THE ROLE OF INTERNATIONAL LAW IN THE PROTECTION OF HUMAN RIGHTS UNDER THE MALAWIAN CONSTITUTION OF 1995

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I. INTRODUCTION

The new Constitution of the Republic of Malawi (hereafter '1995 Constitution') was signed into law by the President of Malawi on 17 May, 1995, exactly one year after the country's first post-independence democratic elections were held on 17 May, 1994. In fact, the 1995 Constitution is a slightly amended version of a constitution which was first enacted by the Malawian Parliament on 16 May, 1994. The adoption of the earlier Constitution itself followed the national referendum of 17 June, 1993 which had confirmed that a substantial proportion of voters in Malawi were in favour of a change to political pluralism in the country. The Constitution adopted in 1994 was thus, in both conception and substance, the product of negotiations involving a number of political parties and pressure groups brought together under the aegis of the National Consultative Council, and was initially intended to apply provisionally for a period of twelve months, during which it could be amended or repealed, in terms of section 212, by the new democratically elected Parliament which came into being following the elections already referred to above. It

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2 According to statistics quoted in The Monitor, Blantyre, 18 June, 1993, 62.2% of voters voted in favour of political pluralism, 34.5% opted for retention of the one-party system, and 2.3% of the votes were spoiled ballots or declared null and void. For a discussion of some of the legal aspects relating to the referendum, see C. Ng'ong'o, "The Malawi Referendum of June 1993: Some Pertinent Legal Issues", paper presented at the "First Regional Conference on Law, Politics and Multiparty Democracy in East Africa", 17-23 October, 1993, Dar-es-Salaam, Tanzania.

3 Thus, section 212 provides, in part, as follows:

212. (1) This Constitution shall provisionally come into force on 18th May, 1994, being the appointed day, and shall provisionally apply as the Constitution of the
was therefore meant to provide the basis for an interim constitutional order, much along the lines of the interim Constitution of South Africa of 1993. It had also been envisaged that during this period of provisional application it would provide the focus for a national debate by various segments of Malawian society on the search for the most acceptable system of democratic governance for the country.

Accordingly, a national constitutional conference involving a wide spectrum of participants was convened in the Malawian capital, Lilongwe, in February, 1995 to consider various proposals and submissions on the constitution received from members of the public, political parties, non-governmental organizations, interest groups, and so on, in the preceding twelve-month provisional period. A special session of Parliament was subsequently convened to consider the recommendations which emanated from this conference. It was during this session that a number of amendments were effected to the original (i.e. 1994) constitution through the Constitution (Amendment) Act No. 6 of 1995. The amended constitution was then formally re-enacted as the Constitution of the Republic of Malawi 1995 through the Republic of Malawi (Constitution) Act No. 7 of 1995. The new Constitution came into force definitively on 18 May, 1995. All subsequent references in this article are to the 1995 Constitution. 4

One area in which there is a remarkable similarity between the recent constitutional developments in Malawi and those in South Africa is in the structure and content of the bill of rights enshrined in the respective constitutions. 5 The two constitutions are significant in at least two respects. First, in elevating certain specified legal rights to constitutional status,