

## ANALYSEN UND BERICHTE

### The Malawi Republic Constitution and Multi-Partyism: Main Concerns

By *Kothi Kamanga*

After the one-party, pro marxist FRELIMO government in Mozambique had converted to pluralist politics in November 1990, and following the triumphant march over of multi-partyism in Zambia exactly a year later, attention swiftly shifted to Malawi's other neighbour - Tanzania, which had suddenly become awkwardly conspicuous for persisting in regarding multi-partyism undesirable. But Tanzania's Revolutionary Party (better known by its Kiswahili acronym, CCM) and the government over which it rules, have, like the FRELIMO government, conceded to local demands, calling for multi-partyism and a decriminalization of political dissent. Quite expectedly, focus now locks on neighbouring Malawi where the ruling (and sole political party), Malawi Congress Party (MCP) and President for Life Hastings Kamuzu Banda have simply ruled out the question of a multi-party system of government.

As recently as October 18, 1992, the President stated before a Press Conference in Lilongwe rather categorically if not arrogantly, that "people here [that is, in Malawi] do not want a multi-party system of government."<sup>1</sup> The President's statement betrays strong opposition to the idea of ditching mono-partyism despite a global trend discernible even amongst erstwhile protagonists of mono-partyism and "Party Supremacy" to liberate themselves from these obsolete notions. Whether Malawi's intransigency represents a sound alternative is a matter better left for political strategists. For our part, the legal implications of the so-called transitional process appear more relevant, and it is in this spirit the Malawi Republic Constitution (1966) is being discussed.

Focus on this legal document is hardly exaggerated and must be seen as appropriate of the constitution's pre-eminent role in the hierarchy of the laws of the land is to be considered. For, with the probable exception of anarchists, whether guided by marxist or bourgeois

<sup>1</sup> His Excellency's Statement to Members of the Press. 18/10/92 (mimeo).

legal doctrine, the tendency is to regard the constitution as the "fundamental", "basic", "supreme" law of the land. As a consequence thereof and in accordance with the notion of "constitutional legitimacy", the existence of rules or practice conflicting with the constitution is deemed impermissible. As a matter of fact, the constitution represents such an important source of law that even international law is, from time to time, obliged to seek guidance if not authority from the constitution.

Akehurst points out to nationality as amongst those issues where international law relies on sources of municipal law. In order to determine, writes Akehurst, whether an individual is a national of state X, international law normally looks at the law of state X.<sup>2</sup> But further examples may be found in the field of diplomatic law and also, the law of treaties. Thanks to the institution of incorporation, important consummation procedures of these essentially international legal categories appear to distinctly lie within the normative embrace of constitutional law. For instance, according to the Vienna Convention on the Law of Treaties (Articles 46 and 47 in particular), violation of constitutional limitations on competence to make treaties invalidates the state's consent to be bound. One relevant implication of this rule appears to be the confirmation of the constitution as an important source of international law. Antonio Cassese's study bearing the title "Modern Constitutions and International Law"<sup>3</sup> may be regarded as additional proof of the significance of the constitution as a source of international law.

And, as we shall have occasion to observe, the Malawi Republic Constitution of 1966 contains a fair share of incongruities and infractions that unavoidably beg the question of its legitimacy as well as that of the attributes (such as an autocratic Presidency) of state power drawing authority on such a constitution.

One of the primary tasks before this author is to identify those provisions of the Malawi constitution that entrench and legitimize undemocratic notions and practice. But this task, we believe, would be better tackled by preliminarily, albeit briefly, discussing the circumstances in which this constitution came into being, or more accurately, how Malawi became a One-Party State. Likewise, it would be in order to focus on some conceptual issues at this early stage. Central to our discussion are concepts such as "democracy", "multi-partyism", "constitutional rights" and a few others. Since these are frequently interpreted in ways that are not only varied but incompatibly so,<sup>4</sup> there is evidently a necessity to throw light on these categories as regards their content.

2 Akehurst, M., *A Modern Introduction to International Law*, 6th ed., 1987, p. 43.

3 Cassese, A., *Constitutions and International Law*, Recueil des Cours, 1985-III., Vol. 192.

4 See for example, the *T. Mkandawire / P. Anyang' Nyong'o* debate in the pages of *Codesria Bulletin* No. 2, 1991.

Divergent views abound, for example, in explaining why multi-partyism is desirable, in fact so desirable that world wide, its enshrinement in the supreme law of the land (the constitution, that is) is being vigorously sought. With this in mind we offer the following hypotheses to summarize the conceptual frame work within which these terms are understood, and within which the struggle for legitimizing political opposition in Malawi is being perceived.

#### 1. Power belongs to the people

Political power derives its legitimacy<sup>5</sup> from the people, on whose behalf and in whose interest duly constituted organs of state power govern. It is rulers who remain at all times answerable before the electorate and not *vice versa*, which regrettably is the case in Malawi. Subsequently, the "divine" origins of the ruling MCP's monopoly of power or the institution of a life presidency, whose candidate the Constitution (Art. 9) refers by name, can only be outrageous perversions of both the law, reason and justice.

#### 2. Opposition and dissent

Institutionalized opposition is a vital legal safeguard at the disposal of the governed (both as a collective, and in their individual capacity) in exercising control and influence over the rulers whose propensity to abuse instruments of power is nothing but phenomenal. This crucial legal and political institution implies and is complemented by the following basic rights and freedoms:

- freedom of speech, association and assembly;
- freedom of conscience and expression; and
- the right to information.

#### 3. Right to participate in government

If the rulers draw their authority and legitimacy from popular mandate, it is only logical to expect that the latter would be at liberty to choose their political representatives, or alternatively, be equally free to contest for public office themselves. The right to participate equally implies and includes the right to censure those persons guilty of abusing the powers vested in them. Moreover, and perhaps more importantly, the right to participate would be rendered useless if no provision was made for impeachment.

#### 4. Multi-partyism and democracy

Despite close ties, the two are quite distinct,<sup>6</sup> each anchored in a socio-economic system of its own and necessarily reflecting all the connotations attending on these systems and the

<sup>5</sup> For a detailed examination on constitutional legitimacy, see *McAuslan, P. / McEldowney* (eds.), *Law, Legitimacy and the Constitution*, 1985, especially at pp. 62-81.

<sup>6</sup> For an insight into the wider implications from ignoring this distinction, see *Shivji, I.*, *Village Democracy: True Root in Civil Society*, Family Mirror No. 91, Dec. 1992.

epoch of its emergence. If the notion of "democracy" was conceived in antiquity, that of "multi-party political system" is a relatively new phenomenon having been devised in Europe of the capitalist mode of production. To conclude, as some erroneously do, that multi-partyism is synonymous with democracy or that it is an end in itself, appears misguided. Arguably, multi-partyism is a salient feature of a democratic society but it ought not necessarily be either equated to or confused for democracy itself. Multi-partyism becomes desirable in so far as it embodies a reaffirmation of the people's sovereign right to determine who is to govern and how affairs of state are to be run.

Another important matter worth discussing at this early stage is related to the circumstances in which opposition was bastardized, that is, constitutionally declared unlawful. Two important facts of history need be pointed out. Firstly, it will be recalled (perhaps surprisingly) that Malawi had in fact inherited a multi-party system from its former colonial power, the British. Secondly, despite noises to the contrary, Malawi became a One-Party state clearly not through a mechanism that took into account (let alone facilitate such) the opinion of all voting age Malawians, that is, by popular mandate. Rather, it was achieved through legislative fiat which was supplemented by a deliberate policy of "harrassing the other political parties out of existence". And these parties, in the government's own unwitting admission, were the Christian Liberation Party, the Congress Liberation Party and the United Federal Party (UFP).<sup>7</sup> But while recognizing Malawi's "multi-party heritage", Malawian authorities continue to insist that the multi-party system was abolished as a response to the people's wish.

According to this argument, only the MCP and the UFP survived the 1961 elections, with the latter however disbanding two years later following the collapse of the Federation of Rhodesia and Nyasaland which it supported. 'This is how the Malawi Congress Party came to be the only political Party in this country', the argument concludes lamely. This assertion strongly contradicts evidence gathered from official recordings of legislature proceedings which indicate quite unambiguously that as late as 1963, the country continued to remain a plural society. Alongside MCP parliamentarians four Nyasaland Constitutional Party members sat in the Nyasaland Legislature.<sup>8</sup>

Having responded to the "official version" as to how Malawi's disastrous transition from multi-partyism to the MCP's illegitimate monolithic grip over the nation's political life, we may now return to what we feel were the genuine determinants. And these are:

- 1) struggles within the Nyasaland African Congress (NAC) leadership;
- 2) the colonial and missionary element;
- 3) influences of the "charismatic leader" doctrine, and
- 4) cunning scheming on the part of Kamuzu Banda.

7 Daily Times (Blantyre), November 6, 1992.

8 Hansard (Zomba), July 10, 1963.

In the early to mid 50's the NAC leadership found itself ensnared in one acrimonious debate after another,<sup>9</sup> debates quite capable of weakening the nationalist movement and worse still, jeopardizing chances for an early attainment of independence. Subsequently, it became strategically important to speedily seek the leadership of a "neutral outsider" generally acceptable to all the warring factions, to safeguard cohesion. At the same time, the 50's was a turbulent period in Africa's political relations with its colonial masters. Nationalist struggles and movements became an issue of particular concern to the metropole whose privileged status within these territories was being challenged ever more defiantly. The possibility of being confronted with the combined forces of the national liberation movement and "communism" must have created phenomenal headaches in London, Paris, Lisbon, Brussels and New York.

Nyasaland was one such territory that could be manipulated by "Communists", and thus the necessity for British imperial authorities to have their surrogate at the helm of the Nyasaland independence movement.<sup>10</sup> And it was the missionary<sup>11</sup> that identified the personality most suitable for this ignominious role. In addition to this, the regional political heavy weights of the day, racist colonial regimes in South Africa, Rhodesia and Mozambique all of which were seriously being threatened by local liberation movements, also required a collaborator.

Two more factors were to be crucial in the emergence of Kamuzu Banda as undisputed leader of the NAC which is viewed as the most decisive element in Malawi's transition to mono-partyism: influences of the "charismatic (omnipotent) leader" doctrine, and cunning scheming on the part of Banda. Hastings Banda had not only been scheming<sup>12</sup> to become the next ruler of Nyasaland, thus putting into effect his political, economic and moral ideals. Within the NAC leadership and especially (unfortunately?) amongst its most enlightened section, unjustifiably enormous pre-eminence was attached to the "charismatic leader" doctrine. Kanyama Chiume, who was undoubtedly amongst the most influential figures of the movement and, until falling out in 1964, was a close confidant of Banda, is

<sup>9</sup> *McMaster, C.*, Malawi Foreign Policy, 1974, p. 13.

<sup>10</sup> *McMaster* (previous fn.) writes in this respect: "It was not in [Britain's] interest to ... create a situation in which leaders far more radical than Dr. Banda could gain foothold" (p. 41). Imperial designs over Nyasaland is a fact corroborated by *Williams, T. David*, in: Malawi - the Politics of Despair, 1978, p. 307.

<sup>11</sup> *Roitberg, R.*, The Rise of Nationalism in Central Africa. Cambridge, 1965, p. 189.

<sup>12</sup> *Mpakati, A.*, Bandism or Bandastan, Journal of African Marxists, No. 2, August 1982. *McMaster* (fn. 9) quotes from Banda's letter of pomp to one Creech Jones in the 40's saying in part: "I am as you know, the chief political advisor to both the Nyasaland African Congress. And to most educated Africans ... I represent the only source of political information and advice as well as inspiration" (p. 19).

remembered to have been particularly enthusiastic in promoting Kamuzu Banda's cult. In a speech before the Legislative Assembly, he is on record as stating with undisguised pomp:

"I want to make it absolutely clear, there should be no illusion at all, in Malawi there is only one man above us, that is Ngwazi Kamuzu Banda... Above Ngwazi Kamuzu Banda is God in his Celestial Palace, He is ruling in His Palace and here He has dedicated Ngwazi Kamuzu Banda".<sup>13</sup>

The emphasis on Kamuzu Banda's personality as the most decisive determinant in the nation's political fate is not accidental. This article is premised on the recognition of the preponderant influence of the subjective element (leader's political outlook) over the objective (Malawi's colonial heritage, land-locked situation and poverty). More pertinently, I intend to argue that more than any other factor, it is Banda's appearance on the Malawian political landscape and ultimate emergence as an implacable, ruthless, self willed autocrat that has been the primary causative factor in Malawi's transition to mono-partyism and the horrid human rights violations that distinguish the Malawian political system. This is far from suggesting that once he ascended to power the President was free to mould the country's political system in total disregard to limitations of the objective world. What we are saying is that in this particular case, when the objective factors are weighed against the subjective, one is left convinced that rather than the former, it is Bandaism which has exerted the greater impact in shaping state policies and practice. And this most interesting phenomenon has been made possible thanks to Banda's ingenuity at interpreting Malawi's objective reality through the prism of his arch conservative, reactionary, parochial world outlook.<sup>14</sup> For, it is an inescapable truth that while confronted by analogically debilitating objective reality, most, if not all of the region's governments nevertheless proceeded to formulate policies and create institutions distinct from Malawi's.<sup>15</sup> From an exceedingly repressive political system, an excruciatingly exploitative economic system, a deeply stratified social set up, to a rabidly reactionary foreign policy, it is as if Malawi has set itself the dubious goal of seeking distinction of excesses.

Enough on the historical setting from which sprung a constitution extremely hostile to opposition. Now an attempt will be made to identify those constitutional provisions particularly prejudicial to the democratization process, provisions that a future Constitutional Commission may want to bring under scrutiny.

<sup>13</sup> Hansard (Zomba), July 10, 1963, p. 749.

<sup>14</sup> For a thoroughly researched exposition on Banda's personality and political convictions see *Short, P.*, Banda, 1974. In categorizing Bandaism I adopt the scheme suggested by *Entin, L. / Entin, M.*, *Politology of Development in Independent States*, Moscow 1985 (in Russian).

<sup>15</sup> Lesotho and Zambia are such governments. Like Malawi, both are land-locked, characterized by exceptionally fragile economies that are to a considerable degree "dependent" on racist South Africa.

In a style typical of many constitution's in former British Colonies, the 1966 Constitution<sup>16</sup> contains no provision expressly prohibiting the existence of political parties other than the Malawi Congress Party (MCP). Yet even the most cursory examination of section 4(1) and 4(2) leads one to conclude conclusively that opposition is both unconstitutional and illegitimate. In fact, one comes out with the distinct impression that the constitution is intolerant to dissent even when this shall come from within the MCP. Section 4(1) reads: "There shall be in the Republic [of Malawi] ... only one National Party". Section 4(2) was most probably inserted to dispel any doubts that may arise as to the identity of this National Party whose monopoly of political power is being institutionalized and politically deified. Here, the Constitution stipulates: "The National Party shall be the Malawi Congress Party".

Having so unambiguously legalized the MCP's political exclusivity, in what could well be the result of oversight on the part of Constitution makers, we find provisions in the same constitution which, when examined closely, tend to challenge the MCP's privileged position and illegitimization of opposition to the ruling party. Section (2) proclaims:

*"... the powers of the Republic of Malawi derive from the people of Malawi and shall, subject to and in accordance with the provisions of this Constitution, be vested in persons who are elected by and responsible to the people of Malawi."* [emphasis by the author]

Another provision giving ground to question the constitutional illegalization of opposition is to be found in section 2(1), which reads:

*"The Government and people of Malawi shall continue to recognize the sanctity of the personal liberties enshrined in the United Nations Universal Declaration of Human Rights and of adherence to the Law of Nations."*

Of course, some writers, and Eleanor Roosevelt<sup>17</sup> is one of them, outrightly reject the binding nature of the Declaration, categorizing it as a mere "common standard of achievement", a position more or less shared by Starke. It is none the less significant to observe that while the latter insists that "the Declaration could not and did not purport to be more than a manifesto, a statement of ideals, a pathfinding instrument", he continues to point out that the Tehran United Nations Conference on Human Rights proceeded to declare that the Declaration constituted an obligation for the members of the international community.<sup>18</sup> But it is Harris' contra argument which appears the more convincing and he advances four reasons for regarding the Declaration "source of rules of customary international law". Judicial practice, in Harris' opinion, does regard the Declaration as a legally binding instrument. For evidence, he cites the Filartiga Case at which Circuit Judge Kauf-

<sup>16</sup> Blaustein, A. / Flanz, G. (eds.), *Constitutions of the Countries of the World (Malawi)*, 1971.

<sup>17</sup> Quoted in Harris, D.J., *Cases and Materials on International Law*, 10th ed., 1992, p. 610.

<sup>18</sup> Starke, J., *Introduction to International Law*, 10th ed., 1989, p. 364.

man stressed that the rules embodied in the Declaration do reflect "customary international law".<sup>19</sup>

Briefly speaking, the most apparent and significant import of Section 1(2) is the commitment to the maxim of popular origins of power (as opposed to individual or Party). Secondly, Section 1(2) explicitly lays down the manner in which this power shall be delegated to rulers, and what shall be the nature (accountability) of relations between the ruled and rulers. The Constitution could not be more clear and succinct when it demands that in exercising powers vested in them, the latter shall at all times remain "responsible to the people of Malawi".

The essential meaning of Section 2(1) (iii) appears to be Malawi's voluntarily assumed legal obligation to scrupulously observe provisions of the 1948 Universal Declaration of Human Rights. It is worth emphasizing that the Declaration is not a mere statement of intent of (therefore) non-binding pronouncement. The more correct attitude would be to regard it as part of binding, customary international law, whose rules, according to the final part of Section 2(1) (iii), are binding on Malawi. It may be pertinent to list down those sections of the Declaration with particular relevance to the issue under discussion. These are articles 18-21.

Article 18 confers the right to freedom of thought whereas Article 9 confers the right to freedom of opinion and expression. However, it is articles 20 and 21 that are of particular interest, as they appear to bear directly on efforts to return to Malawian opposition constitutionality and legitimacy. Conversely, they provide dynamite with which to blow asunder the MCP's monopoly of power.

**Article 20 reads as follows:**

- "(1)Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association",

while Article 21 stipulates:

- "(1)Everyone has the right to take part in government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

<sup>19</sup> *Harris* (fn. 17), p. 701.

It has been argued above that the better attitude is to regard the Universal Declaration of Human Rights as a binding legal document, more so for those states, like Malawi, that have freely and voluntarily accented to be bound. The expression contained in the Malawi Republic Constitution (Article 2(1) (iii)) to the effect that:

"the Government and people of Malawi shall continue to recognize the sanctity of the personal liberties enshrined in the United Nations Universal Declaration of Human Rights..."

should, in our opinion, be interpreted as Malawi's voluntary acceptance to be bound by the Declaration. One might even mention that Malawi has assumed nearly analogical obligations under the African Charter on Peoples and Human Rights which it has solemnly ratified. Alarmingly enough, neither a constitutional commitment to respect obligations within the realm of International Human Rights Law nor an international outcry have succeeded in checking impulses by Malawian authorities to contravene these instruments as it continues to deal barbarically with those citizens exhibiting the temerity to pursue democratic ideals.

Unfortunately, the Scope of Constitutional Provisions detrimental to the ongoing democratization process extends beyond articles 4(1) and 4(2) which collectively entrench the Malawi Congress Party's political exclusivity. One is able without much effort to locate many others equally prejudicial to the search for a democratic order in Malawi. We had argued earlier on for recognizing Bandaism as the most pervasive, decisive determinant of the nation's socio-political and economic life.

On the basis of this argument, attention will focus mainly on those provisions responsible for entrenching the President's obligatory brand of cult on the one hand, and fostering legislative intolerance to political dissent on the other. Our gaze will primarily be directed to provisions legitimizing a concentration of powers (that is both unwarranted and undesirable) und the executive arm, leading to the impermissible marginalization of two key organs of power - the legislature and judiciary. Such a situation, to say the least, is a brazen mockery of the constitutional pillars on which the whole edifice of democratic governance should rest. In mind are the following: preclusion arbitrary power, separation of powers, independence of the judiciary and sovereignty, as well as supremacy of the legislature.

"Constitutional principles" is a prevalent theme in works on constitutional law as well as at scientific fora on constitutional matters or the broad subject of democratic governance so much so that we may safely dispense with an elaboration. What perhaps could be indispensable is an exposure of the manner in which the Malawi constitution permits itself to contradict the said principles. And that precisely is the objective of the remaining part of

this section. Article 8(3) immediately comes to mind as an example of the more notorious provisions responsible for placing the Presidency "above the law". It reads in part:

"... in the exercise of his functions<sup>20</sup> the President *shall act in his own discretion* and *shall not be obliged to follow advice* tendered by any other person." [emphasis by the author]

But the most bizarre provision (in terms of eccentricity and boldness) is probably Article 9 which found it necessary to identify the personality of the Head of State by name. Malawi's President, proclaims the constitution, "shall be Ngwazi Dr. Hastings Kamuzu Banda". The two articles cited above are outrightly incompatible with the notion of constitutionalism and their omission from a future democratic constitution is a matter of fundamental importance.

The Malawi constitution places no limitations as regards the number of terms an incumbent President would remain in office, the Malawian President having been "enthroned" as ruler for life in 1971. It would appear imperative that an Executive President wielding such a vast array of discretionary powers be granted only a limited tenure of office. Plausibly, an overbearingly permissive constitution such as that Malawi has, does not on its own breed authoritarianism and other undemocratic tendencies. In terms of scope of executive arm discretionary powers, the United Republic of Tanzania Constitution is in principle no different from that Malawi has, and yet, Tanzania's former President Mwalimu Nyerere desisted from (over) abusing the relevant Constitutional provisions. The Malawian President meanwhile, has shown no hesitation in doing just that.

The point being made, therefore, is that efforts need not be spared in guarding against the inclusion of constitutional rules liable to be manipulated by the leadership towards undemocratic ends. Article 20 which empowers the President to nominate (again, at his discretion and on criteria he will choose to set) members of the National Assembly is another example of a provision incompatible with democratic governance in so far it leaves room for undue interference into the working of the Legislature. Typical of many constitutions in former British colonies, the Malawi constitution, in addition to this, contains the traditional clause empowering the President to dissolve Parliament (Art. 35(6)).

The marginalization of Parliament (directly proportionate to the concentration of power in the Executive) is indeed an alarming phenomenon, since the legislature, in accordance with democratic governance (to which the Malawi Constitution subscribes), should remain the supreme power in the state without rivals capable of curtailing or overriding its authority. According to the Malawian constitutional model, the President may not only nominate (and recall) persons of his choice to the National Assembly; his opinion is, in addition to this, decisive in determining who becomes an Assembly member. He retains the right to dissolve

20 And how expansive these are!

Parliament and his approval is a constitutional prerequisite to an Act of Parliament acquiring the force of law. Meanwhile, impeachment is unknown to the Malawian constitutional model and so is the question of the President's (and Council of Ministers') accountability before the National Assembly. The end result is considerable latitude for the President to exercise patronage and even coercing the supreme power in the land into submission. Other constitutional clauses that create latitude for Presidential patronage of the legislative include those that vest in the President: the prerogative of convening Parliamentary sessions (Art. 44(1)); the power to appoint the Speaker (Amendment to Art. 25(1)); through the requirement that only a member of the ruling Party (whose leader the President is) may be a member of Parliament (Art. 23(d)).

Article 45 deserves particular mention as it epitomizes the severe constitutional incongruities and infractions littering the Malawi Republic Constitution. In accordance to Article 45(1), "the President may at any time prorogue Parliament" and, equally at will, dissolve it (Art. 45(2)). Perhaps the most peculiar clause is contained in Art. 45(4) which reads:

"If the National Assembly passes a resolution that it has no confidence in the Government, the President shall within three days of the date of the passing of such resolution dissolve [!] Parliament."

Nor has the Council of Ministers (Cabinet) fared any better in regard to intrusions from the Chief Executive, the President. Here, the imprint of autocracy is in full view and primarily expressed by the unimaginably wide and numerous cabinet portfolios the President has assumed personally. A future constitution may want to examine the possibility of laying down limitations of the functions a President could carry out.

For early 30 years, the President has been uninterruptedly the country's Minister for Justice, Foreign Affairs, Works, Agriculture, Security, Defence and Economic Planning. Even the paltry few portfolios that have escaped this dragnet still do need to contend with the Presidential prerogative of "hiring and firing" (Article 8(2) (a) and 49(4)(c)) Cabinet Ministers. As a matter of fact, the President shall be within the limits of the law if by the mere stroke of the pen brings under his tutelage an unlimited number of Ministerial portfolios. Article 54 provides as follows:

"The President may, by directions in writing, assign to himself ... responsibility for any business of the Government, including the administration of any department of the Government."

## Conclusion

The terms "democracy", "multi-partyism" (the Malawian colloquial being "mate pate"), "constitutionalism" are on the lips of literary every Malawian today. But few have ever

paused to ask why sacrifices need not be spared in the quest for these ideals. An informed opinion on these notions is imperative if Malawians are to be spared the agony of exchanging One-Party, One-Man tyranny for tyranny of a selected group of political parties; that is, plutocracy.

And this is a distinct possibility, for there is a discernible belief that multi-partyism is the icing (if not the very cake) on the "democratic pie". But as we have attempted to argue, democracy goes beyond creating the avenues through which opposition parties may march into State House. Democratic governance, it is submitted, will be achieved there and when a people has recaptured the **constitutive power**, and secondly, accountability of the rulers before the ruled has been reaffirmed.

As Malawians set out to create a democratic society that is in their image and interest, it would be a worthwhile exercise to reflect on factors that led to the adoption of a constitution requiring them to pay allegiance to an imperial President who is also a despot par excellence. Malawians will be pleasantly surprised to learn that by electing to adapt the Republic Constitution to suit the outlook of their President for Life, they played into a deception game about which marxism has warned on more than one occasion. Malawians were confronted by two irreconcilliable sets of criteria in judging Kamuzu Banda's candidacy for high Office: his politico-ideological outlook (arch conservative, compradorial elitist) and his moving outbursts of anti-colonial demagogic ("I shall break the stupid Federation"). By and large, Malawians chose the later and the tragedy created by this situation is what this article has attempted to highlight.

Being the fundamental law of the land, it is only appropriate that landmark developments such as the transition from political barbarism to democratic governance begin with a reshaping of the Republic Constitution through the active participation of and approval by the people themselves. Future constitution makers are emphatically urged to consider placing the State President's tremendous powers firmly within the ambit of the law so that loopholes for abuse of powers are reduced to a tolerable minimum. Consequently, the proposal to have a constitutional clause empowering the citizenry to rise and unseat an unconstitutional regime has this author's full support.

In comparison to the panorama in neighbouring States (Tanzania and Zambia in particular), the pro-democracy struggle in Malawi is in a "pre-historic stage". Malawian authorities persist in derogatorily referring to those Malawians seeking democratic change as "dissidents". In addition, the authorities hypocritically portray the multi-party system of government as likely to "disrupt the prevailing peace and harmony" while well aware that it is the government's intransigency in accepting change that is likely to trigger a conflagration.

Countries such as Congo, Zambia and Tanzania which did undertake bold and timely steps appear to enjoy more stability than those, such as Zaïre, Kenya and Togo, that opted to meet calls for democracy with half-hearted, half-baked policies or political ruses. Encouragingly enough, the odds appear generally in favour of the democratic forces and to the disadvantage of the Malawi Congress Party's political exclusivity. Firstly, internal-based change agents have not only found their voice, which was echoed through a March 8, 1992 Pastoral Letter. They have constituted themselves into organized political entities, the two most recent being the Alliance for Democracy (AFORD) and the United Democratic Front (UDF). Secondly, a crucial element to the Malawi problem has been the exiled community composed of a multiplicity of groupings and personalities. The overwhelming majority of these have since March 22, 1992 adopted the United Front for Multi-Party Democracy (UFMD) as their umbrella organization. But what is perhaps of more political significance are the behind-the-scene efforts in linking up with internal-based pro-democracy forces. Thirdly, the Malawi regime's former patrons (and whose support was crucial) in the West have eventually accepted the inadmissibility of propping Third World regimes that represent a mockery of the very foundations Western Liberal Democracy stands on.

However, one occurrence seems poised to frustrate the march towards a democratically governed Malawi in which the Republic Constitution shall occupy a position befitting a Supreme Law of the land. There evidently are moves by sections of the regime to perpetuate the *status quo*. On the other hand, certain opposition personalities appear eager to cut themselves a cult not very dissimilar to that of the present autocratic leadership. These hiccups notwithstanding, Malawi appears to be responding positively, albeit convulsively, to the winds of change that have ushered multi-partyism and democratic governance firmly on the agenda of African States.

## ABSTRACTS

### **The Malawi Republic Constitution and Multi-Partyism: Main Concerns**

By *Kothi Kamanga*

This article seeks to identify the predeterminants and the legal manifestations of despotic autocracy in Malawi through an examination of the country's supreme law, the Malawi Republic Constitution (1966). As a result of a critical review of the legal structures of Government in Malawi, today, the author, in his conclusion, strongly recommends a thorough revision of the constitution in light of the foreseeable and desirable democratization process.

### **The Role of Mercosur in Latin America's Multidimensional Integration-scheme**

By *Jelka Liselotte Mayr*

In March 1991, four countries in Latin America's southern cone, Argentina, Brazil, Paraguay and Uruguay joined to form a Common Market of the South (Mercosur) by December 31, 1994. The Treaty of Asunción does not only add another attempt at successful subregional integration to a long history of Latin American regional economic relations; Mercosur also reflects the remarkable changes and the dynamic forces that have characterized the economic integration scenario of the American continent since mid 1990.

The first part of this paper describes the background of previous integration experiences and the context of the bilateral integration efforts between Argentina and Brazil from which the Treaty of Asunción has emerged. Following that, the paper analyses the content of the Treaty and proves its consistency with the provisions and objectives of the Latin American Integration Association (ALADI). It continues with an examination of the external relations of Mercosur and its interactions with other (sub)regional and bilateral integration efforts currently in place of the sub-continent. The final part discusses the chief obstacles facing Mercosur and questions the ambitious target date of 31 December 1994, which - given the ground to be covered - seems remarkably optimistic for achieving the aims envisaged by the Treaty.