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***FUNDAMENTAL VALUES OF THE  
CONSTITUTION OF MALAWI***

***SUMMARY OF THE MAIN CONCEPTS AND  
ISSUES***

***BY***

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**CONCEPT PAPER ONE**  
**THE FUNDAMENTAL VALUES OF THE REPUBLIC OF  
MALAWI CONSTITUTION OF 1994**

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**SUMMARY OF THE MAIN CONCEPTS AND ISSUES**

**I. INTRODUCTION**

The Republic of Malawi Constitution of 1994 contains – and is founded upon - certain fundamental values of constitutional law. The first and possibly most important one is the supremacy of the Constitution itself. The essence of this value or principle is that the three organs of the state, namely the Executive, the Legislature and the Judiciary are all subordinate to the Constitution and are bound by its provisions<sup>1</sup>. The Constitution also embodies other important values. These include those values that are associated with the rule of law; respect for human rights and personal freedoms; adherence to democratic principles and responsible government; the requirement for transparency and accountability on the part of public officials; as well as respect for international law.

It should be noted that these commendable values have not always been part of Malawian constitutional law. The Constitution of 1966, which remained in force for nearly thirty years, vested absolute executive authority in the office of the President<sup>2</sup>. The Presidency was over and above all other organs of the State. In making his decisions affecting the whole country, the President was empowered to act in his own discretion. He was not obliged to follow advice tendered by any other person<sup>3</sup>. Likewise, the Bill of Rights was deliberately excluded from the Constitution of 1966. Political activity was strictly controlled by the only legal party in the country – the Malawi Congress Party<sup>4</sup>. Under this kind of constitutional order, it was virtually impossible to guarantee transparency and accountability by those in power. There

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<sup>1</sup> See s.4 of the Constitution of 1994.

<sup>2</sup> See especially s.8 of the Constitution of 1966.

<sup>3</sup> This point was confirmed by Messrs. Louis Chimango, Robson Chirwa and Edward Bwanali when they testified in *DPP v. Dr. Banda et al*, Crim. Appeal No. 21 of 1995, MSCA (unrep.), at p.16 of the judgment. The three men were some of the closest Cabinet Ministers of Dr. Banda

<sup>4</sup> See, s.4 of the Constitution of 1966.

was no mechanism for ensuring checks – and – balances between the executive on the one hand, and all the other organs of the state on the other.

It is against this dismal background that the present constitutional order has to be understood. The constitution of 1994 was designed to improve upon any other constitutional order that had hitherto existed in Malawi. It is a yard stick for measuring the legality of executive decisions as well as legislative enactments. It is therefore necessary to state the legal basis and main elements of these fundamental values of constitutional law.

## II. SUPREMACY OF THE CONSTITUTION

This is reflected under the provisions of ss.4 and 5 of the Constitution of 1994. These provisions are in the following terms -

“4. This Constitution shall bind all executive, legislative and judicial organs of the State at all levels of Government and all the peoples of Malawi are entitled to the equal protection of this Constitution and the laws made under it.

5. Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid”.

The issue of constitutional supremacy over executive as well as legislative enactments has come before the courts of law in a number of cases. In Attorney – General v. Lunguzi et al<sup>5</sup> the Supreme Court of Appeal held that the State President had violated the provisions of the Constitution (especially s.43 thereof) by removing the respondent from his post as Inspector General of Police without giving him reasons in writing for such removal. Likewise, in Director of Public Prosecutions v. Dr. Banda et al<sup>6</sup>, the Supreme Court of Appeal declared ss.313 and 314 of the Criminal Procedure and Evidence Code<sup>7</sup> null and void because they were inconsistent with s.42 of the Constitution. The general rule that emerges from these decisions is that executive decisions and actions must conform to the terms and requirements of the Constitution. Likewise, the principle that legislative procedures and enactments that are contrary to the Constitution are null and void is now part and parcel of Malawian constitutional law. However, there is the need for all the organs of the State, especially the executive organ, to recognize and accept this value of constitutional law. Those in power should know that they are below the power of the Constitution and are subject to its stipulations.

## III. LIMITED GOVERNMENT OR THE RULE OF LAW

The general theme that runs throughout the Constitution of 1994 is that of limited exercise of government power or the rule of law<sup>8</sup>. This requires that the

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<sup>5</sup> Civil Appeal No.23 of 1994, MSCA (unrep).

<sup>6</sup> Crim. Appeal No. 21 of 1995, MSCA (unrep.)

<sup>7</sup> Cap. 8:01 of the Laws of Malawi.

<sup>8</sup> On the rule of law generally, see, J.F. Garner, Administrative Law (4<sup>th</sup> Edition) (London: Butterworths, 1974) at p.17 et seq.

exercise of executive power should always be subject to judicial review. The aim is to ensure that executive discretion is not allowed to override clear terms of the Constitution. This follows from the fact that the concentration of power in the office of one person is no longer an element of Malawian Constitutional law.

The essence of the doctrine of the rule of law is that all persons must be subject to, and below the power of, the ordinary law of the land. The rule of law requires that in the particular country, there must be adequate (judicial) safeguards against possible abuse of the rights and interests of the individual<sup>9</sup>. These elements of the doctrine are well reflected in the Constitution of 1994. The concept of judicial independence is specifically recognized under s.103 (1) which is in the following terms -

103. (1) All courts and all persons presiding over those courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority”.

It is significant to note that the tenure of office for judges under s.119 of the Constitution has been greatly safeguarded by the process of checks and balances. The executive in general - and the president in particular – has no power to dismiss any judge from office<sup>10</sup>. A judge can only be removed from office for incompetence in the performance of his or her duty or for misbehaviour. He cannot be so removed unless and until a motion praying for his removal has been debated upon in the National Assembly. The relevant motion must be passed by a majority of votes of all the members of the house<sup>11</sup>. These safeguards are necessary in a free and democratic society. Courts of law should feel free to interpret the law impartially; even in cases where the executive organ of the State is involved. As custodians of the law, they should be able to issue orders that shock, disturb or offend the executive; if the aim for doing so is to enforce respect for human rights and the rule of law. The recent rulings in the Nangwale case<sup>12</sup> and the Chilumpha case<sup>13</sup> appear to support the proposition that under the current constitutional order in Malawi, courts of law have increased judicial independence *vis a vis* the executive organ of the State. It is proposed that in order to ensure increased judicial independence in the country, the prescribed age for retirement for judges under s.119 (6) of the Constitution should be raised from 65 years to 70 years of age.

#### **IV RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

The Constitution of 1994 contains a comprehensive Bill of Rights that is enforceable by the courts of law. In interpreting the other provisions of the Constitution, courts of law are specifically required to take full account of the provisions of the Constitution that relate to human rights<sup>14</sup>. The actual rights and freedoms that are guaranteed are quite diverse. They range from civil and political rights to economic, social and cultural rights. The right to development is

<sup>9</sup> See Ex parte Chilumpha, Misc. Civil cause No. 22 of 2006, H.C. (unrep.).

<sup>10</sup> Under s.64 (3) of the Constitution of 1966, the President had power to remove a judge from his office.

<sup>11</sup> See, s.119 (3) of the Constitution of 1994.

<sup>12</sup> Misc. Civil Cause No. 1 of 2005, HC (LL) (unrep.).

<sup>13</sup> Misc. Civil Cause No. 22 of 2006, HC (unrep.).

<sup>14</sup> See s.11 (2) (b) of the Constitution of 1994.

guaranteed under s.30 of the Constitution. Under the terms of this provision, the right to development includes the right to food; the right to housing; the right to employment; and the right to infrastructure such as better roads. The values that underlie these rights are self – evident since these are basic necessities of life. Therefore, the government has the responsibility to respect the right to development and to justify its policies in accordance with this responsibility. Therefore, it can be stated that, as a general rule, respect for human rights and fundamental freedoms is a fundamental value of Malawian constitutional law.

However, there are certain rights and freedoms that are so basic to the survival of democracy and democratic institutions that they deserve some special treatment here. These include those of equality and non-discrimination; the right to freedom of opinion and expression; the right to acquire and to own property; and the right to take part in the government of one's country. It is not possible to have peaceful and power human interaction in a society where one or more of these rights are not respected by the executive organ of the State. It is therefore necessary to examine the legal provisions relating to these human rights. It is also necessary to assess the various ways in which the courts of law have interpreted them.

#### **A. Equality and Non-discrimination**

The principle on non-discrimination is central to the concept of human rights. The primary characteristic that distinguishes “human” rights from other rights is their universality. According to the classical theory, human rights are said to inhere in every human being by virtue of humanity alone<sup>15</sup>. It must necessarily follow that no particular feature or characteristic attaching to any individual, and which distinguishes him from others, can affect his entitlement to his human rights; either in degree or in kind. However, limitations or restrictions of human rights may, in certain cases, be permissible under constitutional law. In any such case, the constitution must specifically provide for this limitation or restriction for a clear and cogent reason. For instance, it may be necessary and reasonable to restrict the right to vote to adults because children may not be able to make an informed choice during elections. It may also be reasonable to require special (or preferential) protection for women and children because they are vulnerable.

The Malawian law on the point is embodied in s.20 of the Constitution of 1994. This provision is in the following terms -

“20. (1) Discrimination of persons in any form is prohibited and all persons are, under any law, guaranteed equal and effective protection against discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status.

(2) Legislation may be passed addressing inequality in society and prohibiting discriminatory practices and the propaganda of such practices and may render such practices criminally punishable by the courts.”

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<sup>15</sup> See, *Attorney – General v. Lunguzi et al* Civil Appeal No. 23 of 1994, MSCA (unrep.) where the Supreme Court accepted this particular point.

The foregoing values are further reflected in those provisions of the Constitution that relate to “fundamental principles of the Constitution. The relevant terms of s.13 are as follows: -

“13. The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals -

(a) *Gender equality*

To obtain gender equality for women with men through –

- (i) full participation of women in all spheres of Malawian society on the basis of equality with men;
- (ii) the implementation of the principles of non-discrimination and such other measures as may be required; and
- (iii) the implementation of policies to address social issues such as domestic violence, security of the person, lack of maternity benefits, economic exploitation, and rights to property.

It is quite arguable that in order to implement and effectively protect the Values that under-lie the principles of equality and non-discrimination, the state is under an obligation to extend preferential treatment to vulnerable groups such as women. The electoral process, for instance, may have to reserve a certain number of quotas of Parliamentary seats for women. In employment and education, policies that are based on the principle of affirmative action may have to be developed and implemented. Any such measures will be perfectly consistent with the terms of s.20 (2) of the Constitution.

On the other hand, the values that are associated with gender equality have serious practical limitations at customary law. Some of the country’s customary laws, such as those relating to marriage and inheritance, are highly discriminatory of women on the basis of their sex. It is in areas like these that legislation is required in order to reconcile customary laws and practices with the foregoing provisions of the Constitution.

## **B. Freedom of Opinion and Expression**

The right to freedom of expression, including freedom of opinion and that of the press, is provided for under ss.34 to 37 of the Constitution of 1994. The embodiment of this right in the national Constitution removes any doubts that may have existed prior to 1994 as to its scope and status in Malawian constitutional law. The Judiciary can now enforce this right as a binding legal rule. It is no longer necessary to have recourse to some other legal instruments such as the Universal

Declaration of Human Rights of 1948 in order to ascertain a person's right to freedom of expression in this country<sup>16</sup>.

The available case – law on the point in uniform in affirming the importance of the values that under-lie this particular right. In Handyside v. United Kingdom<sup>17</sup>, the court stated that the free expression of ideas was essential for the maintenance of democracy and democratic institutions. It was stated in this case that freedom of expression does not only mean imparting information and views that are favourable to the government. This right includes imparting and receiving information that offend shock or disturb the State or any sector of the population. There is yet another important principle that emerges from the case of Lingens v. Austria<sup>18</sup>. The court stated that public figures such as politicians should endure a higher level of criticism and abuse than private individuals. The rationale is that open criticism of those in power so long such criticism is limited to issues that are relevant to their official functions, is but one way of ensuring the value of transparency and accountability.

However, it should be noted that the constitutional provisions on the right to freedom of expression lack proper details under which the right may be limited by the courts. This particular right carries with it special duties and responsibilities. The courts of law have already recognized this fact in such cases as Mwaungulu v. Malawi News<sup>19</sup> and Mpasu v. The Democrat et al<sup>20</sup>. It is therefore suggested that ss. 34 to 37 of the Constitution should be replaced by a single provisions on the lines of Article 19 of the International Covenant on Civil and Political Rights of 1966. It will become clear under the new provision that where the rights and reputations of others are affected, the right to freedom of expression may be limited. Likewise where issues of national security or public order are at stake, the exercise of this particular right may be subjected to certain limitations. Nevertheless, courts of law should be seen to promote – rather than negate – the essence of this particular right.

### **(C) Acquisition and Ownership of Property**

Historically, the right to acquire property is one of the most important human rights of an individual. Acquisition of property and its subsequent ownership and enjoyment is an intrinsic attribute of humanity. It is one of the distinguishing characteristics between human beings and other creatures living on earth. It has been stated that one objective for the formation of the modern state was that the central authorities should protect and safeguard private property<sup>21</sup>. It is therefore hardly surprising that the development of modern human rights law has maintained its traditional focus on the acquisition and enjoyment of private property. It is for this reason that any government that does not respect the right to property violates not

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<sup>16</sup> In Chihana v. Rep Crim Appeal No. 9 of 1992 MSCA (unrep.), the Supreme Court accepted the fact that the Universal Declaration of Human Rights of 1948 "is part of the law of Malawi" and that the rights and freedoms that are stipulated in that instrument can be enforced by the courts in this country.

<sup>17</sup> 1 EHRR 737 (European Court of Human Rights).

<sup>18</sup> Case No. 12/1984/84/131 of 1984. (European Court of Human Rights).

<sup>19</sup> Civil cause No. 124 of 1995, HC (unrep.).

<sup>20</sup> Civil cause No. 124 of 1995, HC (unrep.); Judgment of 14 July 1997.

<sup>21</sup> See Jerome J. AhwarXK, "The Jurisprudence of Human Rights in International Law - Legal and Policy Issues (Oxford: OUP, 1984) p.76

only its international commitments and national legislation in the area of human rights, but also risks losing popular legitimacy and its hold on power.

The present constitutional law on the right to property is stipulated under s. 28 of the Constitution of 1994. This provision is in the following terms -

“28. (1) every person shall be able to acquire property alone or in association with others.

(2) No person shall be arbitrarily deprived of property.

This law has already been examined and interpreted in a number of court decisions. The most important of these is probably the Press Trust Case<sup>22</sup> of 1995. The High Court ruled that the Press Trust (Reconciliation) Act of 1995 was null and void because it was violative of the provisions of s. 28 of the Constitution<sup>23</sup>.

It should be noted that this particular right is not an absolute one. It may be limited in certain cases and under certain circumstances. This is quite clear from the judgements of the High Court and Supreme Court in the Press Trust Case itself. It is also clear from the terms of s. 44 (4) of the Constitution. However, in order to make the law more certain and to avoid the problems that arose in the Press Trust Case, it is proposed that s. 28 of the Constitution should incorporate the terms of section 44 by way of transfer. The new provision will have the advantage of being precise enough as regards the circumstances under which expropriation “shall be permissible”

#### **(d) Democracy Elections and Responsible Government**

Political rights are stipulated under the provisions of s. 40 of the Constitution of 1994<sup>24</sup>. It is stated that every person shall have the right –

1. to form, to join, to participate in the activities of, a political party;
2. to campaign for a political party or cause;
3. to participate in peaceful political activity intended to influence the composition and policies of the government
4. To vote, to do so in secret and to stand for election for public office.

The concept of universal suffrage is recognized under section 77 of the Constitution. The restrictions that are stipulated are fairly reasonable and are not in conflict with the anti-discrimination rule. The values that underlie political rights are well stated under s. 12 of the Constitution. It is here provided, *inter alia* as follows:-

12. This Constitution is founded upon the following underlying principles-

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<sup>22</sup> For the High Court Judgment, see Civil cause No. 2074 of 1995, HC (unrep.)

<sup>23</sup> For the Supreme Court Judgment which reversed the judgment of the High Court on other issues, see, Attorney-General v. Malawi Congress Party et al, Civil Appeal No. 22 of 1996, MSCA (unrep).

<sup>24</sup> See also s.32 of the Constitution which guarantees the right to freedom of association.

- (i) all legal and political authority of the State derives from the people of Malawi and shall be exercised in accordance with this Constitution solely to serve and protect their interests;
- (ii) all persons responsible for the exercise powers of State do so on trust and shall only exercise such power to the extent of their lawful authority and in accordance with their responsibilities to the people of Malawi;
- (iii) The authority to exercise power of State is conditional upon the sustained trust of the people of Malawi and that trust can only be maintained through open accountable and transparent government and informed democratic choice.

The main controversial issues are those that are associated with elections and voting. Since 1994, there have been at least two other presidential and parliamentary general elections in Malawi. In addition to these, there have been several other byes – elections that are held from time to time in order to fill in the vacancies that occur in the National Assembly. These elections have been marked by one persistent feature that is not entirely in line with the law of human rights. Candidates are voted into office purely on tribal or ethnic lines. A person's views on such issues as the economy of the area or the country are rarely taken into account. The result is that except in the main urban areas such as Blantyre and Lilongwe, non-local candidates are rarely voted into office at parliamentary level. This problem was particularly prevalent in the election of 1994 in which candidates were openly campaigning on a tribal ticket. At presidential level, the three main candidates were given overwhelming electoral support only in their own regions or tribal enclaves<sup>25</sup>.

This state of affairs can not be supported under any rule of human rights law. It is a negation of true democracy and representative government. The element of tribalism and /or regionalism should not be a feature of future elections in this country. Candidates should be voted into office purely on merit. The Constitution should make specific provision for non-partisan and non-ethnic voting patterns in future elections.

## **V. TRANSPARENCY AND ACCOUNTABILITY**

This value of constitutional law is reflected in the Constitution of 1994 at three different levels. These are –

- (a) Theoretical level
- (b) Substantive level and
- (c) Institutional level

At all these levels, the aim of the law is to ensure that public officials and public institutions continue to command and enjoy the trust and confidence of all the people of Malawi. It is also the aim of the law to ensure that public officials should not use their positions for personal gain. They should try, as much as possible to avoid any conflict of interests between their private and official undertakings. It is

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<sup>25</sup> See, Ngubola G.T. Kamwambe, *Post-Mortem of 1994 Elections in Malawi* (Limbe I Montfort Press, 1994) at pp. 4-10.

therefore necessary to discuss the relevant rules of constitutional law and to assess their relevance and importance to the Malawian Society as a whole.

### **(a) Theoretical Level**

At the level of theory, the principles of national policy that are stipulated under s. 13 of the Constitution are relevant. The provisions on transparency are as follows-

13. The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals-

#### *(o) Public Trust and good Governance*

To introduce measures which will guarantee accountability and transparency, personal integrity and financial probity and which by virtue of their effectiveness and transparency will strengthen confidence in public institution.

Although these principles are only “directory” in nature, courts of law are entitled to have regard to them in interpreting and applying any of the provisions of the Constitution or any other law. Courts of law are also entitled to take into account these principles in determining the validity of decisions of the executive organ of the State<sup>26</sup>.

The recent case of *Chikakwiya v. Rep* illustrates the need by public officials to adhere to the values of accountability and financial probity. At the material time, the accused (Mr John Chikakwiya) was a high ranking official of the United Democratic Front. He was also a Mayor of the Blantyre City Council. The second charge against him was that he had abused his office (as Mayor) contrary to s. 95 of the Penal Code<sup>27</sup>. The relevant facts were, that he had given instruction to issue a cheque for K400,000 in the name of his of his deputy. When this was done, he kept the money himself for road maintenance work at Machinjiri in the city. The Supreme Court of Appeal held that the conduct of the Appellant breached internal procurement procedures of the Blantyre City Council. He was convicted of the offence of abuse of office and sentenced to nine months imprisonment with hard labour. A number of other cases have also ended up in convictions and imprisonment of public officials.<sup>28</sup>

### **(b) The Substantive Level**

The Constitution contains specific substantive provisions relating to transparency and accountability. The terms of section 88A of the constitution are particularly relevant<sup>29</sup>. They require the President and Members of the Cabinet to

<sup>26</sup> See, s.14 of the Constitution of 1994.

<sup>27</sup> Cap. 7:01 of the Laws of Malawi.

<sup>28</sup> The most famous one involved a former Cabinet Minister (Mr. Yusuf Mwawa) who was convicted and sentenced to a total of 12 years imprisonment. The State alleged that when he was Minister of Education, Mr. Mwawa used MK160,550 from the Ministry’s Special Clients Account to pay for his private wedding at Mount Soche Hotel in Blantyre.

<sup>29</sup> See also s.213 of the Constitution of 1994.

disclose in full all of their assets. This must be done within three months of the election of the President or the appointment of the Cabinet Minister. It is further stated as follows-

“88A. (3) The President and Members of the Cabinet shall not use their respective offices for personal gain or place themselves in a situation where their material interests conflict with the responsibilities and duties of their offices.”

The terms of s.213 of the Constitution impose a similar duty and obligation on other public officials.

### **(c) The Institutional Level**

The Constitution provides for the establishment of public offices that are mandated to check mal-administration in the country. The most important of these is the office of the Ombudsman. This institution is constituted under section 120 of the Constitution. The powers and functions of the Ombudsman under section 123 of the Constitution are stated as follows-

“123. (1)The office of the Ombudsman may investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is an y remedy reasonably available by way of proceedings in a court or where there is no other practicable remedy.

It is quire possible that using the above powers, the Ombudsman can investigate and rule upon some unconstitutional practices by public employers or other officials. For instance, a person may allege that he is being left out of employment at the recruitment stage, purely on tribal or ethnic lines. On the face of it, any such practice is contrary to section 20 of the Constitution. Tribalism or nepotism ought not to be practiced by any public official or institution. Therefore, with a view to enhancing transparency and accountability, the Ombudsman may rule that the relevant official or institution has acted unconstitutionally. He may then proceed to grant the necessary remedy to the complainant.

Other institutions that may be noted are the Anti-Corruption Bureau (ACB)<sup>30</sup>and the Human Rights Commission. By investigating and exposing corrupt practices by public officials, the ACB can and does positively contribute to enhancing the values of transparency and accountability. Likewise, by bringing greater awareness of human rights and fundamental freedoms, the Human Rights Commission and non-governmental organizations can contribute to the goal of achieving transparency and accountability. It is only when people know their rights that they are in a position to detect mal-administration by public as well as private officials.

### **(v) Respect for International Law**

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<sup>30</sup> The Anti-Corruption Bureau is not specifically mentioned in the Constitution of 1994. However, there is a statute that regulates its composition and work. Some of its activities (or investigations) have enhanced the value of transparency and accountability in Malawi.

Malawi is part of an international legal order that is governed by the international law. One of the principles of national policy is to the effect that those in power must govern in accordance with the law of nations and the rule of law<sup>31</sup>. The government is also mandated to support the further development of international relations at regional and international levels. It is hardly possible to over emphasize the values that underlie these principles. Malawi cannot succeed in nation-building without the active political or economic support by other states.

As a fundamental value of constitutional law, adherence to international instruments, but also in their implementation at domestic level. The country is a party to a number of treaties. These include the two UNO Covenants of 1966<sup>32</sup>, the Convention on the Rights of the Child of 1989 and the African Charter on Human and Peoples Rights of 1981. Malawi is required to comply with the provisions of these treaties. Where the relevant treaty requires periodic reports to be submitted, this obligation must be fulfilled. It is not enough to be a party to a treaty and not to fulfill some of its most important requirements.

Likewise, there is the need to implement some treaties at national level. People should be able to know their rights under these treaties and to be allowed to enforce them in the courts of law. Particular reference must be made to the convention on the Rights of the Child of 1989 whose provisions are universally recognized and acknowledged by the international community.

#### **(vi) Conclusion**

Malawi has witnessed unprecedented changes in its constitutional order since 1994 when the new constitution was adopted. Unlike the Constitution of 1966 which vested supreme executive powers in the office of the president, the Constitution of 1994 embodies a number of fundamental values of constitutional law. These include the supremacy of the Constitution over all executive and legislative organs. The values that are associated with the rule of law and limited exercise of executive authority are well entrenched. The Judiciary is freer and independent under the present Constitution than it has ever been under any other previous constitutional order. Therefore, in line with its mandate under s. 12 of the Constitution, the Judiciary should seize this opportunity to uphold and defend human rights and fundamental freedoms for all. The survival of democracy and good degree, on maintaining and improving upon, the commendable values that are enshrined in the Constitution of 1994.

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<sup>31</sup> See, ss. 29-31 of the Constitution of 1994.

<sup>32</sup> See, s.13 (k) of the Constitution of 1994. In the past, especially before 1900, international law was referred to as the "Law of Nations". However, from about 1945 onwards, it is not conventional to employ the term the law of nations. The conventional term is "public international law" in order to distinguish it from "private international law or conflict of laws".