

CALL FOR PAPERS

REFLECTIONS ON THREE DECADES OF THE CONSTITUTION OF THE REPUBLIC OF MALAWI

May 2025

Adopted on 18 May 1994, to constitutionalise Malawi's transition from a one-party authoritarian state to a multiparty democracy, the Constitution of the Republic of Malawi (the Constitution) has been in force for just over 30 years.¹ As the supreme law of the land, the Constitution was, and still is, expected to play an indispensable role towards democratic consolidation, and in guiding and controlling the exercise of public power for the advancement and benefit of all individuals in Malawi. In particular, the Constitution sets out an ambitious social justice vision aimed at improving the livelihoods of Malawians in diverse areas, such as gender equality; access to health, education, food, water and housing; inclusive and sustainable development; and environmental equity and justice.² The Constitution also espouses fundamental principles of democratic governance such as openness, transparency, accountability, the rule of law, judicial independence, and public power as a trust established by the people for their sole benefit.³

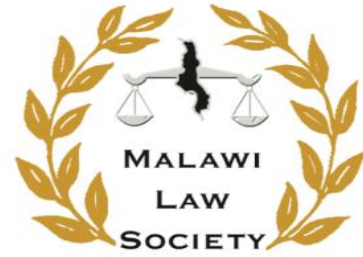
Undoubtedly, the Malawi of the last 30 years is quite different from that preceding the adoption of the Constitution. Malawians now enjoy more freedoms and rights than before. Six presidential and parliamentary elections have been conducted, relatively peacefully. Several political parties have had the opportunity to establish a government after triumphing in national elections. The intervening period has also witnessed an explosion of law-making, with numerous laws being introduced to replace outdated and outmoded ones or to usher in entirely new laws meant to realise the ideals, values and vision of the Constitution. For example, significant revisions and amendments have been made to the criminal procedure law, and new legislation has been enacted to bolster the regulation of the financial services sector and also in the areas of gender equality, domestic violence and sexual abuse, family relations, elections and electoral administration, and environmental protection and governance.⁴

¹ Republic of Malawi (Constitution) Act 20 of 1994, legislation as at 31 December 2017, available at: <https://malawilii.org/akn/mw/act/1994/20/eng@2017-12-31> [accessed 14 October 2024].

² For in-depth commentary, see Danwood Mzikenge Chirwa, *Human Rights under the Malawian Constitution*, Juta (2011).

³ See, Dan Kuwali and Chikosa Mozesi Silungwe, 'Horizontal Accountability: Bottom-up oversight of public duty bearers in Malawi,' *Journal of Comparative Law in Africa* 1 (2022), 1-23.

⁴ For example, the Marriage, Divorce, and Family Relations Act, chapter 25:01 of the Laws of Malawi (Act No. 4 of 2015' GN 2/15), available at: <https://malawilii.org/akn/mw/act/2015/4/eng@2017-12-31> [accessed 13 October 2024].



Notably, legislative revisions, reforms and amendments have also been made to the Constitution itself. Among the changes introduced to the Constitution are amendments constitutionalising the notion of duties in relation to human rights, floor crossing, and the management of elections - following the decision of the Malawi Supreme Court of Appeal in the Presidential Elections Petition of 2019.⁵ Curiously, some of the provisions of the Constitution have been amended on more than one occasion.⁶

For their part, courts have been called upon to adjudicate numerous constitutional disputes, some of which have been precedent-setting, momentous and ground-breaking. While exercising their authority to interpret and apply the Constitution, courts have either expanded or contracted the meanings of some of its provisions in ways that have attracted praise on some occasions and criticism on other occasions.⁷

On the policy front, various administrations have attempted to translate their political manifestoes into concrete policy prescriptions. Some of these were, or have been, designed to realise short-term goals, while others were, and are, explicitly meant to realise long-term goals. Policies of the latter kind include the Malawi Vision 2020, adopted in the mid-1990s, and the recently adopted Malawi Vision 2063.

Key players in ensuring that constitutionalism and democratic consolidation take root in Malawi include the executive, the legislature, the judiciary and the legal profession, political parties and politicians, accountability institutions established by the Constitution, such as the office of the Ombudsperson and the Human Rights Commission, the Malawi Electoral Commission and all other institutions created by the Constitution. The extent to which all these institutions have fulfilled their prescribed and expected roles has been the subject of some attention, but much more reflection needs to be done.⁸

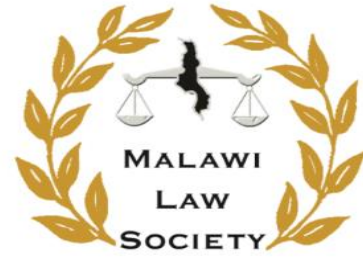
Regarding prior reflection on the Constitution's overall role in Malawi, the review conducted by the Malawi Law Commission between 2006 and 2007, which led to the publication of the *Report on the Review of the Constitution*, immediately stands out. Additionally, between 25 and 28 July 2012, the Malawi Law Society (MLS) and the Malawi Law Journal co-hosted a conference on the theme 'The Malawian Constitution at 18: Constitutionalism, Diversity and

⁵ *Prof Arthur Peter Mutharika and Another v Dr Saulos Klaus Chilima and Dr Lazarus McCarthy Chakwera* (MSCA Constitutional Appeal No. 1 of 2020) [2020] MWSC 1 (8 May 2020) (*Presidential Elections Appeal* case). See, Mwiza Jo Nkhata, Anganile Willie Mwenifumbo and Alfred Majamanda, 'The Nullification of the 2019 Presidential Election in Malawi a Judicial Coup D'état?' *Journal of African Elections*, DOI: 10.20940/JAE/2021/v20i2a4, 57-80.

⁶ For example, section 65.

⁷ The judicial interpretation of section 15(2) of the Constitution on *locus standi* immediately come to mind here.

⁸ See, Redson Edward Kapindu and Fidelis Edge Kanyongolo, 'The state of administrative law in Malawi: Systems, structures and emerging issues' in H Corder and J Mavedzenge, *Pursuing Good Governance: Administrative Justice in Common-Law Africa* (2019) 67–91. See also, Rizine Robert Mzikamanda, 'Constitutionalism and the judiciary: A perspective from Southern Africa' Paper presented at the ALRAESA Conference Lilongwe, Malawi, 26–27 July 2011 available at www.lawcom.mw/index.php/events [Accessed on 10 November 2024].



Socio-Economic Justice'. On their part, political scientists have also reflected on some of the presidential and parliamentary elections and aspects of democratic governance.⁹ In May 2024, for example, the Political Science Association (PSA) organised a conference under the theme '30th Anniversary of Multiparty Democracy: Reflections on Malawi's Governance, Politics, and Development.' All these efforts provide remarkable insights into Malawi's progress in advancing constitutionalism and democracy. However, they do not provide an exhaustive reflection on all the themes this conference seeks to address, nor do they reflect on the entire 30 years of the Constitution's existence.

This conference, proposed for two days, aims at engaging a wide range of stakeholders, including legal practitioners, government representatives, civil society, academia, political party representatives and international partners, to explore, and reflect on the impact of the Constitution on the political, economic and social dynamics in the country and the challenges that have emerged in its interpretation, application and implementation. Critically, the conference also aims to serve as a platform for dialogue on viable means for strengthening constitutionalism and enhancing public participation in governance. By bringing together diverse voices, the conference aims at fostering a renewed commitment by all to constitutionalism and democratic governance in Malawi and ensuring that the principles enshrined in the Constitution continue to guide and bolster the nation's march towards a more just and equitable future.

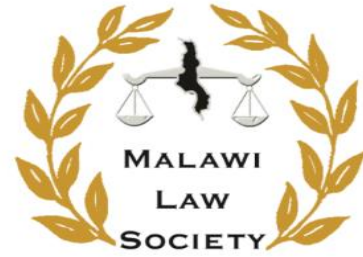
We invite abstracts and papers that seek to reflect on three decades of the interpretation, application, enforcement and implementation of the Constitution. In framing proposed problems to be investigated, we expect abstracts that are detailed, original and provide critical analysis of major constitutional and legal developments on any of the sub-themes below. The papers and abstracts should also reflect, where possible, on concrete proposals for improvement/reform of the Constitution.

Sub-theme 1: Evolution of constitutional law and constitutionalism in Malawi

Under this sub-theme, we expect abstracts/papers to:

- reflect on the underpinnings of Malawian constitutional law and the impact they have had on democracy and constitutionalism thus far; or
- identify key constitutional and political developments in Malawi that call for a reflection on our constitutional and political history; notable continuities or discontinuities in the development of democracy and constitutionalism; or signify the advancement or suppression of the underlying values or principles of the Constitution from a historical point of view.

⁹ See, *Beyond Impunity: New Directions for Governance in Malawi* (Rondebosch: UCT Press, 2022), edited by Kenneth R. Ross, Asiyati L. Chiweza and Wapulumuka O. Mulwafu.



Sub-theme 2: The Constitution, democratic governance and accountability:

This sub-theme seeks to address the critical role of the Constitution in shaping a public institutional culture that advances good governance, openness, transparency, and accountability. Abstracts and papers may focus on any of the following sub-themes:

- select major constitutional and political developments or public institutional practices that justify or call into question the constitutional design of the vertical, horizontal, and diagonal power and accountability relations between select organs of state, such as the executive versus the legislature, the judiciary versus the executive, the legislature vs the judiciary;
- the design and practice of the relationship between any of these organs with accountability institutions such as the Office of the Ombudsperson and the Malawi Human Rights Commission;
- the role and limits of the office of the Attorney General in ensuring the separation of powers between the executive and the legislature, and between the executive and the Electoral Commission; or
- constitutional amendments and their impact on constitutionalism and democratic governance.
the constitutional principles or institutional practices that encourage/allow/dissuade agency or the active involvement of citizens in the political, administrative, economic, and legal process and in matters that affect their rights and interests;

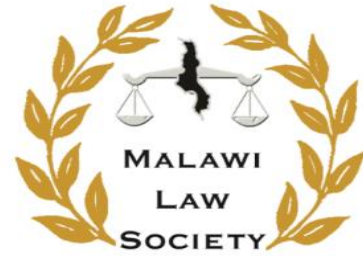
Sub-theme 3: Human rights, socio-economic justice and inclusion

Abstracts and papers under this sub-theme could address any of the following sub-themes:

- the extent to which the Constitution has advanced social justice in the democratic era;
- analysis and critique of the jurisprudence on socio-economic rights and the right to development and of the opportunities to bolster the protection of these rights; or
- the Constitution's readiness for, and its role in, addressing developmental challenges of the 21st century such as climate change; or
- a critique of recent major court decisions and legislative or policy measures addressing the plight and rights of vulnerable groups such as women, children, persons with disabilities and older persons.

Sub-theme 4: The Constitution and economic governance

This sub-theme seeks to review the impact of the Constitution on fostering good and inclusive economic governance that advances the livelihoods and welfare of all, as well as the challenges



that the country has faced over the last 30 years in meeting its socio-economic goals. Abstracts and papers may focus on any of the following:

- how the Constitution's ideals and values have been translated into policy and other tangible socio-economic benefits for the citizenry, especially marginalised and vulnerable groups;
- the impact of the Constitution on the legislative reforms in the financial services sector; or
- the design and effectiveness of Malawi's public finance management system, anti-corruption framework, and other public institutions established to combat financial crimes, wasteful expenditure or diversion, misuse, misapplication, and looting of public resources.

Sub-theme 5: The courts, legal profession and constitutional interpretation

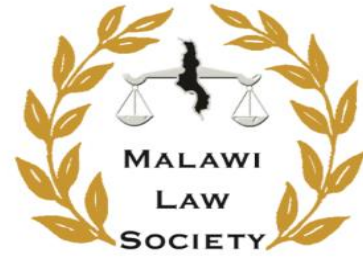
This sub-theme recognises the central role of the judiciary and the legal profession in protecting and advancing the Constitution, the rule of law and democracy. This sub-theme, therefore, expects abstracts to:

- discuss and critique major decisions on the interpretation of the Constitution, such as those on the meaning of 'majority' in the determination of the winner of a presidential election, presidential immunity, the definition of 'public office', and the provisions on floor crossing by members of parliament; or
- the implications of recent jurisprudence for advancing public interest litigation and the empowerment and participation of citizens and civil society in constitutional discourse and litigation.

Sub-theme 6: Accountability of the judiciary and the legal profession

Recognising that the unique role that the judiciary and the legal profession play in upholding the Constitution and democracy comes hand-in-hand with acknowledging the importance of the accountability of both to the public, this sub-theme invites abstracts and papers to probe the personal accountability of members of the judiciary and legal profession, with a focus on any of the following:

- the impact of the Constitution on the development of ethics for the legal profession and judicial officers, including discussions on professional conduct, regulatory bodies, continuing education, client protection and transparency and accountability of the legal profession and the judiciary;
- the design and practice of the system of appointing judicial officers; analysing, among others, the independence, impartiality and ethical standards of such system;



- the design and practice of the disciplinary system for judicial officers, including oversight mechanisms, disciplinary actions and the clarity of the procedures for investigating and disciplining judicial officers; or
- the design and practice of the disciplinary system for legal practitioners, including the regulatory framework, the composition and nature of the disciplinary committee, codes of conduct for the legal profession, the complaints handling system, sanctions and Appeals.

Sub theme 7: Electoral administration and dispute resolution

This sub-theme focuses on the vital role of effective, transparent and professional administration of elections in ensuring electoral legitimacy and democratic transition of power. It also seeks to highlight the significance of an electoral dispute resolution that strikes the right balance between giving an opportunity to contestants in an election to have access to justice and the need for timeous and swift resolution of electoral disputes to ensure an orderly transfer of power and to establish a stable and legitimate administration. Abstracts and papers could focus on a critical review of any of the following:

- the practice of the administration of presidential and parliamentary elections and its impact on democratisation and constitutionalism;
- the independence, professionalism and competence of the Electoral Commission;
- the design and practice of Malawi's electoral dispute resolution mechanisms, its robustness, responsiveness, fairness and reliability; or
- the impact of recent electoral amendments on the administration of elections and the dispute resolution mechanism.

Sub theme 8: Constitutionalism in the digital era

This sub-theme focuses on reimagining constitutionalism in the digital era and invites contributions addressing topical issues affecting Malawi such as the adaptation of traditional constitutional values, such as the rule of law, principles of national policy and human rights within a context dominated by modern digital technologies. With the current constitutional backdrop in mind, abstracts and papers could focus on any of the following:

- the interface between digital technologies (including AI, the internet, social media), democracy and human rights in Malawi;
- discussion and critique of Malawi's practice and design of internet governance;
- discussion and critique of key laws and practices on data privacy and online surveillance in Malawi;
- discussion and critique of Malawi's regulatory framework for social media;
- analysis of the outcomes of the interface between digital technologies and constitutionalism in Malawi



Abstracts and contributors

Abstracts are welcome from scholars, legal practitioners, civil society activists, policymakers, and the public at large. About 250 words long, abstracts should specify the title of the proposed paper and provide an outline of the argument. They must be submitted by *20 December 2024* to Professor Mwiza Nkhata: mwizankhata@gmail.com and Dr Chikosa M Silungwe: c.m.silungwe@gmail.com. Full papers, no more than 10 000 words long, are expected to be submitted by *30 March 2025*. The conference will be held in Lilongwe in May 2025. Selected conference papers will be compiled into a book. This edited volume will undergo peer review and be published by a reputable publisher by the end of 2026.

Organising team:

Danwood M. Chirwa, PhD, Dean and Professor of Law, University of Cape Town
Dan Kuwali, LLD, Extraordinary Professor of International Law, University of Pretoria.
Bernadette Malunga, PhD, Head, Department of Private Law, School of Law, Economics and Government, University of Malawi
Mwiza Nkhata, LLD, Honorary Professor of Law, University of South Africa
Chikosa M. Silungwe, PhD, Consultant, Mizumali Foundation Limited.