police stood by and watched. The group demanded to speak to journalists Mabvuto Banda and Akimu Kaingana, who had written an article in *The Malawi News* reporting that traditional leaders had distanced themselves from a claim by the then UDF MP Henry Mussa⁶⁰ that they supported the idea of President Muluzi running for a third term in office.⁶¹ And in February of the same year the editor of *The Chronicle*, Rob Jameson, wrote in an editorial that UDF young democrats had assaulted him for his critical stand against the government.

Under the present government, several journalists were detained in 2006 by the state and its agents. Some were arrested for reporting that the president was being haunted by ghosts at State House.

In spite of these and similar difficulties, however, the print media have played a crucial role in holding the government to account by unearthing corruption scandals, both in the public and private sectors. Most of the corruption cases that are in court, and those that are being investigated at the time of writing, were exposed by the private print media.

PUBLIC TRUST IN DEMOCRACY

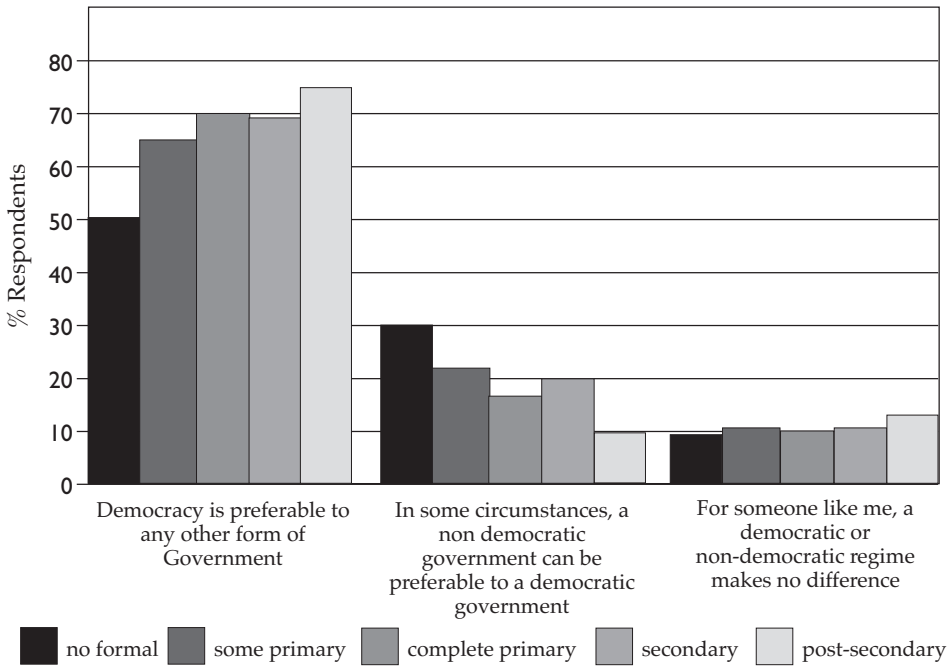
The various civic education programmes carried out by the state and by CSOs at the grassroots and through the media have communicated at least an element of trust in the democratic system. This can be seen from the level of citizen participation in governance, an indicator of which is the increased call-ins to current affairs radio programmes. It is also heartening to note from the 2006 Afrobarometer report (see below) that there is substantial agreement with the statement that democracy is preferable to any other form of government and that there is an understanding of what democracy means. This means that democracy is being internalised in the minds of the people.

Figure 1 (*next page*) shows that regardless of their level of education, most Malawians agree that democracy is preferable to any other form of government. At the same time, however, some of those without any form of education feel that in some circumstance a non-democratic government may be preferable. In addition, the Afrobarometer studies reveal that despite low levels of education Malawians generally understand the meaning of democracy (see Table 5).

GENDER PARTICIPATION

Since the advent of democracy, Malawi has made some progress in improving the proportion of women holding important positions in different sectors of the economy. Moreover, the government has committed itself to reaching the SADC target of 30% female representation in all political and civil service posts, regardless of some problems. There is a Ministry for Gender, Youth and Community Services which is

Figure 1: Who prefers democracy?



Source: Evans G & Rose P, *Support for Democracy in Malawi: Does Schooling Matter?* Afrobarometer Working Paper No 57, 2006.

Table 5: What does democracy mean?

What if anything, do you understand by the word democracy? What comes to mind when you hear the word?

	No formal	Some Primary	Primary	Secondary	Post-secondary	Total
Don't know	38 23%	52 12%	5 3%	7 2%	0 0%	102
Freedom in general	17 11%	46 11%	25 13%	50 13%	6 14%	144
Freedom of speech	23 14%	64 15%	47 24%	81 21%	10 24%	225
Multi-party election	17 11%	73 17%	23 12%	40 11%	3 7%	156
Adverse consequences	11 7%	18 4%	9 5%	22 6%	4 10%	54
Other	56 35%	172 41%	88 45%	179 47%	19 45%	514

commissioned to advance government policies on gender. In addition, some women's NGOs are directly involved in gender issues. Through the existing legal system the incumbent president has used his constitutional powers to appoint women in different government positions.

In March 2000, the Ministry of Gender, Youth and Community Services launched a 'National Gender Policy, 2000-2005'. This policy was guided by the Malawi constitution and international conventions to which Malawi is a signatory.

The overall aim of the policy was 'to enhance participation of women and men, girls and boys for sustainable and equitable development for poverty eradication'.⁶² Six key themes were addressed in the policy, and gender was seen as a vital issue in respect to each. The themes were:⁶³

- education and training;
- reproductive health;
- food and nutrition security;
- natural resources and environmental management;
- governance and human rights; and
- poverty eradication and economic empowerment.

CONCLUSION

There is no doubt that democracy has enhanced citizen participation in the governance process through a number of CSOs and the media. However, there are many problems and challenges confronting each of these organisations, and these limit the impact of citizen participation. This is discernible from the lack of effective participation in matters that directly and indirectly concern them, such as the food shortages of 2002 and 2005 where the government's indifference was not challenged. Relations between the government and civil society have not yet evolved into a state of understanding and collaboration. The sustainability of NGOs is a critical problem, with most of these bodies facing challenges in terms of capacity and resources. These challenges restrict their proactive role. For the church, the issue is whether it should be an active player in the ongoing political process or whether it should respond only when its guidance is requested by the government or civil society.

A positive factor is that public opinion surveys such as the 2006 Afrobarometer survey and the 2004 NUFU document reflect that in spite of its problems and challenges, democracy is still the preferred form of government. This gives encouragement to those endeavouring to improve the level of democratisation in Malawi.

LOCAL GOVERNANCE

In spite of the sound legal framework provided by Chapter XIV of the constitution and the Local Government Act of 1998, Malawi's local government institutions are not effective or vibrant. The many reasons for this being so will be discussed in this chapter. Although in terms of the constitution local government elections should be held every five years, this has not happened and such elections were held only once in the past 13 years – in 2000. Resources for district development are not only inadequate but are also negatively affected by bureaucratic bottlenecks. The elections of 2000 indicated inadequate liaison between elected officials and the public. As a result, democracy in Malawi relies very much on a top-down approach, with much needing to be done to make structures effective at the local level.

CONTEMPORARY HISTORY OF LOCAL GOVERNANCE

Local government is an institution that can be used to enhance democratic consolidation as it facilitates grassroots participation and political accountability at the local level. In this regard, Malawi has had a local government history which dates back to the colonial era. Malawi, then Nyasaland, was a British colony between 1891 and 1964. The colonial local government system was based on chieftaincy under the British philosophy of indirect rule. The functions that were devolved to the chiefs included administrative, judicial and developmental activities. The 1933 Native Administrative Ordinance sanctioned the formation of chiefs' councils, which were to be answerable to the central government through district commissioners rather than to the local people. The district commissioner was the administrative head of the district. To make local government more representative and accountable, the District Council Acts of 1953 and 1962 provided for elected members. As a result, more functions were devolved to the local level including those of revenue collection, education, infrastructure and public health. The Department of Local Government noted in 2001 that the local authorities in the colonial era performed their functions effectively and were highly regarded by the central government and the people in general. This also implied that the activities of line ministries at district level were very limited.

When Malawi became independent in 1964, the local governance system was changed. This change entailed the transfer of the central role of chiefs in local government activities to elected representatives (councillors). As a result, the chiefs became ex-officio members of local councils. The councillors elected from among their own ranks chairpersons who were required to head the councils. In this regard, the council chairpersons assumed some of the developmental responsibilities that were previously performed by the district commissioners. The district commissioners' role then became that of guiding, advising and training council personnel. This was vital, particularly because the post-independence councillors were not as knowledgeable and experienced as the colonial administrators, who were rejected by the people at the polls as agents of the unpopular colonial state.

Due to the politics of the one-party system, the MCP as the only legally existing political party institution at the time controlled both the local and central government systems. In particular, the party's hand-picked candidates were appointed for both local government and central government elections. In most cases, the elections no more than rubberstamped the candidates endorsed by the party. In cases where the party's favourites could not be elected, the party leadership appointed them as councillors. The same applied to the election of the council chairpersons. Only those favoured by the MCP were elected. Councils therefore became increasingly politicised. All council chairpersons were required to be delegates to the ruling MCP annual convention and all councillors were to be members of the party. Those who ceased being members automatically lost their seats in the councils.

The current local governance system is a result of the introduction of multiparty democracy in 1993. In order to nurture and consolidate the young democracy, the government decided to devolve powers for governance and development to lower levels so as to bring on board grassroots participation in decision-making.

LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR LOCAL GOVERNMENT

For democracy to be consolidated, key democratic institutions have to be enshrined in the constitution. In this regard, the local government system

in Malawi is regulated by the Decentralisation Policy and Local Government Act of 1998, which is in line with the 1995 constitution. In particular, section 146(1) of the constitution provides for the existence of local government authorities. According to the decentralisation policy, local government was established in order to abolish a dual system of local governance that existed in the one-party era, to improve coordination, to reduce duplication of effort, to promote popular participation and to administer poverty-reduction schemes.

Local government structures and functioning

The structure of local government in Malawi is made up of district, town, municipal and city assemblies. In terms of the decentralisation policy, cities, municipalities and towns are 'districts in their own right'. The Local Government Act provides for the composition of the district assemblies as follows:

- One member elected from each ward in the local government area; these members are called councillors.
- Members of the traditional and sub-traditional authorities in the local government area; these are ex-officio members without a vote.
- MPs from the constituencies in the local government area; these are also ex-officio members without a vote.
- Five persons as non-voting members to be appointed by the elected members to cater for special interest groups as determined by the assembly.

The elected political heads of the assemblies are called mayors in the case of the city and municipal assemblies and chairpersons in the case of district and town assemblies. These are chosen by and from among the elected members and they serve five-year terms. The constitution also provides for the existence of the administrative personnel at each local assembly. These are subordinate to local councillors and are required to execute and administer the lawful resolutions and policies of the councillors. A district commissioner in the case of district assemblies or a chief executive officer in the case of town, municipal and city assemblies head the administration.

Local assemblies have a variety of powers delegated to them. In particular, the Local Government Act empowers the local assemblies to make policy and decisions on local governance and development for the local government area, to consolidate and promote local democratic institutions and democratic participation, and to promote infrastructure and economic development through district development plans. In addition, the assemblies can mobilise resources within and outside the district for governance and development, maintain peace and security in the district in conjunction with the Malawi police, and make by-laws. Moreover, the assemblies have the power to appoint, develop, promote and discipline staff below the position of director, to promote cooperation among themselves, and to register births and deaths.

Many functions and responsibilities are assigned to district assemblies in the realm of public service delivery. In particular, the decentralisation policy stipulates the following as matters under the direct control of local assemblies: education services; environmental services; emergency services; development planning; land utilisation; community development; natural resources management; agriculture; livestock and irrigation; medical and health services; road and street services; public amenities; water supply; business promotion; community policing; and building control. These structures, however, are not functional and the sections that follow refer to this aspect.

Resource allocation

Decentralisation accomplishes the task of contributing to the consolidation of democratic governance if, among other things, resources for running local authorities are available. There are three main sources of revenue for local assemblies in Malawi. Listed in the Local Government Act, these are locally generated revenue, ceded revenue and government grants. The act also creates the National Local Government Finance Committee (NLGFC), which facilitates inter-governmental fiscal transfers and regulates the financial matters of the assemblies.

The Malawi decentralisation policy authorises the central government to transfer 5% of the national revenue, excluding grants, for the development of the districts. Both the Policy and Local Government acts mandate the

NLGFC to recommend a formula for the distribution of grants to the National Assembly for their approval. The Ministry of Finance has allocated 5% of the national revenue base to the assemblies for their general resource fund. From this fund, allocations are made to various assemblies based on the following formula: 80% on the population of the assembly, and 20% on above-average poverty. In addition, the assemblies also generate funds locally through property rates, ground rent, fees from commercial undertakings and service charges.

However, the expert opinion survey indicated that the procedures for resource allocation with respect to service delivery by local government do not provide for an equitable distribution. As a result, as noted by one Afrobarometer study, 'councillors operate with very few resources'.⁶⁴ In particular, the system of central government transfers faces chronic problems such as insufficient funds and lengthy budgetary processes. The shortage of finances is exacerbated by the narrow resource base for locally generated revenue, the lack of effective information systems, inadequate and inappropriate skills and techniques for efficient revenue mobilisation, financial mismanagement, the prevalence of corrupt practices and misallocation of funds in some district assemblies.⁶⁵

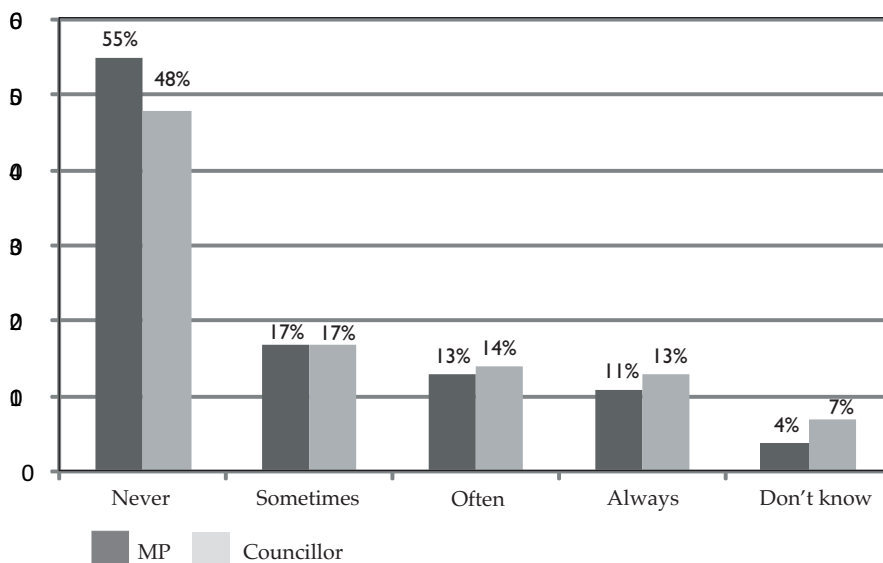
Effectiveness and efficiency of local authorities

For democracy to be consolidated requires effective and vibrant local government authorities. However, most of the experts in the survey indicated that local government authorities are not efficient and effective in realising community development. In this regard, it was observed that the services are thought to be generally poor because local government authorities do not have the requisite capacity to deliver and as a result there are excessive delays in decision-making. In addition, many felt that local government authorities do not have effective mechanisms for responding to community needs. This is particularly the case as local assemblies are too bureaucratic and political, despite being decentralised.

In this regard, Chinsinga noted that lists of projects based on field and desk appraisals are not adhered to but that power politics ultimately determines the way projects are implemented.⁶⁶ This is made worse by the fact that most communities do not contact their elected representatives

when there are problems with the quality of services that assemblies provide. In this regard, the 2006 Afrobarometer survey found that as many as 48% of Malawians feel that councillors 'never' listen to them, 17% feel that they listen to them 'only sometimes', 14% think they listen to them 'often', and only 13% think that they listen to them 'always'.⁶⁷ This trend is depicted in Figure 2.

Figure 2: Do MPs and councillors listen to what people say?



Source: Mthinda C & Khaila S, *Responsiveness and Accountability in Malawi*. Afrobarometer Briefing Paper No 31, 2006.

This trend is aggravated by the fact that the councillors' mandate ended in March 2005 and there have been no commitments to elect a new set of councillors. The situation is compounded by ineffective public service delivery, ineffective coordination and communication between the ministry and the local authorities, and the slow progress in implementing the decentralisation policy.⁶⁸ The effectiveness of the assemblies is also hampered by inadequate and ineffective accountability measures. In this regard Tumbulasi and Kayuni lamented that decentralisation in Malawi is 'opening a new window for corruption'.⁶⁹ These developments threaten the consolidation of democracy at the local level.

MAJOR NEEDS OF LOCAL AUTHORITIES IN MALAWI

The local assemblies in Malawi have certain needs that would enhance their institutional capacity, thereby allowing them to attain higher levels of democratic consolidation. In the first place, assemblies have inadequate human resources and this negatively affects their operations. For instance, Kamanga et al⁷⁰ noted that out of 1,058 posts in the Ministry of Local Government and Rural Development, only 240 were filled. The shortage of staff is more critical in local assemblies, so that for instance Hussein⁷¹ noted that out of the 27 districts he visited, one did not have a district commissioner, 11 did not have directors of planning and development, 13 did not have directors of finance, one did not have a director of administration, and 14 did not have data clerks.

A related problem is that even with the small number of people working in the local government assemblies, these people are not trained to deliver effectively. In this regard, Hussein⁷² said that of great concern was the shortage of well-trained and qualified personnel in the Ministry of Local Government and Rural Development and in almost all local authorities in the country. According to Kamanga et al,⁷³ senior personnel in the ministry show a lack of skills in areas such as strategic management, change management, financial management and development planning.

This capacity gap can be addressed in the short term through secondment of staff and internal transfers. According to Hussein,⁷⁴ secondment of staff involves central government allocating personnel from the mainstream civil service to the local government sector 'on loan'. The problem, however, is that the central government also has staff shortages and it becomes difficult for them to release some of their staff to the local levels. Internal transfers involve movement of staff at senior levels within the local government sector in order to address staff shortages in other local government sectors.⁷⁵ However, Hussein⁷⁶ noted that transfers are perceived by public officers to be politically motivated and abusive, leading to the loss of continuity and institutional memory as well as staff frustration.

The only feasible and long-term measure to control capacity problems is to employ enough competent and skilled personnel to fill the existing

vacant positions in the assemblies. However, for this measure to be effective, it has to be accompanied by a great improvement in the working conditions of the assemblies. This is the case as working conditions in most of the local assemblies are unsatisfactory. This particularly relates to the very low salaries that staff members of the assemblies receive. Just as in other government institutions, the salaries are not competitive enough to attract and retain qualified staff. This situation is exacerbated by the absence of basic facilities. In most of the local assemblies, computers, vehicles and telephones are not available, or are not properly working or are out of date.

Another remedy for skills shortage is the training of local elected officials and staff to take on the new roles and responsibilities, as stipulated in the 1998 Local Government Act. However, all these measures have financial implications. There is therefore also a need to improve the ability of local governments to mobilise their own resources locally, through policy and administrative changes. This is the case as financial problems are also prevalent in the local assemblies, resulting in staff retention problems. Despite having a resource base in the form of central government transfers, locally generated revenue, donor aid and loans, these are usually not sufficient to satisfy the ever-growing needs of the local assemblies. The problem of erratic revenues is exacerbated by the fact that most of the key taxable resources are centrally controlled, leaving the assemblies to collect taxes and rates from small businesses and thereby to reduce the tax resource base. For instance, big businesses and companies that exist in the city assemblies of Lilongwe, Mzuzu and Blantyre submit their taxes to the central government rather than to the assemblies. This situation cripples the operations of the assemblies. In addition, Hussein notes that in most instances 'government has not fulfilled its statutory obligation to transfer 5% of the net national revenue to local government'.⁷⁷

The other major need of the local assemblies in Malawi is political commitment. The problem is that since the dawn of multiparty democracy the central government has not been committed to devolving power to local government levels. In particular, the central government has not been supportive in terms of putting in place elected representatives at the local level. This is a blatant violation of the constitution. For instance, in the

Muluzi era, although the country had multiparty democracy in 1994, local government political officials were not elected until 2000 and there were no viable incentive structures for the effectiveness of the councillors. In this regard, the councillors had no salaries and were paid only meagre allowances when they had meetings. The problem is that the government was convinced that this was enough and it expected councillors to be performing although they were 'not paid to represent their wards in the district assembly'.⁷⁸ In this regard, the government was of the view that councillors 'receive allowances to pay for their transport and upkeep during assembly and committee meetings. Therefore councillors need to be very committed to serving their wards or communities in development work. They should not contest for work'.⁷⁹

This demotivated many young and capable councillors and as a result they voted with their feet. When President Mutharika came to power in 2004, the attitude towards local councillors did not change. The councils were dissolved in March 2005 as their constitutional mandate ended then, and in terms of the provisions of the constitution the country was supposed to hold local government elections the same year. However, there has been no attempt to hold a follow-up round of local elections up to the time of writing. The problem is that Mutharika's party, the Democratic Progressive Party (DPP), does not have grassroots structures and the president is afraid of registering massive losses that would make his legitimacy questionable. These issues have made the consolidation of democracy a challenge.

POSITION AND ROLE OF TRADITIONAL LEADERSHIP INSTITUTIONS

Malawi has traditional authorities in place as provided by the Chief's Act of 1967. The Malawi constitution also provides for the existence of traditional authorities within the local assemblies. In this regard, the constitution goes further to empower parliament to ensure that the composition of local government authorities includes chiefs. In the same vein, the Local Government Act of 1998 recognised the institution of traditional leadership as an important component of the local assemblies. Traditional authorities in Malawi range from paramount chiefs, traditional authorities, chiefs, sub-chiefs, group village headmen and village headmen. Traditional leaders are generally elected on the basis of kinship. Thus one could not be raised to the status of chief or village headman without a

direct link to the previous traditional leadership. In addition, the Chief's Act empowers the president to appoint a person to the office of chief under customary law and based on 'the support of the majority of the people in the area of jurisdiction of the office in question'. Using the same power, the president can remove a non-performing chief from office. The chief may also recommend a person to the president for the office of sub-chief. The chief or sub-chief may in turn appoint village headmen on the recommendation of the people. The chief also has the power to remove a village headman from office if he believes that such a move is reasonable for the maintenance of peace.

In order to avoid such removal from office, chiefs and village headmen are supposed to develop cordial relationships with their subjects. Thus contemporary chiefs are more than customary leaders. They are involved in many development activities as overseers or even coordinators. Chiefs are mandated with the task of maintaining peace, and carry out some traditional functions that are not in conflict with the constitution. Generally, the traditional leaders assist in the administration of the district in which their area of jurisdiction is situated. Thus traditional leaders carry out duties that the district commissioner would have done. The chiefs are like district commissioner's delegates. This delegation is extended to traditional leaders down to the village headmen. Thus development projects such as the Malawi Social Action Fund and Food for Work are jointly supervised by the traditional leaders and project managers.

Traditional authorities (officially known as chiefs) and the rest of the authorities under them work in districts. In terms of the Local Government Act, the traditional authorities are ex-officio non-voting members of the district assemblies. Accordingly, they interact more with the district commissioners under whose jurisdiction they hold office. The district officers have a direct relationship with the central government. Falling under the local government authorities, the district commissioners hold an intercessory role between the chiefs and the central government. Thus the central government can communicate with the traditional authorities only through the district commissioners. Similarly, the local authorities have to go through the local government authorities if they need something from the central government.

Traditional authorities are not formally represented in parliament. However, in most cases MPs whose constituencies fall within or across respective traditional authorities are considered representatives of the traditional authorities in parliament. Usually the MPs consult with the chiefs on what to present in parliament. After parliamentary sittings MPs also report to their traditional authorities on the proceedings. Failure to do so attracts serious repercussions from the chiefs who can easily tell their people not to vote for the said MP in future parliamentary elections. This means that MPs today have to work hand in hand with the traditional authorities to win their favour.

A second chamber of parliament, the Senate, was to have included traditional authorities as well as other specific groups. The constitution was, however, amended to exclude the Senate. The reason given was that Malawi could not afford the cost of a Senate. In addition, attempts to replace the Senate with a chiefs' council that would have comprised traditional authorities and would have been an advisory arm of the government on traditional matters also failed. The reason this time was a belief that the council would be abused by politicians, especially during elections. This view was supported by the 2002 Afrobarometer survey, which found that 50% of Malawians strongly disapproved of rule by a council of elders, traditional leaders or chiefs while only 9% strongly approved of such rule.⁸⁰

The expert opinion survey indicated that traditional leaders have both a direct and an indirect influence of elections at a local level. Specifically, they influence their subjects on who to support in general elections and local government elections. Traditional leaders participate in the selection of government officials in their capacity as citizens of Malawi but not as office-bearers. However, sometimes the public looks at the traditional leaders' role as very confusing. Some leaders corruptly influence people on how to vote, while some leaders are influenced by politicians. This office has therefore become controversial. Sometimes government officials allow traditional leaders to use state resources in support of a candidate which the government prefers. Some traditional leaders have, however, reported such practices to opposition leaders and as a result have sometimes been removed from office by the government.

REPRESENTATION, ACCOUNTABILITY AND CITIZEN PARTICIPATION IN LOCAL GOVERNANCE

Local government elections

Elections are of course an essential element of democratic consolidation. Section 147(5) of the constitution specifies that local government elections shall take place in the third week of May in the year following a general election for the National Assembly, and that local government authorities shall be dissolved on the 20th day of March in the fifth year following their election. The Local Government Act of 1998 further entrenched the legal framework by requiring the Malawi Electoral Commission (MEC) to hold local government elections in wards every five years. Currently Malawi has 842 wards spread across the Northern, Southern and Central regions of the country. Each ward is represented by a councillor.

The first and so far only country-wide election at the local level took place in 2000 but only 14% of eligible voters went to the polls. The trend was similar in subsequent local government by-elections, with only 17% participation. This was surprising as 94% of the registered voters had participated in the 1999 parliamentary and presidential elections. Voter fatigue following the presidential and parliamentary elections was quoted as a possible reason.

Three parties – the UDF, AFORD and the MCP – contested the 2000 elections, while there were also 30 independent candidates. Table 6 shows the results.

Table 6: Results of the 2000 local government elections

Region	AFORD	MCP	Independent	UDF	NIP	Total
North	114	5	6	31	0	156
Centre	6	71	5	257	0	339
South	0	7	16	324	01	348
Total	120	83	27	612	01	843

Source: Malawi Electoral Commission Report, 2000

As in the case of national general elections, local government elections use the FPTP electoral system. This system has created challenges for democratic consolidation at the local level as it has resulted in a regional voting pattern in which the parties receive most votes in the regions from which their national leaders come. This has created a situation in which these regions become the party strongholds.

As can be seen from Table 6, AFORD had most of the votes in the Northern region, which is its stronghold, the MCP received the majority of the votes in the Central region, where most of its leadership belongs, and the UDF polled the majority in the Southern region, which is its stronghold. It must be noted also that most of the independent candidates originally belonged to the UDF. They were aspiring to contest for the local government on a UDF ticket. However, because of the parties' own lack of democracy, the party's leadership preferred other people, even if they were unpopular. As a result, popular candidates who failed to get the support of political leaders decided to contest as independent candidates and some of them eventually won. It is therefore not surprising that most of the independent candidates had seats in the Southern region of Malawi, which is also the UDF stronghold.

Another problem in terms of democratic consolidation at the local level is that the government is not committed to sharing political power with local levels. This was confirmed when the national government did not initiate subsequent local government elections, as they were constitutionally required to do. In 2004, the country had presidential and parliamentary elections. The MEC made a proposal to parliament to include local government elections in the 2004 elections. However, parliament rejected this proposal on the apparent grounds that it was made too late and as a result there would not be enough time for preparation.

The real reason, however, was that MPs were afraid that councillors would also contest parliamentary seats, which would make the contests for these seats more difficult for incumbent MPs. This was particularly so as councillors live in their wards and are very close to the people and become popular in the process, while most MPs live in town and are only seen during election campaigns.

This has created a situation where up to now Malawi has not yet held a second local government election. This was supposed to have taken place five years after the first of these elections in 2000. Dates for elections have not yet been set.

According to the Finance Minister Goodall Gondwe, the government fears that local assemblies with councillors will be too costly as donors have not committed themselves to funding these assemblies.

Public participation in local affairs

It is generally agreed that democracy is consolidated where citizens participate in decision-making at the local level. In this regard, the constitution lists the objectives of the local government system as to further the constitutional order based on democratic principles, accountability, transparency and participation of the people in decision-making and development processes. The local government system is therefore intended to ensure popular participation at the grassroots level.

The structure for participation and accountability is hierarchical, starting from villages assemblies. At the village level there are village development committees (VDCs) under the jurisdiction of the group village headpersons. This is the level where the grassroots participate in decision-making and hold public officers accountable. The village executive committees are the technical arm of the VDCs. They comprise all field officers working in a particular village. The VDCs report to the area development committees (ADCs). The ADCs comprise all VDCs within the jurisdiction of a particular traditional authority or sub-traditional authority. The area executive committees comprise all extension workers in traditional authorities or sub-traditional authorities and provide technical advice to the ADCs. At the community level, therefore, ADCs and VDCs act as local participatory structures to promote popular participation at community, village and area levels. The ADCs report to the district assemblies, which comprise councillors in the assembly and traditional and sub-traditional authorities as ex-officio non-voting members. The district executive committees (DECs), which comprise all heads of departments in an assembly, provide policy guidance and direction to the assemblies. This structure ensures popular participation and accountability.

However, the expert survey revealed that the arrangement of local government popular participation is not effective. The problem is that most of these structures, especially the VDCs and ADCs, are either not functional or just exist on paper. This forces NGOs and other development partners to create parallel structures when implementing projects that require grassroots participation and accountability. This further brings confusion and duplication and makes coordination of projects at the assembly level difficult.

Effectiveness of local CSOs

Democratic consolidation requires a viable, strong and informed civil society to promote popular participation, accountability and transparency. In Malawi, many CSOs work at the local level to influence public decisions that affect the interests of their members and people at large, particularly with regard to development priorities, human rights issues, elections, the delivery of services and the use of public resources. CSOs at the assembly level are able to access and influence decision-making procedures through the DEC structure. As the technical arm of the assemblies, DEC members comprise heads of government departments as well as representatives of the private sector and civil society. On account of their expertise and capacity, the local CSOs serve in addition on a number of stakeholder committees, where they exert their influence in assembly decision-making processes.

The Local Government Act also provides for the participation of CSOs in the process and for the advancement of local government democracy and good governance. In this regard, this act provides for at least five persons to be appointed as members of the assembly by the elected members as non-voting members. Most of these members are taken from civil society groups. In addition, the act further states that committee meetings are to be open to the public. In this case, the civil society groups use this opportunity to influence, monitor and contribute to the proceedings and activities of the assemblies and their committees.

However, civil society groups at the local level of governance face various challenges that prevent them from functioning effectively in consolidating democracy. The first challenge is that since Malawi is a nascent democracy and the role of civil society is still emerging in this context, most of the

civil society groups are in their infancy and the area of their activities is limited. This is the case since many civil society groups are not self-sustaining and they over rely on external donations. As a result, when donor funding is not forthcoming their operations tend to come to a standstill. In addition, some of the NGOs misuse donor funds, which results in the withdrawal of these funds. Moreover, some donors dictate the mode of operation to the civil societies they fund in order to preserve the donors' identity. The NGOs' main objective for shunning the decentralised planning framework is that they view one another, and the district assemblies, not as partners but as competitors in grassroots development.⁸¹ According to Chinsinga and Dzimadzi,⁸² this is done as they have different goals, strategies and mandates that they are hardly willing to compromise for the advancement of the decentralisation framework. However, some of these ways of operation are in conflict with the decentralised planning and governance framework. As a result, local assemblies find problems in coordinating these civil society activities into the decentralisation process.

Relationships between central government and local government

Although the Local Government Act and the constitution define the nature of these relationships, the expert survey revealed that local government authorities are not independent of the central government. This is so because both the constitution and the Local Government Act give much of the authority for issues of local government to the office of the responsible minister. In this regard, the local government assemblies are linked to the central government through the Ministry of Local Government and Community Development. The Local Government Act gives this ministry responsibility for facilitating the development of an effective system of local governance. The Local Government Act also gives the local government minister the power to:

- declare any local government area to be a municipality or township;
- amend the functions to be carried out by an assembly;
- exempt an assembly, following its written request, from any of the specified assembly functions;
- amend the sources of revenue available to assemblies in consultation with the finance minister;

- determine the conditions attaching to the raising of loans within Malawi by the assemblies; and
- issue written instructions, after consulting the finance minister, for the better control and efficient management of the finances of an assembly.

In addition, all policy and other issues affecting local authorities as instruments of local government and development are channelled through the ministry responsible for local government. Ministries retain responsibility over certain issues that are crucial and require certain expertise. These include policy formulation, policy enforcement, inspection, establishment of standards, training, curriculum development and international representation. In undertaking this responsibility, line ministries have direct links with local authorities as instruments of service delivery for professional and operational issues.

Women's participation

One of the cornerstones of democratic consolidation at the local level is women's participation in decision-making. However, the general feeling is that women do not effectively participate in local government activities. In this regard, many positions in the assemblies are male dominated. For instance, during interviews it was observed that in all of the assemblies except Blantyre City the chief executive officers were male. The same trends are also visible in the case of elected representatives. In the 2000 local elections, women were adversely under-represented. As can be seen in Table 7, only 69 women were elected in the country's 842 wards.

Table 7: Representation of women

Region	Wards	Male	Female
Northern	156	146	10 (6%)
Central	339	310	29 (7%)
Southern	348	318	30 (9%)
Total	842	774	69 (8.3%)

Source: Malawi Electoral Commission Report, op cit

This percentage is lower than the percentage of women's representation in Malawi's parliament and lower than the level of women's representation in other countries in the region. Women's representation in parliament is 14.4% while at the local government level it is 8.3%. This trend is rather surprising as it is at the local level that a country has many seats compared to the parliamentary level, and as a result women should have had many more chances at the local level. In addition, local government is the sphere of government in which many politicians gain experience before moving on to national politics. Consequently, persistently low women's representation at the local level could in the long run entail low representation at the national level. If compared to the SADC region as a whole, Malawi's local level representation is also not impressive.

CONCLUSION

From the perception of a bottom-up approach to democracy, it is unfortunate that Malawi has not made much progress. As this chapter has highlighted, constitutional and legal frameworks for local governance are in place, but their implementation is grossly inadequate. As of now, the local assemblies stand dissolved, which is in contravention of the constitution. Service delivery at the local level is inefficient and inadequate, and people do not feel that these bodies are functional or capable of taking care of their needs.

ECONOMIC MANAGEMENT AND CORPORATE GOVERNANCE

THEORETICAL AND HISTORICAL CONTEXT

This chapter is premised on the theoretical school of thought that there is a correlation between development and democratic principles of good governance. Scholarly tradition has it that 'a liberal democracy model with free market economy is the key for development'.⁸³ Thus in their concern for development, questions relating to the enhancement of economic management and corporate governance fall within the parameters of the consolidation of democracy. Malawi's economic management has over time shown sound improvement, culminating in US\$2.9 billion of debt being cancelled by the World Bank and IMF on 31 August 2006. Adherence to 'good governance' was one of the conditions that Malawi, an HIPC, was seen to have fulfilled to qualify for debt cancellation. It is hoped that this move will go some way towards improving the living standards of Malawians.

Malawi justifies its classification as one of the 'least developed countries with a very low human development'.⁸⁴ By 2005, 55.9% of the rural population and 25.4% of the urban population were categorised by 'poverty headcount' as living below the poverty datum line.⁸⁵ Currently, about 42% of the population of Malawi live on less than US\$1 a day. It will be noted in this chapter that the various economic policy shifts since independence from colonialism in 1964 have failed to lead to an economic growth that truly advances the standard of living. There are various internal and external reasons for this. Ephraim Chirwa has observed that Malawi's implementation of macroeconomic policies since 1981 has failed to translate into poverty reduction 'especially in the rural areas, where the poor mostly live'.⁸⁶ Although this situation is attributed to the failure to base the implementation on 'empirical data', plus an inability to fully understand the effect of such policies on poverty growth and reduction, this chapter also argues that the political leadership counts in economic management beyond such factors observed.

It will be noted that part of Malawi's dictatorial period was able to show an improvement in economic growth while another period of the same

dictatorship led to a collapsing economy. Likewise, part of the democratic period in Malawi is fraught with a general economic malaise, contrary to the most recent two years of Malawi's democracy. It will be noted that there are other limiting factors for Malawi's economy and that democratic principles alone may not contribute much to the way the economy is run. For Malawi, the present democratic environment offers both opportunities and challenges for economic growth. Thus, the relationship between democracy and the unstable economy plus improvement of livelihoods is full of paradoxes in our situation.

The economy since independence

There was remarkable growth of the economy from 1964 to the start of the 1970s. This, however, did not translate into a widespread benefit for the majority of Malawians as the economy was said to have been enjoyed by a small elite class under President Banda who controlled the economy and owned 33 companies 'in trust for the people'. The economy suffered from the global oil price hikes of the 1970s. In addition, with the cessation of the export of mining labour to South Africa (following a crash of a labour-recruiting aircraft) the economy began to slump until it reached a low in the 1980s due to drought and the political uncertainty ushered in by Banda's autocracy, which scared off investors. At this point, Malawi's currency was liberalised to float against major international trading currencies as opposed to being fixed by the government. This policy shift was also a result of the conditions set by the IMF, which introduced structural adjustment programmes. The programmes involved intervention in the economic situation, but did not manage to reduce real poverty.

The period of 1997-2002 was characterised by an average economic growth rate of only about 1%. This rate recovered in 2003 to 4.4%, largely as a result of better rains which helped the recovery of small-scale agriculture – it was therefore not merely embracing democracy that mattered but also the weather patterns. However, despite Malawi having experienced an economic growth recovery then, this could not compensate for the fall in per capita incomes that took place in the period 1998-2002. The economy would have needed a 6% growth rate to make a significant impact on poverty reduction. Declining per capita income thus contributed to increased poverty.

In addition, by early 2003 the government had difficulty in maintaining control over its expenditures, highlighting problems of economic mismanagement. This led Malawi's development partners to withhold all financial support except humanitarian aid, thereby holding back the implementation of the Malawi Poverty Reduction Strategy and the Poverty Reduction Growth Facility. This is also the context in which the formulation of an ambitious economic growth strategy was born.⁸⁷

There have been two major economic policy paradigms since independence. For the first 30 years of Malawi's independence – from 1964 to the end of the one-party state in 1994 – economic 'colonial structures and bureaucratic structures and practices' were inherited and followed.⁸⁸ It was in this context that the 30-year-old one-party regime leaned towards 'the capitalist orientation with respect to production and distribution of goods and services, spearheaded by the promotion of commercial agriculture'.⁸⁹

Malawi began by registering rapid economic growth between 1964 and 1979; however, during the continuation of the Banda dictatorship in the early 1980s, an atmosphere of uncertainty among investors and other stakeholders led to a low and erratic economic growth. Throughout this period of political rigidity, there was no broad participation of local stakeholders in influencing economic policy. Such levels of poor democratic principles that lead to fear and uncertainty can have a corrosive effect on the economy.

The Banda one-party state and its authoritarian and monopolistic propensity controlled the economy well into the 1980s, when the rise in the international cost of petroleum and drought forced the government to begin moving towards liberalisation – in the spirit of the globalisation project where the macroeconomic environment matters. Structural adjustment programmes were introduced, indicating that the IMF had begun to have a greater say in the national economy.

Internally, again, corruption and general financial mismanagement in the Muluzi decade (1994-2004) strained economic progress, leading to the partial withdrawal of donors by the end of that period. A combination of

the political change to a multiparty system in 1994 and the need to restore suspended donor aid that had forced Banda to liberalise politics also led to the liberalisation of the market economy. Between 2004 and the present, the Mutharika regime has brought more economic reforms and stressed fiscal discipline, accountability and the empowerment of the private sector. The most notable policy in the present regime has been the policy of zero-tolerance against corruption. It remains to be seen, however, whether the 'walk' will fully match the 'talk'.

It was with the advent of multiparty politics in 1994 that Malawi adopted a liberalised market economy beyond the liberalisation of the currency, and created more room for the participation of stakeholders in policy-making. This approach completed the picture of Malawi joining the globalisation project (which began in the 1980s) in its policy orientation by opening up to global economic forces and giving the market a free rein 'on a global scale'.⁹⁰ But external shocks or macroeconomic imbalances reduced local policy ownership due to donor influence; and there was a general policy failure. The country generally registered a low economic growth from 1994 to 2004. The same policy of liberalising the economy and placing emphasis on the key participation of the private sector may catalyse economic growth, but at the expense of the public sector that, historically, had provided a social safety net function to serve the interests of Malawians who were disadvantaged by the scourge of grinding poverty compounded by illiteracy and ignorance. The question therefore is whether this anticipated economic improvement will, in the final analysis, translate into a tangible difference in the lives of the ordinary populace.

Present trends

Malawi's GDP has been growing, with the latest figure quoted at 2.1% in 2005. Growth over the past four years to 2006 has, however, fluctuated, indicating a relatively unstable economy. Several factors may account for this trend.

Malawi has an agro-based economy that has so far been largely rain-fed. The agricultural sector accounts for 'over 35% of GDP and 82.5% of foreign exchange earnings' while employing 84.5% of Malawi's labour force.⁹¹ Put together, tobacco, tea and sugar account for close to 90% of total export

earnings. Maize is the staple crop and its performance tends to have a direct impact on the general consumer price index, just as the performance of tobacco and its prices (that have been very low in the past few years) are visibly felt in the economy.

For a rain-fed economy, weather patterns sway the economy. In the example of 2005, inflation shot up, the local currency tumbled (see Table 9) and the GDP growth rate nosedived from 4.6% to 2.1% because there was drought; but this was further compounded by mismanagement of the fertiliser subsidy scheme – as a result of which, approximately five million people faced starvation. The 2006 bumper harvest in tobacco and maize has been a result of both good rains and the Targeted Input Programme, in which the government subsidised the cost of fertiliser by more than 50%, although similar attempts were aborted by rain shortage (coupled with hiccups of political transition) in 2005.⁹² The year 2005 was therefore economically strained and this illustrates the place of agriculture as an internal factor.

It is difficult to have sustained economic growth because agriculture, on which the country's economy depends, remains a very fragile economic base and is susceptible to various shocks.

Globally, Malawi has not adequately competed in almost all sectors due, among other things, to very high external and internal transport costs. These costs are due mainly to the geographical location of the country. Malawi is a landlocked country and has not developed any cheap access to the ports on the Indian Ocean. The internal transport costs emanate from the poor network of secondary roads, the existence of trucking cartels that keep prices high, the high taxation imposed on the transport sector, as well as restrictions on the operations of foreign vehicles. All this is also pitted against the challenge of Malawi being a predominantly importing and consuming nation rather than an exporting and producing nation. This is a trend which the present Mutharika government has vowed to reverse. It is thus difficult to control the cost of imported goods at home and this easily results in shocks to economic stability.

The advent of democracy has changed Malawi's foreign policy and trading relationships. The former regime was clearly pro-Western, pro-apartheid

South Africa and pursued a policy of isolation from the rest of the region. The opening up to the international community itself (in what we describe as part of the globalisation project) has opened newer avenues of aid, including funding for the consolidation of democracy. It has further been asserted that:

Malawi has signed up to all possible regional trade agreements, some of which are inconsistent with one another. This is due to the lack of any clear trade policy strategy. The area of food security exemplifies well a multiplicity of policy frameworks combined with an absence of real policy beyond the extremely short term.⁹³

At the regional level, Malawi has bilateral trade agreements with South Africa and Zimbabwe. Malawi is also a member of SADC and the Common Market for Eastern and Southern Africa (Comesa).

Tariffs on imports are being reduced and rationalised in line with other Southern African initiatives. The tariff reform programme has included the removal of the tariff-based protection brought about by merging part of the import tax with the domestic surtax. The maximum import tariff is 45%. The surtax exemption system on both domestic and imported goods was removed to eliminate the trade protection bias.

Almost all non-tariff barriers to trade have been removed. Restrictions on imports have been relaxed, except for a very small range of goods which have implications for health, safety, national security and the environment. Export licences have been abolished for everything except maize, groundnuts and beans. An extended and improved duty drawback was introduced for manufactured exports in 1991.

According to the World Bank,⁹⁴ Malawi's share of global trade, capital flows and foreign direct investment was 0.001% in 1990 and 0.004% in 2003. This is very low compared to other African countries and it indicates that the country is not able to generate sufficient foreign exchange for importing the consumer, capital and intermediate goods required for use by consumers and producers.

Table 8: Economic trends – a macroeconomic picture

	2000	2001	2002	2003	2004	2005
Real GDP (MK bn)	13.2	12.6	12.9	13.4	14.1	14.4
GDP per capita (MK'000)	—	—	12.9	14.2	16.9	19.9
Govt revenue (MK bn)	38.3	21.4	26.4	35.7	47.6	62.6
Govt expenditure (MK bn)	24.9	36.4	50.8	67.9	72.2	79.5
Deficit/surplus (MK bn)	13.6	-15.0	-24.4	-32.2	-24.6	-16.8
Plus net factor income (MK bn)	-1.1	-2.3	-2.8	-3.3	-4.0	-5.2
GNP (MK bn)	102.7	121.6	145.6	168.7	202.2	240.6
Inflation (%)	—	22.7	14.8	9.6	11.5	15.4

Source: 'Malawi in Figures', National Statistics Office, 2006

Despite the GDP's ability to grow, the value of local currency has been declining over the same period. The exchange rate trend of the Malawi kwacha against the United States (US) dollar shown in Table 9 indicates an increasingly weak local currency, with a minor exception of its fluctuating trend against the South African rand. As a predominantly importing economy, Malawi has also little power over foreign exchange control.

Table 9: Foreign exchange rate, 2002-2006

Selected foreign exchange rates (MK per unit)	2002	2003	2004	2005	2006 (July)
UK pound sterling	139.9	192.7	210.1	215.4	252.7
US dollar	87.3	108.6	108.9	118.4	137.6
Euro	--	135.3	145.8	147.1	171.7
South African rand	9.9	16.3	19.0	17.6	18.9

Source: 'Malawi in figures', National Statistics Office, Malawi, 2006

The continued depreciation of the exchange rates of the Malawi kwacha has affected Malawi's balance of payments position. Within the same context of a weakening local currency, the period between 2001 and 2003 had signs of gross economic mismanagement characterised by overspending, as indicated by the rising gradient of deficits (see Table 8). As a result, Malawi's current account balance has declined from a deficit of MK28.7 billion in 2002 to MK47.6 billion in 2005,⁹⁵ thereby indicating rising economic debt that has been robbing the country of social sector spending. Obviously, spending on the social sector in a population that has been steadily rising to a rate of 4% has had serious implications on the improvement of living standards.

The change of political government in 2004 and the move towards stricter fiscal discipline by the Mutharika government is indicated by the trend given in Table 9. It is hoped that this economic trend, if continued, will lead to improved conditions for the growing population.

EXTERNAL RESOURCE FLOWS: IMPACT ON ECONOMIC POLICY AND DEVELOPMENT

The self-reliance of people is a major prerequisite for the vibrancy of a democracy. Malawi's economy still largely depends on an external resource base. In any case, the democratic principles are supposed to translate into the welfare of the people, and meaningful development is endogenous more than externally reliant.

Malawi is to a large extent dependent on foreign aid. The 2004/05 budget estimates put aid at 32.9% of total revenue and grants at 29.5% of total expenditure.⁹⁶ In most cases, donors support specific projects or programmes, which means that the proportion of aid given for budget or balance of payments support is relatively small. This trend, however, appears to be changing towards more emphasis on budgetary support by the donor community. The trends in the flow of real overseas development assistance (ODA) to Malawi from various sources between 1993 and 2002 show that members of the Development Assistance Committee (DAC) are the largest source of aid to the country, with multilateral donors in second place, while non-DAC bilateral donors contribute little net aid to the country.⁹⁷

As is normally the case, these donors insist on good governance, accountability and transparency in the way that their aid is used. The projects they finance are regularly monitored and evaluated. In 1993, 1997 and 2002 most of the aid was cut because the country did not satisfy some of these criteria. Consequently, since 1993 there were fluctuations in the aid flow due to a number of factors such as the non-completion of projects and dissatisfaction with corruption and governance.⁹⁸

Malawi confronts trade deficits almost every year. This deficit is to a large extent subsidised by ODA. According to the Afrodad reports from 2000-04, the 'trade imbalance deteriorated from a deficit of MK3.2 billion in 2000 to MK23.9 billion in 2004'.⁹⁹ The report further states that during the same period the current account imbalance worsened from a deficit of MK11.2 billion to MK39.8 billion. However, after debt relief of MK5.4 billion and MK8.1 billion in 2000 and 2002 respectively, the country managed to have overall balance of payments surpluses. Precisely 'in the other years, Malawi's overall balance of payments after debt relief was in deficit'; and in this case 'progressively, gross official reserves measured in months of import cover declined from 4.7 in 2000 to less than 2.0 in 2004'.¹⁰⁰

TRADE AND AID

Malawi's central location makes it an important trade centre in the region of Central and Southern Africa and it has strong existing links with regional and overseas trading partners. Countries and trading blocs to which Malawi has preferential access include the European Union (EU) (through the Lomé Convention). Agricultural products and virtually all manufactured goods have preferential access to EU member states.

As mentioned, Malawi has bilateral trade agreements with South Africa and Zimbabwe and is a member of SADC and Comesa. Moreover, Malawi is a member of the General Agreement on Tariffs and Trade and the Generalised System of Preferences.

Tariffs on imports are being reduced and rationalised in line with other Southern African initiatives. The tariff reform programme has included the removal of the tariff-based protection. This was brought about by merging part of the import tax with the domestic surtax. The maximum

import tariff is 45%. The surtax exemption system on both domestic and imported goods was removed to eliminate the trade protection bias.

Almost all non-tariff barriers to trade have been removed. Restrictions on imports have been relaxed, except for a very small range of goods which have implications for health, safety, national security and the environment. Export licences have been abolished for everything except maize, groundnuts and beans, and an extended and improved duty drawback was introduced for manufactured exports in 1991.

Much as these may be good initiatives, many are short term and lack proper policy strategies. It has been asserted that:

Malawi has signed up to all possible regional trade agreements, some of which are inconsistent with one another. This is due to a lack of any clear trade policy strategy. The area of food security exemplifies well a multiplicity of policy frameworks combined with an absence of real policy beyond the extremely short term.¹⁰¹

Malawi's foreign trade balance is determined by production levels and world market prices for tobacco, tea and sugar. The country's exports are dominated by these three commodities, which account for about 85% of domestic exports. Imports are dominated by capital goods and industrial equipment. During years of drought, Malawi's food imports rise significantly. In recent years, the direction of Malawi's foreign trade has diversified, with South Africa emerging as a major trading partner. Malawi has a diverse range of export products, mainly in the agricultural sector. These include beans and pulses, dhalls, chillies, coffee, macadamia nuts, rice, confectionery, ceramics, textiles, crafts, farm implements, fishing flies, furniture, gemstones, enamelware, rubber, live tropical fish, cut flowers, buses and trailers.

REVENUE MOBILISATION AND TAXATION, BUDGETING AND PROCUREMENT PROCEDURE

In order to promote efficiency in revenue mobilisation, the government created a semi-autonomous body, the Malawi Revenue Authority (MRA),

whose mandate is to ensure that it collects all revenues on behalf of the government in the form of taxation and other related duties.

Since its creation, the MRA has been able to meet targets that were set by government – even more effectively in the years 2004 and 2005 as the revenue trend in Table 9 indicates. Collection of revenue alone does not mean much, but its effective mobilisation translates into how the revenue is budgeted and how the budget is implemented.

The procedure for government budgeting is rigorous and is well explained in Chapter XVIII of the constitution. No expenditure is allowed unless it has been debated and approved by parliament. At the beginning of each financial year, the finance minister is required to present the national budget to parliament for debate and approval.

During the Muluzi era, however, there was a general concern that parliament was just passing the budget without necessarily scrutinising it. In the period after the 2004 elections, the opposition has been in the majority and has seriously scrutinised the budget before approving it. This happened after training by CSOs in budgetary appraisal, analysis and oversight with funding from the Canadian International Development Agency's Programme on Economic Governance in August 2004. This is contributing to the growth of proper governance with respect to accountability.

The implementation of the national budget may also collapse with poor procurement procedures, overspending and misuse of resources. Procurement ethics demand the democratic principles of transparency and accountability. In order to enhance transparency and accountability in the procurement of public property, the government's Public Procurement Committee handles such issues with a sense of accountability. The committee is required to justify its decisions and to be transparent in its activities as far as procurement of public property is concerned. Malawi has also set up the Office of Director of Public Procurement (ODPP) as provided in the Public Procurement Act of 2003. According to ODPP director Bright Mangulama, the office 'is modelled on international best practice' and is set

to champion a strong procurement management system in the public sector ... [The focus is to bring about] concerted efforts to adhere to the president's zero tolerance to corruption ... through the enforcement and enhancement of the procurement law ...¹⁰²

The ODPP is currently conducting a massive campaign for proper procurement procedures in the public sector. Also, as noted, this implies a quest for democratic principles of transparency and accountability in public procurement and ultimately in the implementation of the national budget. Besides, poor procurement is a fertile ground for corruption, which mocks the spirit of democracy in that the electorate fails to benefit fairly from national resources.

THE PUBLIC AND PRIVATE SECTOR

The privatisation programme

Privatisation and democracy are axes intersecting on the thought that a free market economy provides an environment conducive to quality competition, robust investment and economic growth, but that such a free market economy can best flourish in a liberal democracy. Scholars therefore tend to view the 'liberal democracy model with free market economy' as the key for development.¹⁰³ The whole idea of enabling the private sector to become a key participant in driving the economy rather than the state monopolising the show is the philosophical framework within which the government decides to sell public assets to be privately owned and run. Ideally, it is a matter of devolving economic power to the people whom a democracy is meant to serve. This is the context of thought in which Malawi decided to embark on a privatisation programme. The global proponents of the neo-liberal democratic paradigm – the IMF, for example – set privatisation as one of their conditions for Malawi to be seen as being on course to democratic governance and economic prosperity after the advent of political liberalisation in 1994. Although, it may never be publicly accepted, it remains a condition for aid. Like most African countries, therefore, Malawi has had to comply by embarking 'on the process of privatisation as a necessary step towards democratic governance'.¹⁰⁴

In 1998, four years into the liberalised economy, the Malawi government

began privatising 81 companies, although in only 15 of these had the process been completed by January 2006. A total amount of about MK1.5 billion has been realised, excluding the proceeds of uncompleted transactions. A public debate had always risen in the Muluzi times as the public demanded to be accounted to on the use of the proceeds from privatisation. In fact, privatisation has become a seriously controversial issue in Malawi.

Controversy has not necessarily centred on vilifying the whole idea of privatisation but rather on the way it is done. Some believe that privatisation becomes a human rights issue once it fails to translate into the constitutional right of Malawians to be developed because of the way it is carried out. By 2002, when the economic management of the Muluzi regime was dismal, the picture of the privatisation mission was equally bleak.

The privatisation programme had hitherto missed its target because broad ownership of companies by Malawians had not been achieved. Very few Malawians (the rich few) benefited from the programme. Consequently, instead of encouraging broad ownership and enhancing people's participation in economic activity, the programme has entrenched the high-income disparity ... and has therefore perpetuated poverty.¹⁰⁵

Thus, the efficacy of the entire economic philosophy was missed both due to the political and economic environment in which privatisation was being implemented and due to the manner in which it was done. The present prudent economic management and avowed support for the private sector has yet to prove the extent to which privatisation is working as a component in consolidating the economy and liberal democracy. Notwithstanding all assertions to the contrary, privatisation is globally accepted, but the question is whether it will work for Malawi.

Certain crucial sectors such as the water and power utilities that are usually run by public entities because they are virtual monopolies and perform a social responsibility cannot be left in purely profit-motivated private hands without an extremely strong and effective regulatory mechanism.

Public- private partnerships

In most countries the private sector itself plays a vital role in policy-making and development. However, Malawi's lean private sector has given it relatively less muscle to influence policy. With the liberalisation of the market economy, the private sector has been taking centre stage in the economy, with a critical voice to check and balance the decisions of government. The first democratic president of Malawi, President Muluzi, was a past chairperson of the country's chamber of commerce. His cabinet included many of his erstwhile colleagues from the chamber. In 2004, the private sector umbrella body, the Malawi Confederation of Chambers of Commerce and Industry (MCCCI), had its president appointed by the Mutharika government to be the trade and industry minister. This appointment was a bid to incorporate the spirit of the private sector into the policy-making forum at cabinet level. The government consults the private sector in the pre-budget formulation process, thereby giving the private sector an opportunity to co-own the national budget. For the 2006 national budget, the MCCCI president publicly expressed his organisation's satisfaction that the confederation's contributions had been incorporated into the budget, which he described as largely favouring the private sector.¹⁰⁶

Some experts are convinced that a cohesive relationship exists between the private and public sectors. Indeed, the government is increasingly recognising the private sector as an 'engine of growth' and it therefore strives to create an enabling environment that will promote the private sector through the introduction of measures such as appropriate taxation and non-tax incentives.

NGOs, the private sector and communities play critical roles in the provision of education, health, credit schemes, environmental issues and many other areas. Each year during the drafting of the budget the government invites private sector NGOs to provide input. Consequently, the final budget presented in parliament to some extent incorporates the views of these sectors.

FORCES BEHIND ECONOMIC POLICY FORMULATION

With the positioning of Malawi's economy within the globalisation project, most people believe that the country's socio-economic, political and cultural

governance is broadly subordinated to external influences. Whatever may be said for international political correctness, the World Bank and IMF as the lending institutions give much importance to governance. This is because, in the modern history of economy and governance, 'debt [has become] a powerful form of political leverage under the debt regime when multilateral financial agencies [have] strengthened their control over national policy-making by assuming the lending role'.¹⁰⁷ They provide the main yardstick of economic performance and their assessment of a country's economic performance carries enormous weight in building donor and investment confidence.

While ideally, perhaps, policy formulation should be left mainly to the finance ministry's department of economic planning and development, in practice the Bretton Woods twins, the IMF and World Bank, as well as the donor community, strongly influence economic policy formulation. The Malawi government has had to accept some very stringent conditions in return for aid, and it must tread carefully in order to avoid antagonising the IMF and the World Bank, which effectively drive the major policies.

PUBLIC PARTICIPATION IN ECONOMIC GOVERNANCE

Trade unions

Trade unions and employers' associations in Malawi are hampered in their role as contributors to the shaping of economic policy. Despite the existence of an enabling legal framework, trade unions do not significantly contribute to policy formulation. Studies show that public servants were, for example, throughout the one-party state era expected to be 'loyal and disciplined in serving the government of the day to ensure [the stability of] state functions'.¹⁰⁸ This atmosphere has not completely gone.

Currently, Malawi's industrial base is too low for it to provide a strong industrial force to make an impact outside the civil service. Besides, the turnover of industry is so low that there is hardly enough surplus profit to attract employees into the trade unions to strive for better conditions. The size of the economy and its low profits contribute to a weak industrial force. What further weakens the trade unions is that they are not aligned to any political ideology that fires their spirit to shape policy. Politically,

trade unions were particularly divided in the Muluzi period when they were 'bought' or threatened by the state. The political leadership silenced the unions by giving the leadership promotions and dividing them from their membership. The situation continues to be by and large the same under the incumbent government.

Despite the freedom, the problem remains that the trade unions have hardly recovered from their paralysis during the previous regime. They still lack negotiating ability. This is a challenge to democracy because trade unions are an avenue through which workers can speak on economic matters that affect this important component of the economy.

Civil society organisations

The role of CSOs in policy-making can be viewed from long-, medium- and short-term perspectives. In the long term, organisations such as the MEJN, the MCCCCI and the Society of Accountants of Malawi participate in the formulation of policy documents. They are also involved in the monitoring and evaluation of the implementation of medium-term policy. In the short term, the finance ministry calls in these organisations for the annual pre-budget consultations.

Apart from such consultations on policy formulation, the actual development process is at present largely a quasi-centralised one. Since 2005, the government has required district officers to control the development finance directed from the state to local levels. However, the picture of a decentralised process remains incomplete in the absence of councillors¹⁰⁹ (or indeed a complete local government structure) to be 'the eyes for development' at the local assembly level. Be that as it may, the Mutharika administration is carrying out significant development projects.

The citizenry as a whole is only slightly involved in the process of economic policy formulation through the civil society. The government does develop poverty reduction strategies and other strategies – a process that involves the civil society. Malawi has lately seen the development of the Malawi Poverty Reduction Strategy, now replaced by the Malawi Growth and Development Strategy in which NGOs such as the MEJN and the Consumer Association of Malawi represented the interests of the people.

The MEJN, which has grassroots structures, has also been a vehicle to promote the needs of the citizenry in the direction of the achievement of Millennium Development Goals and debt cancellation. The government also informs and consults these bodies in a limited way on issues being considered in negotiations with external financial institutions and foreign governments.

ACCOUNTABILITY IN ECONOMIC GOVERNANCE

Anti-corruption strategies

The present government, known for its zero-tolerance towards corruption, came to power with an inherited pervasive culture of corruption. In the perception of the public, there was hardly a sector of society until then that was free of corruption. Even the church, the law enforcers (the police) and the custodians of justice (the judges) were considered as being corrupt. Table 10 presents these details.

Table 10: Perceptions of corruption in Malawi based on the 2005 Afrobarometer survey

	Proportion of officials perceived to be corrupt (percentage)				
	None	Some	Most	All	Don't know
Border officials (customs and migration)	8	18	27	21	26
Police	13	24	28	20	16
Foreign businessmen	12	25	21	17	25
Local businessmen	14	33	24	14	15
Judges and magistrates	14	31	23	13	19
The president and officials in his office	15	29	20	15	20
Elected leaders such as parliamentarians	17	29	23	12	18
Teachers and school administrators	24	35	17	10	14
Leaders of NGOs or community organisations	16	30	18	9	26
Religious leaders	36	30	13	6	14

Source: Khaila S & Chibwana C, *Ten Years of Democracy in Malawi: Are Malawians Getting What they Voted For?*, Afrobarometer Working Paper No. 46, South Africa, February 2005.

These perceptions indicate that corruption is an enormous challenge in Malawi – and certainly so if the reality on the ground were as serious as these perceptions. There is no doubt that the public implicitly believes that the government needs to be tough on such perceived levels of corruption.

It is the duty of Malawi's anti-corruption watchdog, the Anti-Corruption Bureau (ACB), to fight corruption. The ACB has done its best to control corruption to the extent that it can do this with its present institutional and legal capacity. While it might be argued that the ACB should have done more, the inadequate current anti-corruption legal framework has limited its effectiveness. Investigations of allegations of corrupt practices are by no means automatic. The Anti-Corrupt Practices Act 1995 has generally been described as a hindrance to the ACB and its cooperating partners in the effective execution of their task.

More importantly, section 6(2) of this act provides that 'a person holding the office of director [of the ACB] may be removed from office by the president, with the confirmation of the Public Appointments Committee, for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour'. This may limit the independence of the ACB to prosecute cases that involve the executive and may lead to political interference.

In addition, with partisan politics and when the executive has the majority of support of MPs, it may not be objective enough in confirming the appointed director of the ACB. What has occurred in reality is just the opposite of this. The ruling party in the period since 2004 has been in the minority in parliament. The parliamentary Public Appointments Committee has therefore used its powers to veto the president's appointees to the positions of the director of the ACB and the director of Public Prosecutions – both of whom are key to the anti-corruption drive.

The politics of the parliament has been one of the major challenges in the present administration. Although the powerful parliament of the past two years has been vigilant and critical in demanding accountability of the executive, it has also slowed progress in other areas.

Section 5(1) of the same act provides that ‘the director shall be subject to the direction and control of the minister on all matters of policy, but otherwise shall not be subject to the control or direction of any person in the performance of his professional duties’. The problem with this is that it is not clear what specifically ‘matters of policy’ are. As Transparency International puts it: ‘Where does “policy” end and “professional duties” begin? Would it be a matter of policy to decide not to investigate, for example, other Ministers?’¹¹⁰ Moreover, section 10(1)(b) of the act provides that the function of the ACB shall be to ‘receive and investigate complaints of alleged or suspected corrupt practices and, subject to the directions of the director of Public Prosecutions, to prosecute offences under this act’. Section 42 further states that ‘no prosecution shall be instituted except by or with the written consent of the director of Public Prosecutions’. This can be viewed as limiting the ACB in terms of action, especially where the said director of Public Prosecutions withholds his consent for unjustified reasons.

Integrity of monetary and financial institutions

The Reserve Bank of Malawi was established under section 185 of the constitution. The section states that ‘there shall be established by an Act of Parliament a central bank ... known as the Reserve Bank of Malawi which shall serve as the state’s principal instrument for the control of money supply, currency ...’. The president appoints the Reserve Bank governor and his/her deputy. Despite the appointments being made by the president, there is rarely interference with the running of the bank. The Reserve Bank has so far effectively controlled other institutions of finance as required by the constitution without external interference.

Accounting and auditing systems

The public finance system aims at aligning itself with internationally accepted accounting and auditing practices. For instance, section 13 of the Public Finance Management Act of 2003 states that the ‘financial reports, financial statements, associated information and accounting procedures required by this act shall be in accordance with generally accepted accounting practices’.

A survey carried out by audit and business advisory firm KPMG ranked Malawi as the second most fraudulent after Swaziland of 13 African

countries. KPMG's Fraud and Misconduct Survey conducted in 2005 indicated that of the 13 countries sampled, Malawi scored 86% after Swaziland's 88%. The score represents respondents' views of fraud as a major problem in the private and public sectors. For Malawi, KPMG cited poor internal controls, collusion between employees, collusion with third parties and management's overriding of internal controls as major causes of fraud. The report also cited economic pressure, weakening of society's values, sophisticated criminals and lack of adequate penalties and enforcement as the major reasons for the expected increase in fraud.

In the public sector, the Malawi National Audit Office is mandated to carry out audit functions. The auditor-general heads the National Audit Office. However, in reality, the auditor-general's role is weakened by capacity and institutional constraints, poor enforcement of auditors' recommendations and lack of seriousness on the part of government to discipline officials responsible for corruption and mismanagement. This makes the auditor-general unable to conduct audits of public institutions, and it is the local government assemblies that suffer most.¹¹¹ For instance, the 2003 audit report reflecting the 1999/2000 accounts (note that this is the latest audit report; the 2004 and 2005 reports are not yet out) covered only five out of 39 local governments in the country.

According to the World Bank: 'A credible public audit system can be measured by the predictability and consistency of its operations and reports as an institution of accountability.'¹¹² In the case of Malawi's local government assemblies, the audit reports are neither predictable nor consistent. In most cases, the annual reports come out only several years after the end of the fiscal year to which they refer. This situation makes it very complicated to hold controlling officers responsible for the mismanagement of funds. Moreover, even after their late publication the quality of the local government audit reports is not impressive. These reports 'suffer from poor quality data and analysis'¹¹³ and are 'not up to international standards'.¹¹⁴ These loopholes give room for increased corruption in Malawi's government structures.

SOCIAL PRESSURES ON THE ECONOMY

Social pressures such as poverty, food insecurity, unemployment and HIV / Aids have a large impact on Malawi's development strategy. In a lean

economy where 42% of the citizenry already lives on less than US\$1 a day, any extra pressure on the economy immediately translates into people's suffering.

HIV / Aids corrodes both financial and productive human resources. The prevalence of HIV is estimated at 23% among urban adults, whereas in the rural areas it is 12.4%.¹¹⁵ As of 2004, the age bracket between 15 and 24 years is the worst infected, with annual deaths estimated at 60,823 in comparison to 720,768 adults and children together who have died of HIV / Aids-related diseases between 1985 and 2004.¹¹⁶ This is the bottom of the economically productive age, thereby posing an economic threat. Levels of awareness exceed 90% and the fight against the epidemic is becoming increasingly intensive.

According to the National Statistics Office, the last census (1998) gave life expectancy at birth as 40 years for males and 44 year for females. By 2006, the life expectancy rates dropped by two years. While 98% of households are claimed to have access to safe water in urban areas, this figure comes down to 87% for households in the rural areas. However, Malawi's low-income urban population has not only been sharply rising with the whole national population index, but it has mostly been confined to over-populated areas where diarrhoea has often broken out, thereby straining the budget of the health sector.

As alluded to above, hunger exerts enormous pressure on the economy. The failure of maize (which is the country's staple food) means deep suffering for most Malawians, whose main social activity is subsistence farming largely confined to the staple food crop. When the crop fails, the government has to find extra funds to import food, a fact that immediately strains the foreign currency base above its recurrent budgetary social expenditure. In 2005 the government had to import large quantities of maize.

CONCLUSION

Economic governance and corporate management in Malawi have been strengthened, especially since 2004. One of the key indicators is the country's reaching an HIPC completion point leading to the cancellation

of Malawi's debt of MK400 billion (about US\$3 billion). Malawi had to meet the required conditions aimed at enhancing macroeconomic stability, ensuring commitment to poverty reduction, strengthening public expenditure management and raising the quality of education, in addition to being seen to be on course for good democratic governance. The Reserve Bank was able to cut lending rates in the 2004-06 period, thereby denoting economic optimism.

In terms of the consolidation of democracy, one major challenge has been the participation of the private sector and local people, which comes as a legacy of the top-to-bottom one-party politics of the Banda regime. By 2002, it was noted that 'in general, Malawians do not think they can have any means to influence the political and economical conditions of their lives'.¹¹⁷ But more recently the private sector has increasingly been participating in discussions on economic interests, and through CSOs people also participate in budget-related issues.

It can indeed be noted that there is renewed effort in the current administration to put the economy on a stable course. The challenge remains to see whether those who have more political leverage use their powers in the economic interests of the majority. While the more powerful Malawian opposition keeps the present government in check, it has sometimes been perceived as abusing its majority by frustrating government business, including threatening to reject the budget as a way of settling political scores.

CONCLUSIONS AND RECOMMENDATIONS

CONSTITUTION AND CONSTITUTIONALISM

Malawi has a detailed and well-written constitution. The past decade has seen a tendency to deviate from the constitution or to amend it hastily for some short-term political gains. This can be described as a lack of the spirit of constitutionalism which needs to be inculcated among all.

Recommendations

- The government should adhere strictly to the constitution.
- There should be regular debates, seminars and conferences on constitutional issues.
- A separate constitutional court should be established.

A WELL-DEFINED SYSTEM OF GOVERNMENT

Constitutionally, Malawi has a presidential form of government, but in practice the country has developed some sort of hybrid system. One of the problems with this is that some individuals hold a number of public positions. The main problem is with MPs doubling as ministers, who owe greater allegiance and loyalty to the executive.

Recommendations

- Separation of powers should be accompanied by separation of personnel.
- 'Bloating' of the cabinet should be discouraged.
- The president should be discouraged from inducting opposition MPs into the executive.

THE PRESIDENT AND THE CABINET

On the issue of competence and accountability, the constitution gives powers and freedom to the president to choose ministers and members of the cabinet. This makes ministers accountable to the president and no one else. Thus there is no collective accountability of the cabinet to the legislature. Ministerial positions have often been awarded on the basis of patronage and personal loyalties at the cost of competence and skills. This is known as the club syndrome.

Recommendations

- Ministers should be appointed on the basis of their professional skills.
- The cabinet should be collectively accountable to the nation in general and the legislature in particular.
- The performance of ministers should be periodically assessed.

COOPERATION BETWEEN THE THREE ARMS OF GOVERNMENT

While in any democracy the relationship between the executive and legislative arms of government reflects the different powers that each have, the bottom line is that they should be able to carry on government both responsibly and jointly. The underlying differences should not undermine the role and position of either of them. In Malawi, the relations between the executive and the legislature have generally been tense and often acrimonious. The legislature may deliberately block the passage of a bill to flex its muscles, while the executive may refuse to fund a sitting of parliament. These reflections of intolerance and lack of accommodation are impediments to democracy.

Recommendations

- Each arm of government should have the basic institutional set-up that it needs to carry out its constitutional mandate.
- To ensure necessary checks and balances, there should be mechanisms such as parliamentary committees, judicial reviews, a constitutional court and an ombudsman's office.

CAPACITY OF THE JUDICIARY

The judiciary generally enjoys trust and confidence as a neutral and impartial body. There are many instances of this view. However, the resources and capacity of the judiciary in Malawi are insufficient to meet its enormously demanding challenges. Threats to its independence from the other two arms of government include attempts by parliament to impeach judges on insufficient grounds.

Recommendation

- The staff and the capacity of the judiciary should be increased.

ACCESS TO JUSTICE

Justice is one of the fundamental principles of democracy. Many challenges confront people, especially the poor and the illiterate, in accessing and affording justice. The modern justice system is alien to them and they feel rather intimidated by the use of English which is foreign to them, and by the whole process which is cumbersome and costly.

Recommendations

- Affordable lower courts should be established that are effective and adequate.
- In terms of constitutional fairness and justice, the traditional courts should be revived.

ADHERENCE TO CONSTITUTIONAL STIPULATIONS ON LOCAL GOVERNMENT ELECTIONS

The Malawi government is in default for not holding elections for the extremely important institution of local government. The financial problems might be overcome by holding the local and general elections together.

Recommendations

- Local government elections should be held periodically, diligently and efficiently.
- The respective responsibilities of MPs and councillors should be clearly understood and respected.

COMMITMENT TO ENHANCING LOCAL GOVERNANCE

No district assemblies are at present functioning in Malawi. Grassroots CSOs are therefore unable to coordinate their own work with the work of the assemblies.

Recommendations

- The necessary infrastructure should be established to allow local assemblies to function.
- Needs should be identified, prioritised and systematically addressed.

UNDERSTANDING OF POWER

A general problem in African societies is an understanding of power. In Malawi, power is usually considered to be indivisible and concentrated at the top. There is a lack of understanding that power needs to be divided, delegated and shared if effective and harmonious governance is to be ensured. The main reason why decentralisation and power-sharing are not being effected is a lack of political will. A strong local government is seen as a threat to the central government.

Recommendation

- There should be a national debate, particularly targeting political elites, on the concept of power.

CIVIL SOCIETY EMPOWERMENT AND COORDINATION

A strong civil society needs all its components – churches, NGOs, trade unions, women's groups and so on – acting in close coordination with one another so that no one of them needs to be the torchbearer. In Malawi the churches continue to play a leading role due to a lack of coordination and collective effort by governance NGOs. The civil society is still a reactive body although some noticeable steps are being taken to make it more proactive. These bodies are, furthermore, concentrated in the urban areas.

Recommendations

- Governance and democracy NGOs should form a network and work in close coordination.
- On critical issues, the voices of these NGOs should be unified so that clear signals can be sent to the government.
- CSOs should become more active in the rural areas where they are often needed the most.

ENHANCING THE AGRICULTURAL SECTOR

The government is targeting greater agricultural productivity, but the challenge is to turn policy into action. The government has, for instance, been subsidising farm inputs since 2004 after a failure to do so for a decade since the fall of President Banda. The government has also made efforts to

ensure that a fertiliser factory is established in Malawi in order to reduce import costs that raise the cost of farm inputs.

It may at one level be argued that the biggest problem with Malawi's agriculture (which is the mainstay of the country's economy) is not government policy but the weather. Crops may fail even during a year when the government has instituted productive policy mechanisms to ensure farm productivity, as was the case in 2005. Such an argument, however, must be dismissed as superficial because policies and implementation are necessary if investment in irrigation is to be made to mitigate the effects of the country's irregular rainfall patterns. Although the country has had an irrigation ministry for nearly a decade, the political will to implement an irrigation policy was lacking until the last two years. There are indications that the Malawi government is now mobilising and empowering communities to go the irrigation route. Provision for the purchase of more irrigation equipment, such as motorised and treadle pumps, has been increased in the budgets since 2004.

Recommendation

- The government should accelerate the implementation of its plans to establish large-scale irrigation for agriculture in order to bring more stability to this mainstay of the country's economy.

LONG-TERM TRADE POLICY FORMULATION

Numerous trade studies have been conducted by several agencies. These are often very similar and they are no more than rhetorical.

Recommendations

- Trade strategies should be formulated with the focus on implementation.
- Information on planned trade agreements should be widely disseminated and consultations should take place on their content.

NOTES

- ¹ National Statistical Office, 'Malawi: Demographic and Health Survey'. Zomba: Government of Malawi, 2000.
- ² National Statistical Office & International Food Policy Research Institute, *Malawi: An Atlas of Social Statistics*. Zomba: Government of Malawi, 2002.
- ³ Ibid.
- ⁴ UNDP, 'Human Development Report 2006'.
- ⁵ Nthara K, Democratisation and economic empowerment, in Immink B, Lembani S, Ott M & Peters-Berris C (eds), *From Freedom to: Empowerment: Ten Years of Democratisation in Malawi*. Montfort Media, 2003, p 113.
- ⁶ UNDP, 'Human Development Report 2006'.
- ⁷ Muluzi B, *Mau Anga – The Voice of a Democrat: Past, Present & Future*. Skotaville Publishers, 2002.
- ⁸ Ibid.
- ⁹ Lwanda J, *Kamuzu Banda of Malawi: A Study in Promise, Power and Paralysis*. Bothwell: Dudu Nsomba Publications, 1993.
- ¹⁰ Meinhardt H & Patel N, *Malawi's Process of Democratic Transition*. Lilongwe: KAS, 2003.
- ¹¹ Kayongolo F, in Nzunda MS & Ross KR, *Church, Law and Political Transition in Malawi 1992-94*. Gweru: Mambo Press, 1995.
- ¹² Ott M, Phiri K & Patel N (eds), *Malawi's Second Democratic Elections: Process, Problems, and Prospects*. Kachere Series, 2000.
- ¹³ Lwanda, op cit.
- ¹⁴ Ibid.
- ¹⁵ Africa Watch, 1990.
- ¹⁶ Lwanda, op cit.
- ¹⁷ Catholic Institute of International Relations, *The Truth Will Set You Free*. Pastoral letter, Church in the World No.28, September 1992.
- ¹⁸ GOM/UNDP, 'Report on the State of Governance'. UNDP, 2003.
- ¹⁹ Joint International Observer Group, 'International Observer Briefing Manual for the Malawi Parliamentary and Presidential Elections', 17 May 1994.
- ²⁰ Nzunda & Ross, op cit.
- ²¹ Malawi Election Commission, 'Election Commission Report: 1994'.
- ²² Bujra A & Adejumobi S, *Breaking Barriers: Creating New Hopes, Democracy, Civil Society and Good Governance in Africa*, 2nd ed. Addis Ababa: Development Policy Management Forum, 2003.
- ²³ Ibid.
- ²⁴ Habisso T. 2005. *The Challenges of Developing Democracy in Africa*. Available at <2005/Jan/Democracy-in-Africa.html" www.ethiopiafirst.com/news 2005/Jan/Democracy-in-Africa.html>.
- ²⁵ Linz JJ & Stepan A, *Problems of Democratic Transition and Consolidation – Southern Europe, South America and the Post Communist Europe*. Baltimore London: John, Hopkins University Press, 1996.
- ²⁶ Hyden G, Olowu D & Ogendo W (eds). *African Perspectives on Governance*. New York: Africa World Press, 2000.
- ²⁷ Migdal J, *Strong Societies and Weak States, State–Society Relations and State Capabilities in the Third World*. Princeton: Princeton University Press, 1988.
- ²⁸ Malawi Human Rights Commission, Annual report, 2003.
- ²⁹ GOM/UNDP, op cit.

- 30 Dodge W, Frumi M & Wright-Carozza P, *A Commentary on the Provisional Constitution of the Republic of Malawi*, 23 November 1994, pp 5–6.
- 31 Patel N, Malawi – The birth of a multiparty democracy, in *Africa Contemporary Record*, XXV (1994-1996). New York Africana Publishing Company, 2001.
- 32 See *The Nation*, 7 March 1998.
- 33 Booth D, Cammack D, Harrigan J, Kanyongolo E, Mataure M & Ngwira N, *Drivers of Change and Development in Malawi*. Overseas Development Institute Working Paper 261, London, 2006, p 25.
- 34 Afrobarometer surveys, Round 3, 2006 <www. Afrobarometer.org>.
- 35 Khembo N, The multiparty promise betrayed: The failure of neo-liberalism in Malawi, *Africa Development* XXIX, 2004.
- 36 Patel N & Tostensen A, 'Executive Parliament Relations in Malawi 1994-2004'. Research carried out by the Christian Michelsen Institute, Norway and the Centre for Social Research Malawi (unpublished), 2004.
- 37 Amendment No. 2, Act 2001.
- 38 Khembo, op cit.
- 39 Patel & Tostensen, op cit.
- 40 Findings from the survey on political culture conducted by the Centre for Social Research, University of Malawi and the Christian Michelsen Institute, Norway conducted under NUFU project, 2004.
- 41 Expert opinion survey respondent, Chikosa Banda, Law lecturer.
- 42 Beethem D, *The State of Democracy: Democracy Assessment in Eight Countries Around the World*, Kluwer Law International, 2002.
- 43 *The Nation*, 28 September 2000.
- 44 Patel N & Svasand L (ed), *Government & Politics in Malawi*. Kachere Books 33. Zomba: CSR and CMI, 2007.
- 45 Konrad-Adenauer-Stiftung, *Civil Society and Democracy*. Training of Young Politicians Series, Module 3. Lilongwe: KAS, 2003.
- 46 According to the NGO Act, every organisation is supposed to be a member of this body before getting registered.
- 47 Weekend talk: An interview with HRCC Chairperson, *Weekend Nation*, 29-30 April 2006.
- 48 Centre for Education Research and Training, *The Changing Roles of Non-Governmental Organizations in Education in Malawi*. CERT, University of Malawi, 2002.
- 49 Langa J, MEJN want govt explanation on K260M, *Weekend Nation*, 13-14 May 2006.
- 50 Von Doepp, 1998
- 51 See Malawi Government, 'Policy Analysis Initiatives'. Office of the Vice-President, 2001, p 174.
- 52 Patel & Svasand, op cit.
- 53 See NGO Act section 20(2).
- 54 *The Nation*, 26 May 2006.
- 55 The Episcopal Conference of Malawi and Malawi Council of Churches press statement, *The Lamp* 36, July-August 2002.
- 56 Muluzi bans all demonstrations, *The Nation*, 29 May 2002.
- 57 MEJN feels sidelined in budget talks, *The Nation*, 26 May 2006.
- 58 See Khembo N & Mpesi A, 'Rapid Assessment on Corruption, Accountability and Governance in Malawi'. Report Submitted to DPK, Zomba, 2005.
- 59 Mabvuto Banda of *The Nation* was arrested for merely reporting on a rumour that there were ghosts at State House. Jameson and other journalists at *The Chronicle* were

arrested for reporting that the former attorney-general, Raph Kasambala was involved in a stolen laptop scandal.

60 Mussa is now Minister of Transport and Public Works in the incumbent government. He is also on the ruling DPP's national executive committee.

61 Mchulu A, UDF invades *Daily Times*, *The Nation*, 21 May 2002.

62 Government of Malawi, 'National Gender Policy, 2000-2005'.

63 WLSA Malawi & SARDC WIDSAA, *Beyond Inequalities 2005: Women in Malawi*. Limbe and Harare: WLSA/SARDC, 2005.

64 Mthinda C & Khaila S, *Responsiveness and Accountability in Malawi*. Afrobarometer Briefing Paper No 31, 2006, p 5.

65 Tambulasi R & Kayuni H, Decentralization opening a new window for corruption: An accountability assessment of Malawi's four years of decentralized governance, *Journal of Asian and African Studies* (forthcoming).

66 Chinsinga B, District assemblies in a fix: The perils of the politics of capacity in the political and administrative reforms in Malawi, *Development Southern Africa* 22(4), October 2005, p 539.

67 Mthinda & Khaila, op cit.

68 Kamanga RTE, Banda BF, Chunga DE & Phiri DSK, 'Functional Review of the Department of District and Local Government Administration and Assemblies'. Lilongwe (unpublished), 2000, p 28.

69 Tambulasi & Kayuni, op cit.

70 Kamanga et al, op cit.

71 Hussein M, The role of Malawian local government in community development, *Development Southern Africa* 20(2), June 2003, p 53.

72 Hussein M, Capacity building challenges in Malawi's local government reform programme, *Development Southern Africa* 23(3), September 2006.

73 Kamanga et al, op cit, p 57.

74 Hussein, Capacity building challenges in Malawi's local government reform programme, op cit.

75 Ibid.

76 Ibid.

77 Ibid.

78 Mthinda & Khaila, op cit, p 5.

79 Ministry of Local Government and Rural Development, as cited in Mthinda & Khaila, op cit.

80 Tsoka M, *Public Opinion and the Consolidation of Democracy in Malawi*. Afrobarometer Paper No.16, 2002.

81 Chinsinga, op cit, p 531.

82 Chinsinga B & Dzimidzi C, 'Impact Assessment Study on the Process of Decentralization in Malawi since 1993'. Report submitted to the Decentralization Secretariat, Lilongwe, 2001.

83 See Patel N et al, 'Privatisation and Democratic Governance: Convergence or Divergence?' Centre for Social Research, University of Malawi, (unpublished), 2006.

84 Government of Malawi, 'Behavioural Surveillance Survey Report', 2004, p 19.

85 Government of Malawi, National Statistics Office, *Malawi in Figures 2006*.

86 Chirwa E, 'Macroeconomical Policies and Poverty Reduction: Can We Infer from Panel Data?', University of Malawi, 2005.

87 Government of Malawi and European Union, 'Joint Annual Report on the Implementation of the ACP-EU', 2003.

- 88 Mkandawire M, Malawi's political economy and growth, *Malawi Journal of Social Science* 19, 2005, p 20.
- 89 Ibid.
- 90 Also see McMichael P, *Development and Social Change: A Global Perspective*, 2nd edition. California: Pine Forge Press, 2000, pp 149, 154-55.
- 91 See Government of Malawi, 'Behavioural Surveillance Survey Report', 2004, p 19; GOM/UNDP, op cit.
- 92 See FAO/WFP Report, 'Crop and Food Supply Assessment Mission to Malawi', June 2003.
- 93 Booth et al, op cit, p 21.
- 94 World Bank, 'World Development Indicators for 2004 and 2005'. Washington: World Bank, 2005.
- 95 National Statistics Office, 'Malawi in Figures 2006', Government of Malawi.
- 96 See Malawi Government of, 'Malawi Economic Report', Lilongwe: Ministry of Finance, 2004.
- 97 World Bank, 'African Development Indicators 2004'. Washington: World Bank, 2004, pp 289-292.
- 98 Afrodad, *The Politics of the MDGs and Malawi*. Harare: African Forum and Network on Debt and Development, 2005, p 12.
- 99 Ibid, p 16.
- 100 Ibid.
- 101 Booth et al, op cit, p 2.1
- 102 Bright S. M. Mangulama, Director of the Office of the Director of Public Procurement, *The Public Procurer Magazine*, 1(1), pp 4,6.
- 103 Patel et al, op cit.
- 104 Ibid.
- 105 'The Malawi Human Rights Commission Report of 2001-2002', p 63; quoted in Patel et al, ibid.
- 106 See *The Daily Times*, 4 September 2006, p 5.
- 107 McMichael, op cit, p 165.
- 108 See Dzimbiri L, The impact of the institutional and legal framework for industrial relations during the one-party state in Malawi, *Malawi Journal of Social Science* 19, 2005, pp 16-17.
- 109 Malawi has been without local assembly councillors since 2004. The local government elections are yet to take place for reasons that have been officially announced as lack of funding especially for sustaining the upkeep of the ward councillors beyond the elections.
- 110 *Transparency International Source Book* cited in Khembo, op cit.
- 111 World Bank, 'Malawi: Country Financial Accountability Assessment'. Washington: World Bank, 2003, p ix.
- 112 Ibid, p 21.
- 113 Ibid.
- 114 Ibid, p 40.
- 115 GOM, 'Behavioural Surveillance Survey', op cit, p. 21.
- 116 See 'National AIDS Commission Spectrum', 2003; quoted in 'Behavioural Surveillance Survey', ibid, p.22.
- 117 Tsoka, op cit, p 6.

REFERENCES

- Afrodad. 2005. *The Politics of the MDGs and Malawi*. Harare: African Forum and Network on Debt and Development.
- Beethem D, *The State of Democracy: Democracy Assessment in Eight Countries Around the World*, Kluwer Law International, 2002.
- Booth D, Cammack D, Harrigan J, Kanyongolo E, Mataure M & Ngwira N. 2006. *Drivers of Change and Development in Malawi*. Overseas Development Institute Working Paper 261, London.
- Bujra A & Adejumobi S. 2003. *Breaking Barriers: Creating New Hopes, Democracy, Civil Society and Good Governance in Africa*, 2nd ed. Addis Ababa: Development Policy Management Forum.
- Carothers T. 1999. *Aiding Democracy Abroad: The Learning Curve*. Washington: Carnegie Endowment for International Peace.
- Catholic Institute of International Relations. 1992. *The Truth Will Set You Free*. Pastoral letter, Church in the World No.28, September 1992.
- Centre for Education Research and Training. 2002. *The Changing Roles of Non-Governmental Organizations in Education in Malawi*. CERT, University of Malawi.
- Chinsinga B & Dzimadzi C. 2001. 'Impact Assessment Study on the Process of Decentralization in Malawi since 1993'. Report submitted to the Decentralization Secretariat, Lilongwe.
- Chinsinga B. 2005. District assemblies in a fix: The perils of the politics of capacity in the political and administrative reforms in Malawi, *Development Southern Africa* 22(4), October.
- Chirwa CW & Erdmann G. 2000. 'Political Attitudes: How Democratic are Malawian Citizens?' Results from 1998 Opinion Survey conducted by the University of Bochum, Germany (unpublished).
- Chirwa E. 2005. 'Macroeconomical Policies and Poverty Reduction: Can We Infer from Panel Data?', University of Malawi.
- Dodge W, Frumi M & Wright-Carozza P. 1994. 'A Commentary on the Provisional Constitution of the Republic of Malawi'. Unpublished, 23 November 1994, pp 5–6.
- Dzimhiri L. 2005. The impact of the institutional and legal framework for industrial relations during the one-party state in Malawi, *Malawi Journal of Social Science* 19.
- Evans G & Rose P. 2006. *Support for Democracy in Malawi: Does Schooling Matter?* Afrobarometer Working Paper No 57.
- FAO/WFP. 2003. 'Crop and Food Supply Assessment Mission to Malawi'. Report, June 2003.

- Gloppen S & Kanyongolo E. 2004. 'The Role of the Judiciary in the 2004 General Elections in Malawi'. Research on the institutional context of the 2004 elections in Malawi conducted by the Christian Michelsen Institute, Norway and the Centre for Social Research, Malawi (unpublished).
- GOM/UNDP. 2003. 'Report on the State of Governance'. UNDP.
- Habisso T. 2005. *The Challenges of Developing Democracy in Africa*. Available at <www.ethiopiafirst.com/news/2005/Jan/Democracy-in-Africa.html>.
- Hussein M. 2003. The role of Malawian local government in community development, *Development Southern Africa* 20(2), June.
- Hussein M. 2006. Capacity building challenges in Malawi's local government reform programme, *Development Southern Africa* 23(3), September.
- Hyden G, Olowu D & Ogendo W (eds). 2000. *African Perspectives on Governance*. New York: Africa World Press.
- Immink B, Lembani S, Ott M & Peters-Berris C (eds). 2003. *From Freedom to: Empowerment: Ten Years of Democratisation in Malawi*. Montfort Media.
- Khaila S & Chibwana C. 2005. *Ten Years of Democracy in Malawi: Are Malawians Getting What they Voted For?*, Afrobarometer Working Paper No. 46, South Africa.
- Kamanga RTE, Banda BF, Chunga DE & Phiri DSK. 2000. 'Functional Review of the Department of District and Local Government Administration and Assemblies'. Lilongwe (unpublished).
- Khembo N & Mpesi A. 2005. 'Rapid Assessment on Corruption, Accountability and Governance in Malawi'. Report Submitted to DPK, Zomba.
- Khembo N. 2004. The multiparty promise betrayed: The failure of neo-liberalism in Malawi, *Africa Development* XXIX.
- Konrad-Adenauer-Stiftung. 2003. *Civil Society and Democracy*. Training of Young Politicians Series, Module 3. Lilongwe: KAS.
- Linz JJ & Stepan A. 1996. *Problems of Democratic Transition and Consolidation – Southern Europe, South America and the Post Communist Europe*. Baltimore London: John Hopkins University Press6.
- Lwanda J. 1993. *Kamuzu Banda of Malawi: A Study in Promise, Power and Paralysis*. Bothwell: Dudu Nsomba Publications.
- Malawi Government of. 1967. Chief's Act. Zomba: Government Printer.
- Malawi Government of. 1998. Local Government Act, Lilongwe: Government Printer.
- Malawi Government of. 1998. The Decentralisation Policy. Lilongwe: Government Printer.
- Malawi Government of. 2001. 'Policy Analysis Initiatives'. Office of the Vice-President.
- Malawi Government of. 2004. 'Behavioural Surveillance Survey Report'.
- Malawi Government of. 2004. 'Malawi Economic Report 2004'. Lilongwe: Ministry of Finance.
- Malawi Government of. 2004. The Constitution of the Republic of Malawi.

- Malawi Government of/European Union. 2003. 'Joint Annual Report on the Implementation of the ACP-EU'.
- Malawi National Assembly. 2003. 'Strategic Capacity Development Plan (July 2004-June 2008)'. Lilongwe.
- McMichael P. 2000. *Development and Social Change: A Global Perspective*, 2nd edition. California: Pine Forge Press.
- Meinhardt H & Patel N. 2003. *Malawi's Process of Democratic Transition*. Lilongwe: KAS.
- Migdal J. 1988. *Strong Societies and Weak States, State-Society Relations and State Capabilities in the Third World*. Princeton: Princeton University Press.
- Mkandawire M. 2005. Malawi's political economy and growth, *Malawi Journal of Social Science* 19.
- Mthinda C & Khaila S. 2006. *Responsiveness and Accountability in Malawi*. Afrobarometer Briefing Paper No 31.
- Muluzi B. 2002. *Mau Anga – The Voice of a Democrat: Past, Present & Future*. Skotaville Publishers.
- Nthara K. 2003. Democratisation and economic empowerment, in Immink B, Lembani S, Ott M & Peters-Berris C (eds), *From Freedom to: Empowerment: Ten Years of Democratisation in Malawi*. Montfort Media.
- National Statistical Office & International Food Policy Research Institute. 2002. *Malawi: An Atlas of Social Statistics*. Zomba: Government of Malawi.
- National Statistical Office. 2000. 'Malawi: Demographic and Health Survey'. Zomba: Government of Malawi.
- National Statistics Office. 2006. 'Malawi in Figures 2006', Government of Malawi.
- Nzunda MS & Ross KR. 1995. *Church, Law and Political Transition in Malawi 1992-94*. Gweru: Mambo Press.
- Ott M, Immink Bodo, Mhango B & Peters-Berries C (eds), 2004. *The Power of the Vote: Malawi's 2004 Parliamentary & Presidential Election*. Kachere Series.
- Ott M, Phiri K & Patel N (eds). 2000. *Malawi's Second Democratic Elections: Process, Problems, and Prospects*. Kachere Series.
- Patel N & Svasand L (ed). 2007. *Government & Politics in Malawi*. Kachere Books 33. Zomba: CSR and CMI.
- Patel N & Tostensen A. 2004. 'Executive Parliament Relations in Malawi 1994-2004'. Research carried out by the Christian Michelsen Institute, Norway and the Centre for Social Research Malawi (unpublished).
- Patel N et al. 2006. 'Privatisation and Democratic Governance: Convergence or Divergence?' Centre for Social Research, University of Malawi, (unpublished).
- Patel N. 2001. Malawi – The birth of a multiparty democracy, in *Africa Contemporary Record*, XXV (1994-1996). New York: Africanan Publishing Company.

-
- Sargent LT. 1993. *Contemporary Political Ideologies: A Comparative Analysis*, 9th ed. Wadsworth Publishing Company.
- Tambulasi R & Kayuni H. Decentralization opening a new window for corruption: An accountability assessment of Malawi's four years of decentralized governance, *Journal of Asian and African Studies* (forthcoming).
- Tsoka M. 2002. *Public Opinion and the Consolidation of Democracy in Malawi*. Afrobarometer Paper No.16.
- UNDP. 2006. 'Human Development Report 2006'. UNDP.
- WLSA Malawi & SARDC WIDSAA. 2005. *Beyond Inequalities 2005: Women in Malawi*. Limbe and Harare: WILSA / SARDC.
- World Bank. 2003. 'Malawi: Country Financial Accountability Assessment'. Washington: World Bank.
- World Bank. 2004. 'African Development Indicators 2004'. Washington: World Bank.
- World Bank. 2005. 'World Development Indicators for 2004 and 2005'. Washington: World Bank.

ABOUT EISA



EISA is a not-for-profit and non-partisan non-governmental organisation which was established in 1996. Its core business is to provide technical assistance for capacity building of relevant government departments, electoral management bodies, political parties and civil society organisations operating in the democracy and governance field throughout the SADC region and beyond. Inspired by the various positive developments towards democratic governance in Africa as a whole and the SADC region in particular since the early 1990s, EISA aims to advance democratic values and practices and to enhance the credibility of electoral processes. The ultimate goal is to assist countries in Africa and the SADC region to nurture and consolidate democratic governance. SADC countries have received enormous technical assistance and advice from EISA in building solid institutional foundations for democracy. This includes: electoral system reforms; election monitoring and observation; constructive conflict management; strengthening of parliament and other democratic institutions; strengthening of political parties; capacity building for civil society organisations; deepening democratic local governance; and enhancing the institutional capacity of the election management bodies. EISA was formerly the secretariat of the Electoral Commissions Forum (ECF) composed of electoral commissions in the SADC region and established in 1998. EISA is currently the secretariat of the SADC Election Support Network (ESN) comprising election-related civil society organisations established in 1997.

VISION

Promoting credible elections and democratic governance in Africa.

MISSION

EISA's mission is to strengthen electoral processes, good governance, human rights and democratic values through research, capacity building, advocacy and other targeted interventions. The organisation services governments, electoral commissions, political parties, civil society organisations and other

institutions operating in the democracy and governance fields throughout Africa.

VALUES AND PRINCIPLES

Key values and principles of governance that EISA believes in include:

- Regular free and fair elections
- Promoting democratic values
- Respect for fundamental human rights
- Due process of law / rule of law
- Constructive management of conflict
- Political tolerance
- Inclusive multiparty democracy
- Popular participation
- Transparency
- Gender equality
- Accountability
- Promoting electoral norms and standards

OBJECTIVES

- To nurture and consolidate democratic governance
- To build institutional capacity of regional and local actors through research, education, training, information and technical advice
- To ensure representation and participation of minorities in the governance process
- To strive for gender equality in the governance process
- To strengthen civil society organisations in the interest of sustainable democratic practice
- To build collaborative partnerships with relevant stakeholders in the governance process.

CORE ACTIVITIES

- Research
- Conferences, seminars and workshops
- Publishing
- Conducting elections and ballots
- Technical advice
- Capacity building
- Election observation
- Election evaluation
- Networking
- Voter / civic education
- Conflict management
- Educator and learner resource packs

PROGRAMMES

EISA's core business revolves around three main programmes, namely: Conflict Management, Democracy and Electoral Education; Electoral and Political Processes; and Balloting and Electoral Services.

CONFLICT MANAGEMENT, DEMOCRACY AND ELECTORAL EDUCATION

This programme comprises various projects including: voter education, democracy and human rights education; electoral observation; electoral staff training; electoral conflict management; capacity building; course design; and citizen participation.

ELECTORAL AND POLITICAL PROCESSES

This programme addresses areas such as: technical assistance for electoral commissions, civil society organisations and political parties; coordination of election observation and monitoring missions; working towards the establishment of electoral norms and standards for the SADC region; and providing technical support to both the SADC-ECF and the SADC-ESN.

BALLOTING AND ELECTORAL SERVICES

The programme enhances the credibility and legitimacy of organisational elections by providing independent and impartial electoral administration, management and consultancy services. The key activities include managing elections for political parties, trade unions, pension funds, medical aid societies, etc.

EISA'S SPECIAL PROJECTS INCLUDE:

- Local Government, which aims to promote community participation in governance
- Political Parties, which aims to promote party development at strategic, organisational and structural levels through youth empowerment, leadership development and the development of party coalitions.

EISA'S SUPPORT SERVICES INCLUDE:

- Research
- Publications
- Library
- Information and Communication Technology.

EISA PRODUCTS

- Books
- CD-ROMS
- Conference proceedings
- Election handbooks
- Occasional papers
- Election observer reports
- Research reports
- Country profiles
- Election updates
- Newsletters
- Voter education manuals
- Journal of African Elections
- Election database

OTHER RESEARCH REPORTS IN THIS SERIES

- No. 1: Electoral System Reform, Democracy and Stability in the SADC Region: A Comparative Analysis
Khabela Matlosa
- No 2: From Military Rule to Multiparty Democracy: Political Reforms and Challenges in Lesotho.
Edited by Claude Kabemba
- No 3: Swaziland's Struggle with Political Liberalisation.
Edited by Claude Kabemba
- No 4: Gender and Elections in Lesotho: Perspectives on the 2002 Elections.
Puleng Letuka, Mats'eliso Mapetla, Keiso Matashane-Marite
- No 5: Governance Quality and Government Commitment to the NEPAD African Peer Review Mechanism.
Grant Edward Thomas Masterson
- No 6: Elections and Democracy in Zambia.
Edited by Claude Kabemba
- No 7: Dilemmas of Political Transition: Towards Institutionalisation of Multiparty Democracy in Tanzania.
Edited by Shumbana Karume
- No 8: Gender, Women, and Electoral Politics in Zimbabwe.
Rudo Gaidzanwa
- No 9: Negotiating the Impasse: Challenges and Prospects for Democratisation in Zimbabwe.
Edited by Wole Olaleye
- No 10: Elections and Democratisation in Malawi: An Uncertain Process.
Edited by Nixon S. Khembo
- No 11: Democratic Consolidation in SADC Botswana's 2004 Elections.
David Sebudubudu and Bertha Z. Osei-Hwedie
- No 12: South Africa's 2004 Election: The Quest for Democratic Consolidation.
Edited by Laurence Piper
- No 13: Multiparty Democracy and Elections in Namibia.
Debie LeBeau and Edith Dima
- No 14: Multiparty Democracy in Mozambique: Strengths, Weaknesses and Challenges
Edited By Adriano Nuvunga

-
- No 15: Political Parties and Democratisation in the Southern African Development Community Region: The Weakest Link?
Khabele Matlosa
- No 16: Political Parties and the Democratisation Process in Zimbabwe
Lloyd M. Sachikonye
- No 17: Political Parties and the Quest for Democratic Consolidation in Zambia
Jotham Momba
- No 18: Political Movements and the Challenges for Democracy in Swaziland
Joshua Bheki Mzizi
- No 19: Political Parties and Democracy in Mauritius
Sheila Bunwaree and Roukaya Kasenally
- No 20: Parties and Political Transition in the Democratic Republic of Congo
H Kabungulu Ngoy-Kangoy
- No 21: Political Parties: Development and Change in Malawi
Nandini Patel
- No 22: Parties and Political Development in Mozambique
Eduardo J. Siteo, Zefanias Matsimbe, Amilcar F. Pereira
- No 23: Parties and Political Development in Lesotho
Khabele Matlosa
- No 24: Parties and Political Development in Tanzania
Rose Shayo
- No 25: Political Parties and Democratic Governance in South Africa
Tom Lodge
- No 26: Parties and Political Development in Namibia
Victor L. Tonchi and Albertina N. Shifotoka
- No 27: Political Parties in Botswana
Gloria Somolekae
- No 28: Political Parties and Political Evolution in Angola/*Os Partidos e a evolução política em angola*
Augusto Santana
- No 29: Enhancing the effectiveness of Political Parties in the SADC region through public outreach Programmes: Focus on Botswana, Lesotho, Namibia and Zambia
Denis Kadima, Khabele Matlosa, Victor Shale

No 30: Consolidating Democratic Governance in Southern Africa: Zimbabwe
*Lloyd M. Sachikonye with Shingi Chawatama, Charles Mangongera,
Norbert Musekiwa and Choice Ndoro*

No 31: Consolidating Democratic Governance in Southern Africa: Botswana
*Zibani Maundeni with Dorothy Mpabanga, Adam Mfundisi and David
Sebudubudu*

No 32 : Consolidating Democratic Governance in Southern Africa: Lesotho
*Tumelo Tsikoane with Tefetso H. Mothibe, 'Mamoeketsi E. N. Ntho and
David Maleleka*