

**CAN ECONOMIC DEVELOPMENT BE A MORAL JUSTIFICATION TO AMEND  
THE CONSTITUTION OF MALAWI?**

**By**

**Thokozani Tarisai Njima**

**THESIS**

Submitted to  
KDI School of Public Policy and Management  
in partial fulfillment of the requirements  
for the degree of

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## **ABSTRACT**

### **CAN ECONOMIC DEVELOPMENT BE A MORAL JUSTIFICATION TO AMEND THE CONSTITUTION OF MALAWI?**

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**Thokozani Tarisai Njima**

**Key Words:** Emerging democracies, illiberal democracy, constitutional democracy, developmental dictatorship, constitutional amendment, moral justification, economic development.

The purpose of this study is to examine critically the prevalent tendency among emerging democracies of justifying a constitutional amendment, which aims at extending incumbent presidents' constitutionally-defined terms of office, with economic development. The analysis is purely on the basis of moral and constitutional theory of constitutional democracy. From a case study of Malawi's politics, we learn that a moral imperative, such as economic development, can never morally justify an unethical means.

## **ACKNOWLEDGEMENTS**

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## **1.0 INTRODUCTION**

### **1.1 Background of the Study**

Of late, especially among the emerging democracies, it has become a common place that incumbent presidents seek an extension of their constitutionally-defined terms of office. They use various justifications for their extension requests; but the truth is that, as Fareed Zakaria (1997) documented, these justifications are largely a ruse to their incumbency for perpetuity. The present turmoil (2011) that plagues Malawi is yet another narrative of what Zakaria terms “the rise of illiberal democracy.”

The history of Malawi’s politics originates from as early as the 10<sup>th</sup> century when Malawi was first settled. Before the Great Britain colonized her in 1891, Malawi was under the native rule. The British ruled Malawi until 1961. From 1964 (the year that Malawi gained independence) to 1994, Hastings Kamuzu Banda ruled Malawi with an iron fist up until he was voted out from power in an election. Since 1994, the politics of Malawi has taken place in a framework of a presidential system of democracy.

From 1995, therefore, Malawian presidents have been elected every five years. Constitutionally, they are allowed to serve only for two consecutive five-year terms. Despite the constitutional stipulation, in 2002 the former president Bakili Muluzi, while serving his final 5-year term, proposed a constitutional amendment which would have allowed him to run for a third term. The move, however, was blocked by the National Assembly. Similarly, a trial balloon is circulating lately that the present president Bingu wa Mutharika, whose political party has a comfortable majority in the August House, is again contemplating the same move. One may ask, “Can the extension of the terms of office by amending the existing constitution be morally justifiable?” The supporters for the extension argue that ten years are not long

enough to spur sustainable economic development that the country needs. What they argue in essence is that the longevity of incumbency is essential for sustainable economic development. Thus, the advocacy for the constitutional amendment has an appearance of good intention; but on a closer look it defies logic, common sense and constitutional rule of law. If the theory is true, why not amend the constitution which then will apply to the next holder of the presidency. To change the constitution to apply to the incumbent president is the same as asking one to become his own judge.

## **1.2 Research Objectives**

I take issue with the proponents' rationale for the extension because I believe that the argument for a constitutional amendment on the grounds of economic development is plainly a red herring that misleads the public. My main purpose in this study, therefore, is to examine critically on the basis of moral and constitutional theory of democracy if the proponents' argument is justifiable in any way. In other words, I want to examine if the proposal for the constitutional amendment under question is justifiable. Specifically, I seek answers to the following questions:

- a. Why is it that “constitutional liberalism” and “democracy”, that used to be two faces of the same coin which could not be separated from each other, are recently coming apart?
- b. Why do illiberal democracy and developmental dictatorship find emerging democracies fertile terrain?
- c. Can the ideology of “economic development first; democracy later” be morally justified?
- d. Can a moral imperative morally justify an unethical means?
- e. Do we really require personnel continuity to attain a sustainable economic development?

### **1.2.1 Justification of the Study**

This research is relevant to public discourse for two reasons. First of all, I assume that some have a keen interest to work in the civil societies, specifically NGO's that promote democratic consolidation. Thus, this study will help them broaden their knowledge base that has particular bearing on the rise of illiberal democracy.

Lastly, I chose this subject area not only to add to the existing body of knowledge on constitutional liberalism but also to bridge the current literature gaps on the rise of illiberal democracy in emerging democracies, particularly in the Malawian context. This thesis, therefore, intends to address these issues.

### **1.3 The Claims Advanced in this Study**

The constitutional amendment for the extension of incumbency on the grounds of economic development is a red herring. Improved social wellbeing through economic development is not the main reason why its proponents advocate for it; the main reason is the perpetuity of their incumbency for personal gains. In this study, I also make the following sub-claims:

- a. The proponents for the constitutional amendment - under discussion in this study - justify their unethical action with economic development because many emerging democracies lack economic progress; hence, the rise of illiberal democracy and developmental dictatorship in the emerging democracies.
- b. The proposers of the incumbency extension want to grab power and slide our young democracy back to dictatorship.
- c. There is no moral imperative that can make an unethical action become moral.
- d. It is not the personnel discontinuity that is slowing down economic development in the emerging democracies; but the policy discontinuity.

#### **1.4 The Study Plan**

This is a case study of Malawi to examine critically the rationale that the proponents for a constitutional amendment use to support their argument. Firstly, this is a literature overview that is being done with the intention of learning about the research already conducted in the field of democratization and how this relates to Malawi. The end goal is to accumulate knowledge, as well as build on the work of other scholars to provide a more comprehensive study of the current state of politics of the emerging democracies.

Secondly, this study is qualitative in nature, relying on secondary sources gained from the library of the KDI School of Public Policy and Management. The data used in this study will be taken from both on- and off-line handbooks and academic books and journals.

Lastly, this is a descriptive analysis in which I will explain why it is not morally justifiable to claim that economic progress is the main reason that the constitution of Malawi has to be amended to allow incumbent presidents to extend their terms of office.

#### **1.5 Organization of the Presentation**

The following section offers a comprehensive survey of some of the theoretical and empirical literature on constitutional democracy. Section 3 covers the discussion of whether the amendment of the constitution can be morally justifiable. After wrapping up the discussion in section 4 with recommendations, I will summarize and conclude the study in section 5.

Perhaps before reviewing the existing literature on constitutional democracy and how especially in the “emerging democracies” a new phenomenon - illiberal democracy - is sprouting from it, the notion of “emerging democracies” needs to be freed from ambiguity.

According to the Wikipedia's definition, democracy (the rule of the people) is "a political system in which all members of the society have an equal share of formal political power". There is a burgeoning literature on democracy. In these studies, it is a common place to find scholars disagreeing on some perspectives concerning the concept of democracy. However, they all agree about its origins. The history of democracy "traces back to Athens, as early as the sixth century BC, to its re-emergency and its rise from the 17<sup>th</sup> century to the present day"<sup>1</sup>.

From Samuel P. Huntington's 1991 work (*The Third Wave: Democratization in the late Twentieth Century*), we do learn a lot about how democracy has evolved from the early nineteenth century to this democratic age we live in. He classifies the evolution of democracy into three waves. The first wave of democratization was long. It was experienced from the early nineteenth century to early 40's. It saw the spread of democracy in the beginning, but later got defeated by authoritarianism and fascism. On the other hand, the second wave was short-lived. By early 70's many democracies that had emerged during this phase collapsed. However, Portugal's "Carnation Revolution" in 1974 planted the seed of democracy from which the third wave of democratization sprouted. It is during this wave that we have witnessed the rise of democracy all over the world. Today, almost 62 percent of all countries in the world have democratic governments (Zakaria, 2004).

Which are the "emerging" democracies then? We have looked at how democracy both triumphed and failed during the first and second waves of democratization. As some democracies either collapsed or survived the first and/or the second wave(s), others have been

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<sup>1</sup> "History of Democracy." *Oracle Think Quest*. Web. 27 June 2011.  
< [http://library.thinkquest.org/26466/history\\_of\\_democracy](http://library.thinkquest.org/26466/history_of_democracy)>.

borne during this third wave we are living in. Subsequently, “emerging” democracies refer to all democracies that are developing within the third wave of democratization. Thus, Malawi belongs to the group of the emerging democracies since her government has been a democracy only since 1994. In general, most emerging democracies are from Latin America, Africa, and parts of Asia.

## **2.0 LITERATURE OVERVIEW AND THEORETICAL PERSPECTIVE**

### **2.1 Introduction**

The purpose of this section is to provide a survey of some of the theoretical and empirical literature on the rise of illiberal democracy and developmental dictatorship in emerging democracies and to link the same to the research problem. Specifically, I will look at how and why constitutional or liberal democracies are increasingly turning into illiberal or electoral democracies. This includes the most popular reasons given by leaders justifying their use of unethical means to fulfill moral imperatives.

### **2.2 Literature on the Rise of Illiberal Democracy in Emerging Democracies**

“Liberal democracy, also known as *constitutional democracy*, is a common form of representative democracy. Its origins can be traced back from the European 18th century - a period also known as the Age of Enlightenment” (Wikipedia). From the West’s perspective - for almost a century-, “liberal democracy refers to a political system marked not only by free and fair elections, but also by the rule of law, a separation of powers, and existence of a bundle of freedoms, namely; the protection of basic liberties of speech, assembly, religion, and property” (Zakaria, 1997). Putting it differently, democracy and constitutional liberalism have been regarded as two faces of the same coin which could not be separated from each other. The following year, Marc F. Plattner added that not only are these two concepts distinct,

but they also feed on each other.

However, political scientist Philippe C. Schmitter pointed out that “constitutional liberalism is theoretically different and historically distinct from democracy” (Zakaria, 1997). In 1995, in an article in the *Journal of Democracy*, Schmitter argued that, “Liberalism, either as a conception of political liberty, or as a doctrine about economic policy, may have coincided with the rise of democracy. But it has never been immutably or unambiguously linked to its practice.” Admittedly, in 1997, Zakaria noted, “Today the two strands of liberal democracy, interwoven in the Western political fabric, are coming apart in the rest of the world. Democracy is flourishing; constitutional liberalism is not.” Unfortunately, “the products of democracy without constitutional liberalism are centralized regimes, the erosion of liberty, ethnic competition, conflict and war” (Zakaria, 1997).

Subsequently, my question is: Why are these two concepts coming apart? There are various theses that attempt to respond to this question. Among them is Zakaria’s criticism on both the international community and the United States of America that are so obsessed with balloting instead of promoting the gradual liberalization of societies. In his regularly cited 1997 article<sup>2</sup>, Zakaria pointed out that “democratically elected regimes, often ones that have been reelected or reaffirmed through referenda, are routinely ignoring constitutional limits on their power and depriving their citizens of basic rights and freedoms.”

In the same vein, in 1996, Larry Diamond<sup>3</sup> emphasized that elections are not all that is there to democracy. He distinguished liberal democracy from electoral democracy. “Electoral

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<sup>2</sup> Fareed Zakaria, “The Rise of Illiberal Democracy,” *Journal of Foreign Affairs* 76, no. 6 (1997): 1-22.

<sup>3</sup> Larry Diamond, “Is the Third Wave Over?” *Journal of Democracy* 7, no. 7 (1996): 20-37.

democracies have governments resulting from reasonably free and fair elections, but they lack many of the safeguards for rights and liberties that exist in liberal democracies”<sup>4</sup>. On the other hand, liberal democracies have both elections and the aforementioned safeguards. He also noted that “the number of electoral democracies has grown greatly in recent years, but the number of liberal democracies has been relatively static.”

In 1999, not only did Jan Engberg and Svante Ersson<sup>5</sup> concur with other political scientists that “illiberal democracy is on the rise.” They also pointed it out that this phenomenon is particularly evident in countries that have demonstrated an ability to combine illiberal measures with economic growth and social stability. Similarly, Zakaria (1997) portrayed the potential of illiberal democracy as below:

“Illiberal democracy is a growth industry. Seven years ago only 22 percent of democratizing countries could have been so categorized; five years ago that figure had risen to 35 percent. And to date few illiberal democracies have matured into liberal democracies; if anything, they are moving toward heightened illiberalism. Far from being a temporary or transitional stage, it appears that many countries are settling into a form of government that mixes a substantial degree of illiberalism. Just as nations across the world have become comfortable with many variations of capitalism, they could well adopt and sustain varied forms of democracy. Western liberal democracy might prove to be not the final destination on the democratic road, but just one of many possible exists.”

The second question, therefore, is: Why does illiberal democracy find emerging democracies

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<sup>4</sup>Restrictions on the power of the executive; independent judiciaries to **uphold the rule of law**; “protection for individual rights and liberties of expression, association, belief, and participation; consideration for the rights of minorities; limits on the ability of the party in power to bias the electoral process; effective guarantees against arbitrary arrest and police brutality; no censorship; and minimal government control of the media.”

<sup>5</sup>Jan Engberg and Svante Ersson. “Illiberal democracy in the Third World - An empirical Enquiry,” *Umea University* 1999, <http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/mannheim/w3/engberg.pdf>.

fertile terrain? First and foremost, Huntington (1997) argued that, it being a Western product, liberal democracy cannot find fertile terrain anywhere outside the West. And it happens that most- if not all- emerging democracies are not Western. He further elaborated that “despite it being not inherently incompatible with major non-Western cultures, the extent to which non-Western societies are receptive to either liberal democracy or electoral democracy varies with the extent to which they have been influenced by the West.”

Second, how democracy was introduced in certain countries seems to have effect on democratization. Most emerging democracies, especially in the Sub-Saharan African Region - Malawi inclusive – which were under dictatorship before the third wave, had given way to democracy in response to a sustained “push” from outside (Joseph, 1989)<sup>6</sup>. On the same subject, Zakaria (1997) concurred with Richard Joseph by illustrating that “in contrast to the Western and East Asian paths, during the last two decades in Latin America, Africa, and parts of Asia, dictatorships with little background in constitutional liberalism have given way to democracy. The results are not encouraging.” Thus, the political elites from these regions find it very difficult to uphold the constitution.

Along the same lines, political leaders in emerging democracies consider democratic means as impossible (Lee, 2011)<sup>7</sup>. For instance, they perceive democracy as an impediment to economic progress and hence preventing them to catch up with the world. Their argument is that in the absence of democracy, decision-making is prompt and costless as there will not be, say, the “majority” requirement.

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<sup>6</sup> Richard Joseph, “Democratization in Africa after 1989: Comparative and Theoretical Perspectives,” *Comparative Politics* 29, no.3 (1989): 363-382.

<sup>7</sup> Yong S. Lee, “The Rise of Developmental Dictatorship in Emerging Democracies,” KDI School of Public Policy and Management (2011).

Fourth, according to Huntington (1997), democracy has a chance to develop only if political leaders have a conviction that “they have an interest in promoting democratic development or a duty to achieve it.” Unfortunately, such persons are scarce in many parts of the world, especially in the emerging democracies. Instead, we are provided in abundance with irresponsible, shortsighted, corrupt and inefficient political leaders who are mainly interested in self-enrichment. They deal with who- or whatever stands in their way to fulfill their personal interests; it being through legal fine-tuning, suppressing civil societies and any other critics, maximum control of the media and other no-no’s of liberal democracy.

Fifth, democracy depends on how much vigorous a civil society is (Huntington, 1997). But the question that follows would be: Is the vigorous civil society liberal or fundamentalist or secular? Notably, very few emerging democracies have the liberal type of civil societies. For instance, despite witnessing the emerging of a energetic civil society in the Muslim countries, liberal democracy is failing to consolidate in them because it is neither a secular nor a liberal but a fundamentalist civil society.

Lastly, the economic success of some countries (especially in Asia), that sustained growth under illiberal democracy, gives many emerging democracies – *most of which are developing and/or lack economic growth* – the incentive to justify the unconstitutional means they employ. Admittedly, Jan Engberg and Svante Ersson (1999)<sup>8</sup> explained that “illiberalism is not only aspiring Asian politics. A growing number of African, Asian and Latin American political elites have been looking towards East Asia for inspiration when it comes to matters of political stability, economic development and ability to cope with internal and external crises.”

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<sup>8</sup> Engberg, Jan and Svante Ersson, “Illiberal Democracy in the Third World – An Empirical Enquiry,” Umea University (1999)

### 2.3 Literature on the Rise of Developmental Dictatorship in Emerging Democracies

Lack of economic progress is one of the problems prevalent among emerging democracies. Among others, leaders from these emerging democracies blame democracy as the major obstacle to economic development. It has, therefore, become a common place to hear them justifying their undemocratic actions with developmental goals and social transformation. They claim that the 16<sup>th</sup> Century Machiavellian Moral Choice Approach - which states that an action is morally justified insofar as it contributes to good ends - is applicable and appropriate to the emerging democracies. The insinuation is that the glorious end, the consequence, will absolve whatever means employed – The Consequentialism Principle of Justice (Richter and Burke, 2007)<sup>9</sup>. But the most important question is: Is economic development at the top of their agenda? And the obvious answer is – No! (*More discussion in Section 3*). After all, the glitch with the Consequentialism Approach is that the glorious end used to justify an extra-constitutional means is always future-based. Unfortunately, no-one can foretell what the future holds.

The decision of whether to take extra-constitutional means is one of the moral challenges leaders face. Currently, the ubiquitous extra-constitutional means is the trashing of the constitutional rule of law. This is done on account of moral imperatives such as economic development. Here, two goods are arguable. Can the ideology of “*economic development first; democracy later*” be morally justified? Also, can a *moral imperative* morally justify an *unethical means*?

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<sup>9</sup> William L. Richter and F. Burke, *Ethical Foundations: Virtue, Consequence, and Principle. Combating Corruption, Encouraging Ethics*, (New York: Rowman and Littlefield Publisher, 2007), 11-30.

I believe that democracy should not be compromised at the expense of economic development. We can learn a lot from the case of former South Korean president, Mr. Park Chung Hee. He laid solid economic foundations from which the country developed. Despite such economic success, many Korean were not pleased with the political deterioration. The nadir of his political career was when he declared himself “the Lifetime President” through the “Yushin” regime (a permanent constitutional dictatorship) which was abolished after his assassination in 1979. This tells us that rational people cannot support moral cause of any unethical means.

Similarly, no moral imperative can make an unethical action become moral. Most of the times, we find that the implemented extra-constitutional means is only beneficial to the few that proposed it. For instance, when an incumbent president seeks a constitutional amendment to elongate his tenure of office, it is only him and his proponents that benefit from such extra-constitutional means. In fact, they propose extension of terms of office in order to continue having access to government resources. However, according to the Utilitarian Principle of Justice, an action is morally right if it is to result in “the greatest pleasure of the greatest number,” that is, to maximize total social welfare (Lee, 2011)<sup>10</sup>. In this sense, the extra-constitutional means cannot be ethical regardless of the given justification.

Along the same lines, the tendency to extend terms of office or to endorse a relation of the incumbent president to be his successor is in opposition to the first condition of the second principle of Rawls’ Theory of Justice<sup>11</sup>. It stipulates that the ideal moral justification is granted if “the social and economic inequalities are to be attached to offices and positions

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<sup>10</sup> Yong S. Lee, “Moral Choice” (Lecture Note No. 4, Leadership and Ethics, KDI School of Public Policy and Management, Seoul, 2011).

<sup>11</sup> John Rawls, *A Theory of Justice*. (Harvard University Press, 1971).

open to all under conditions of fair equality of opportunity” (Lee, 2011). The fact that the aforementioned practices disadvantage other presidential aspirants, no action of such nature can have a moral justification.

#### **2.4 Shortcomings in the Existing Body of Knowledge on Illiberal Democracy**

As much as there is a sizable literature on the rising use of unethical or unconstitutional means in the world, there is scarcity of literature on whether the use of unethical means to achieve developmental goals (moral imperatives) can be morally justified, especially in the context of Malawi. The following section, therefore, is an argument concerning whether economic development (a moral imperative) can morally justify the constitutional amendment (an unethical means) – described in the first section. To examine whether delivering a moral imperative through an unethical means can be morally justified, this discussion showcase the politics of Malawi which is one of the emerging democracies located in the Sub-Saharan African region.

### **3.0 DISCUSSION**

#### **3.1 Background**

For 33 years, Kamuzu Banda – the first president of the Republic of Malawi – ruled Malawi with an iron fist. He was ousted in 1994 by Bakili Muluzi; the first democratically elected president. During his second and final term in office, Muluzi initially proposed an amendment to the 1995 constitution to allow him to rule Malawi for life (open term bid). However, the national assembly turned down his plan. Later in 2002, he bade for a similar constitutional amendment that could have allowed him to run for a third term. The move was again blocked by the August House.

The frustration of Muluzi’s bids for Open and Third Terms enabled the entry of the

incumbent president, Bingu wa Mutharika. He took office after democratic elections in 2004. He is now serving his second and final 5-year term which commenced in 2009 and is ending in 2014. But it seems he will not leave the presidential office that easily. Something that started like a mere rumour, Malawians had a rude awakening early 2010 hearing it from the president himself that: “Yes, my kid brother – just like any other Malawian citizen – is at liberty to contest for the presidential seat during the 2014 general elections.” Many are not against him vying for the presidency but the absence of a level-playing field for all the aspiring candidates. The president’s brother enjoys coverage on the national TV and radios. Anyone against this undemocratic act is sucked from his party or personally attacked in various ways.

Unfortunately, the imposed presidential candidate, Peter Mutharika, is becoming very unpopular – it doesn’t imply that he has ever been popular – amongst the citizenry because all ministries he has headed so far have been involved in various scandals. By and large, his leadership skills are questionable. Reacting to this turn of events, the sitting president is rumored to be considering a constitutional amendment to allow him elongate his tenure of office. It is a disturbing fact that currently, the ruling party has a comfortable majority in the National Assembly which can easily amend the constitution should the rumour turn out to be true just like it has so far been the case.

Many, especially the die-hards of the ruling party, are in support of the constitutional amendment. They argue that 10 years is not long enough to develop the economy of Malawi. Thus, *they claim economic development to be the justification for the undemocratic constitutional amendment.*

One may ask: “How do they support their argument?” First, they argue that two-consecutive-term limit makes short-term goals prevail over the long-term ones. The political leaders go for policies that produce immediate tangible results. The idea here is to have their names tagged to such successes, which is only possible if the successes are evidenced during their ruling term. But the problem with such myopic mentality is that development policies, projects and programs that can, in the longer-run, nurture or contribute significantly towards economic development are side-lined.

Second, the political leaders have the incentive to prioritize personal gains over social welfare of the Malawian citizenry. The fact that they are leaving the government anyway, gives them assurance that they will not shoulder the consequences that emanate from their current decisions and actions. This is well evidenced through common tendencies observed during final terms. Towards end of the legitimate tenure of office, the political leaders forsake even the short-term goals. Thus, economic development ceases to be the priority on the agenda. What you hear about is corruption, personal enrichment, propaganda, petty politics and so forth.

Third, put in Chris Ngwodo’s<sup>12</sup> own words:

“It is personalities that breathe life into policies and institutions, that is to say, it is individuals that propel the machinery of government. When institutions perform well, people do not hail the agencies but the personalities heading them. This means that the vitality of these institutions flows directly from the vibrancy of the dynamic personages in charge of them. Thus, institutional efficiency essentially derives from personal leadership style and

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<sup>12</sup> Chris Ngwodo, “Third Term and Matters Arising,” *Nigeria Village Square*, February 18, 2006, <http://nigeriavillagesquare.com/>.

vision. The logical progression of this understanding would be to recognize the dexterity of the president who has assembled a remarkably competent group of technocrats to pursue an ambitious program of national transformation. *Personnel continuity* at some level is coterminous with *policy continuity* and thus *institutional stability*.”

In a nutshell, Ngwodo is basically establishing how personnel discontinuity is related to policy discontinuity and subsequently, to the stability in an institution. In other words, changing presidents this frequent (every 4 or 5 and 8 or 10 years) leads to discontinuity of developmental projects because each political leader wants to initiate his own projects instead of continuing those left behind by his predecessor. As a result, it is the country that suffers as there is no economic progress.

Lastly, political leaders may differ in their preferences when it comes to diplomatic relations and this has a severe impact on economic progress. For instance, Muluzi – the previous president of Malawi – had diplomatic ties with the deceased Libyan dictator: Muammar Gaddafi. The commencement of the incumbent president automatically brought all projects that were funded by Gaddafi to a halt. Being in bad books with the West, the sitting government now eyes relations with the East. Subsequently, all projects which are currently being funded by – say – the Chinese and Iranian governments will encounter their early deaths should the next president mend patches with the West.

To sum up, the proponents of the aforementioned constitutional amendment claim that the incumbent president is a performer and that he would develop the Malawi economy should he have ample time; that is, more than the constitutionally-defined two consecutive 5-year terms.

### 3.2 Analysis

The proponents claim that the rationale for the constitutional amendment is economic development. I take issue with this claim. The only way this claim may have a moral justification is that the proposed constitutional amendment would be applicable not to an incumbent but to the future presidents. Otherwise, this argument is nothing but a red herring. Truth is, they want to grab power and slide Malawi back to dictatorship by gradually derailing our hard-earned young democracy from the democratic route. If this is a new political order, the Malawian politics will be opening the door to an authoritarian system for perpetuity. Not even a single moral imperative can justify a constitutional amendment of this kind; be it economic development or social and cultural transformation or demagoguery. To put it plain and simple, this is a broad daylight rape on the constitution which they swore to uphold. It is against this background that I counter-argue that such extra-constitutional means cannot be morally justified. Below, are the reasons:

First, it is very important to keep in mind that a social contract was made and accepted between the president and the Malawians the day the former took the presidential oath of office. Through a process of mutual consent, both parties agreed to abide by common rules and to derive political authority from the consent of the governed. Subsequently, should there be any failings discovered in laws or political structures it is not the political leaders that have powers to correct them by, say, re-engineering the constitution. It is only the governed that have a clear mandate to do so through elections or other means (Rousseau, 1762). In the absence of a referendum that seeks the citizens' take on the constitutional amendment, this extra-constitutional means cannot be morally justified regardless of the rationale behind it.

Likewise, we can borrow a leaf from the popular dialogue of Socrates and Crito that

articulates a Greek version of social contract theory. Socrates argued against escaping from prison despite being unjustly convicted ending with an execution that awaited him the following day. He stated that his escape would hurt the citizens of the Athens city. Socrates' argument was that his stay within it implied him entering into a social contract with the Athenians; creators of the Athenian laws. The escape would connote him being disobedient to the city laws he tacitly consented to abide by; hence, hurting the Athenians. He, therefore, chose to live an honorable life by living according to his promise; not to breach the social contract with the city. Similarly, when a person is taking the presidential oath of office, he is entering into a social contract with Malawians. This contract – guided by the 1995 Republican Constitution of Malawi – stipulates that one is allowed to govern Malawi for a maximum of two consecutive 5-year terms only. By virtue of becoming the president of Malawi, one has willingly accepted the burden of the local laws; in this case, the limit on his powers. He can, therefore, not violate these laws on the account of economic development.

On the same subject, David Gauthier (1986)<sup>13</sup> proposes that “if two parties were to stick by the original agreed-upon arrangement and the morals outlined by a contract, then both would experience an optimal result.” The same would apply to the Malawian politics. A president would not earn respect should he opt to cling to power regardless of him doing a recommendable job on the economy during his constitutional term(s). He would earn it if he does the moral thing; sticking by the agreed-upon contract – that is, leaving office at the end of the agreed tenure. If strong economic foundations are built by President A and President B continues from where “A” stopped, Malawians will always remember how President A contributed towards the development of the economy. In that case, President B will also do a great job so as to leave behind a good precedence too. In the end, both “A” and Malawians

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<sup>13</sup> David Gauthier, “Morals by Agreement,” Oxford University Press, 1986.

stand to gain from the economic progress (if at all economic development was the former's goal in the first place).

Second, the recent violations of the principle of the Rule of Law<sup>14</sup> by the Executive, makes it doubtful that economic development is the rationale for the constitutional amendment under discussion. On several occasions, the current regime has disrespected the Rule of Law principle<sup>15</sup>. If it is not disregarding court orders then it is denying Malawians their constitutional rights. For instance, in the eight-months old impasse between the president - *who is also the Chancellor of the University of Malawi (UNIMA)* - and lecturers<sup>16</sup> from two constituent colleges of UNIMA (Chancellor College, also known as CHANCO, and Polytechnic), the former ordered the UNIMA Council not to reinstate four academic staff union leaders despite the dismissed unionists obtaining a court injunction. Besides, the president has also made it difficult for Malawians to exercise their constitutional rights of holding peaceful demonstrations. He has ordered the Police to demand a refundable fee of about US\$13,000 from organizers of demonstrations. He claims those funds will be used to replace damaged property should the mass demonstrations end up with riots. But it is no

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<sup>14</sup> "The rule of law is a notion that states that no person is above the law, that no one can be punished by the [state](#) except for a breach of the law, and that no one can be [convicted](#) of breaching the law except in the manner set forth by the law itself." In his advocacy for the rule of law, [Aristotle](#) flatly "opposed letting the highest officials wield power beyond guarding and serving the laws". Its essential characteristics are: **the supremacy of law**; justice; discretionary power; judicial precedent; common law; a **prospective legislation**; an independent judiciary; **restrictions of powers** of the different branches of government; and an underlying **moral basis** for all law ([http://en.wikipedia.org/wiki/Rule\\_of\\_law](http://en.wikipedia.org/wiki/Rule_of_law) and <http://civilisationis.com/cooray/btof/chap180.htm>).

<sup>15</sup> Wanangwa Kalua, "Weep for Malawi's Democracy," *Nyasa Times Online*, August 1, 2011, <http://nyasatimes.com/columns/weep-for-malawi%E2%80%99s-democracy/>.

<sup>16</sup> In February 2011, a political scientist at CHANCO was summoned by the Inspector General (IG) of Police over contents of one of his lectures. During this specific lecture, he cited the current massive deterioration of the Malawian economy as one of the probable reasons why the popular Egyptian and Tunisian protests erupted. This event denoted that spies were planted in classrooms; a common place during the one-party era. In reaction, his fellow lecturers from two constituent colleges of UNIMA (CHANCO and Polytechnic), refused to teach without assurance of academic freedom which is provided by Section 44(1)(h) of the constitution. To everyone's surprise, the State President backed up the IG and ordered the dismissal of 3 academic staff union leaders and the political scientist under question. Reacting to the ongoing protests by lecturers and students, in April 2011, the president ordered the indefinite closure of the two colleges and the involved parties do still lock hones in the impasse.

secret that the goal is to suppress any quarters with dissenting views on his leadership style.

Similarly, it raises eyebrows when the current regime links its proposed constitutional amendment to economic development if we scrutinize the unpopular bills it has recently assented. First, the law concerning the local government elections has been amended to give the president powers to decide when such elections should be held. Of course the outcome is disturbing as we are now in the 7<sup>th</sup> year without Ward Counselors who represent Malawians at the grassroots level. Thus, the president keeps on postponing the elections, the latest being scheduled for 2014. Second, the amendment to section 46 of the Penal Code giving the Minister of Information powers to ban a publication. Subsequently, local publications undergo strict censorship by government with any publication critical of government being banned. The third draconian bill that was recently passed by the ruling party – which has a comfortable majority in the National Assembly – is the infamous Injunction Bill. It was passed amid vigorous resistance from the opposition parties, NGO's and the religious and international communities. This Law ensures that no one gets an injunction against the government within three days of need arising even when one has a just and a reasonable cause (Kalua, 2011). All in all, these regressive laws aim at giving more power to the already too authoritative government; a situation not healthy for a democratic nation like Malawi. It is, therefore, more logical and reasonable to say the president wants to elongate his tenure in order to satisfy his insatiable appetite for power than to say he wants the constitution amended in order to have ample time to develop the economy of Malawi.

Third, the moral imperative of economic development could morally justify an extra-constitutional means only if the latter is the last and the only resort. To this end, I have more questions than answers. Does it mean Mutharika is the only Malawian who is able to develop

the economy? If he needs more than ten years just to show his ability to revamp the deteriorating economy, how many more years will he demand to show tangible economic results? Also, what can stop him from making himself the lifetime president of Malawi? Should this practice of constitutional amendment be extended to all future presidents? If the answer is yes, democracy then is a means to establish a dictatorship. Wouldn't this be a blatant contradiction?

Fourth, I can pick a leaf from the political trends in some emerging democracies to answer the research question. All the dictators we have in the world grab power in the name of one or more national interests. They democratically occupy the highest office and after experiencing power, they use it to cling to their position. If economic development was indeed the rationale for their extended terms of office, there couldn't have been the furious wave of protests across the Arab world (2011). The political leaders amass wealth while the ordinary citizens continue swimming in the oceans of poverty.

Fifth, as it is a common place with many African political leaders, the sitting regime has failed to keep most promises it made during campaign period. Among them were to uphold the constitution, to be zero tolerant to corruption and to improve the social well-being of the citizenry. The aforementioned frequent constitutional rapes speak volumes on how the sitting regime honors the first promise. Besides, the Anti-Corruption Bureau loses all its teeth when a corruption case involves any big fish from the ruling party. And the latter can well be described by the massive dwindling economic situation Malawi has ever experienced since she obtained her independence in 1964 (Nyasa Times 2011). It is a sad thing that acute shortage of foreign exchange, fuel and drugs in hospitals; daily 6 hours power outages; and water scarcity are now order of the day. Without beating about the bush, the current regime

has not only failed to keep its promises but has totally failed to govern and manage the economy of Malawi. Actually, that is what provoked the bloody anti-government national demonstrations on 20<sup>th</sup> July 2011; the trigger-happy police shot and killed 19 unarmed demonstrators. One may well think aloud: “Should he extend his tenure of office, what will make the president this time keep his promise of developing the economy and nothing else?”

Lastly, assuming economic development was a justifiable rationale to amend the constitution, we may analyze how the incumbent president has so far economically performed. Even if his performance has been superb is no justification for seeking a constitutional amendment for his own sake. If, on the other hand, his current performance is not that different from or worse than that of his predecessors, it is a case for treason. Just for the sake of his economic-development rationality, I examine the state of Malawi's economy under his leadership by looking at the GDP growth rate, industrial sector's GDP contribution, export percentage of GDP and industrial development (*see Appendices I-IV*).

Table 1 on the following page, summarizes the economic performance for all three regimes under which Malawi has been governed (*see Appendices I-III*). On average, GDP grew by 3.22%, 4.4% and 9.3% during 33 years of the dictatorial regime, 10 year of the first democratic government and the first 5 years (first term) of the current regime, respectively. The current president managed to gain donor confidence that was lost during his predecessor's regime. This had a positive impact on GDP growth. However, the former failed to utilize this opportunity to develop the industrial sector and apparently, exports. Actually, the current picture is totally different. Due to poor economic and governance policies, traditional donors – who support about 40% of the national budget – have pulled off their aid to Malawi<sup>17</sup>; worsening off her economic ills.

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<sup>17</sup> BBC News. 2011. UK cuts aid to Malawi government. *BBC News Africa*, July 14, 2011. <http://www.bbc.co.uk/news/world-africa-14154485>.

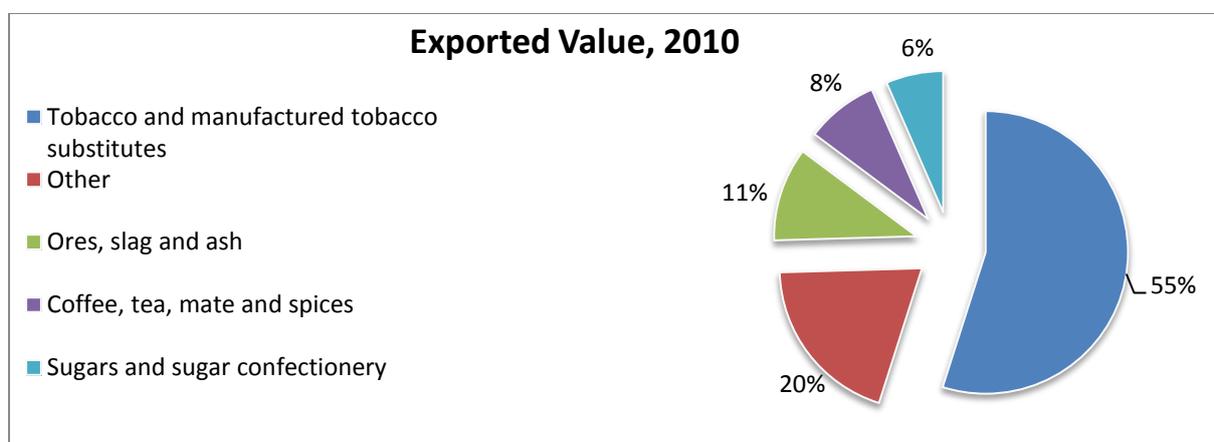
**Table 1 Economic Progress from 1961 to 2009**

Indicators	Political Regimes		
	Kamuzu 33 years: 1961-1994	Muluzi 10 years: 1994-2004	Mutharika 5 years: 2004-2009
Average GDP Growth Rate (%)	3.22	4.4	9.3
Average Industrial Sector's GDP Contribution (%)	19.45	18.28	16.49
Average Export %age of GDP	25.2	24.4	26.2

*Source: World Bank, World Development Indicators<sup>18</sup>*

Along the same lines, as indicated by Figures 1 and 2 on page 35, one can clearly see that Malawi is still doing less value addition evidenced by a limited diversity of exports (*see Appendix IV*). Exports are predominantly comprised of unprocessed agricultural products. Also, a good chunk of the imports is of consumable goods and less machinery and equipment. Based on this analysis, I doubt the current regime would economically perform any better should its tenure be extended.

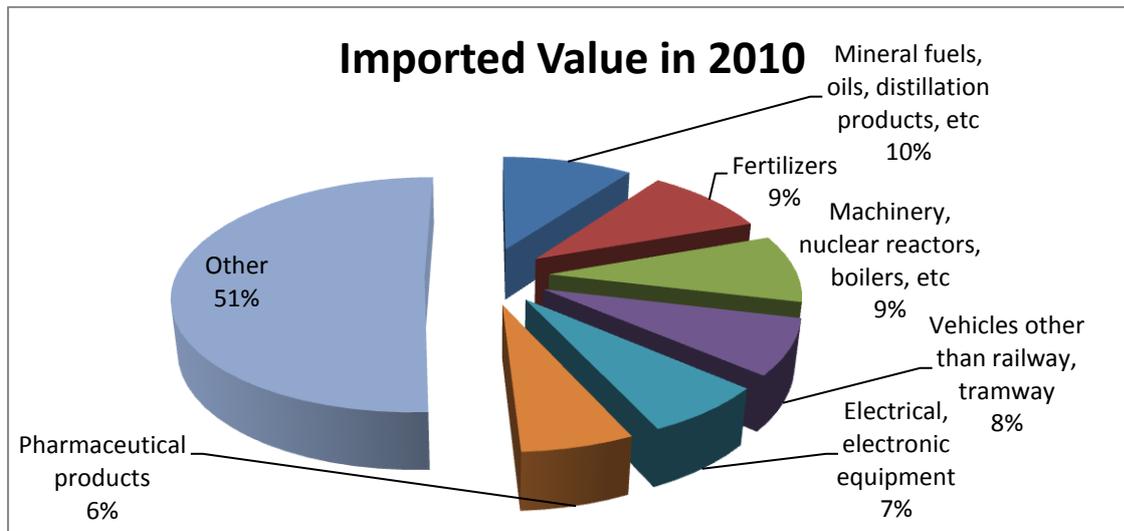
**Figure 1 Exports from Malawi to the World Market in 2010**



*Sources: ITC calculations based on COMTRADE statistics.*

<sup>18</sup> The most recent data available as at 2009; only up to end of the first term of the current regime.

**Figure 2 Imports into Malawi in 2010**



*Sources: ITC calculations based on COMTRADE statistics.*

Before I make recommendations, perhaps it is important that I discuss why constitutional limits to power – essential tenets of liberal democracy – should always be respected. This is in two folds; the constitutional separation of powers and the constitutional terms of office. According to the 51<sup>st</sup> Federalist Paper by James Madison<sup>19</sup> (the fourth-most cited Federalist Paper)<sup>20</sup>, “the government must be structured, designed, so that the three constitutional branches and their relationships will have the ability to keep each other in their proper places.” A constitutional democracy is one where the Executive, the Judiciary and the Legislature function independently and hence providing a check and balance system. He further adds that “ambition must be made to counteract ambition.” The personal interests of the man must be connected with the constitutional rights of the place.” In order to resist usurpations and to control the abuses of government, the constitutional rule of law should never be put to sleep regardless of the claimed moral imperative. After all, it is not angels that govern men. Subsequently, the power of the constitution to exert control on the government should never be compromised.

<sup>19</sup> James Madison, “Federalist No. 51,” *Publius*, 1788.

<sup>20</sup> “Federalist No. 51,” *Wikipedia, the Free Encyclopedia*, Web, 14 August 2011, [http://en.wikipedia.org/wiki/Federalist\\_No.\\_51](http://en.wikipedia.org/wiki/Federalist_No._51).

## 4.0 RECOMMENDATIONS

Kofi Annan (former UN Secretary-General) once said: “Good governance is perhaps the single most important factor in eradicating poverty and promoting development.”<sup>21</sup> “Good governance is, among other things, participatory, transparent and accountable, effective and equitable, and it promotes the rule of law” (Abdellatif, 2003). Perhaps it is high time our political leaders started paying more attention not to the ends but the processes. “Besides, an individual should never be deemed so vital to economic governance that the constitution gets re-engineered for his sake” (Kambai, 2006)<sup>22</sup>.

Even though I concur with the proponents of the constitutional amendment that discontinuity is hampering economic progress, we disagree on the kind of discontinuity that is slowing it down; it is not the personnel discontinuity but the policy discontinuity. All their arguments would be taken care of if Malawian politics shifted from that of promoting political party manifestoes and propaganda to that of promoting a National Development Agenda. With a National Development Agenda (NDA) in place, there will no longer be personalization of projects and diplomatic relations. All that the sitting government would do is to contribute significantly towards the NDA and leave office gracefully after the elapse of its constitutional tenure. Moreover, each incoming president would work hard to outwit his predecessor. Subsequently, the economic progress would be sustained without necessarily having to pack the constitutional rule of law.

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<sup>21</sup> Adel Abdellatif, “Good Governance and its Relationship to Democracy & Economic Development,” 2003.

<sup>22</sup> Danjuma Kambai, “Third-Term Syndrome,” Online Nigeria, April 23, 2006, <http://www.onlinenigeria.com/articles/ad.asp?blurb=257>.

## **5.0 SUMMARY AND CONCLUSION**

Knowing that Malawi needs economic development more than anything else, Malawian politicians, just like fellow politicians from other emerging democracies, tend to justify their unethical activities with a moral imperative - sustainable economic progress. The unethical means under discussion in this study is the trashing of the constitutional rule of law whereby some people argue that in order to have a sustainable economic progress the republican constitution of Malawi has to be amended. This type of constitutional amendment aims to elongate the incumbent president's tenure to more than two consecutive 5-year terms. They claim the current constitutional terms of office are not long enough for sitting governments to implement their economic development policies. Thus, they justify the proposed constitutional amendment with economic development. And so, the question is; can the proponents morally justify the constitutional amendment with economic development?

By and large, this kind of constitutional amendment is against the constitutional rule of law – an underlying moral basis for all laws. It is not only in breach of the social contract between the incumbent president and the Malawian populace but it is also not the only and last resort to develop the economy. In addition, we can learn from other experiences especially from most emerging democracies where political leaders slide their nations back into dictatorship by smothering their infant democratic systems. Caution: They do not start with enormous issues that would provoke suspicions instantly but with issues that seem trifling on the surface, for example this constitutional amendment under question.

From the Malawian context, it is even a non-starter to justify a constitutional amendment of this kind with economic development since the incumbent president has in fact mishandled the economy during his constitutional tenure. It would, therefore, be a humdrum joke to say

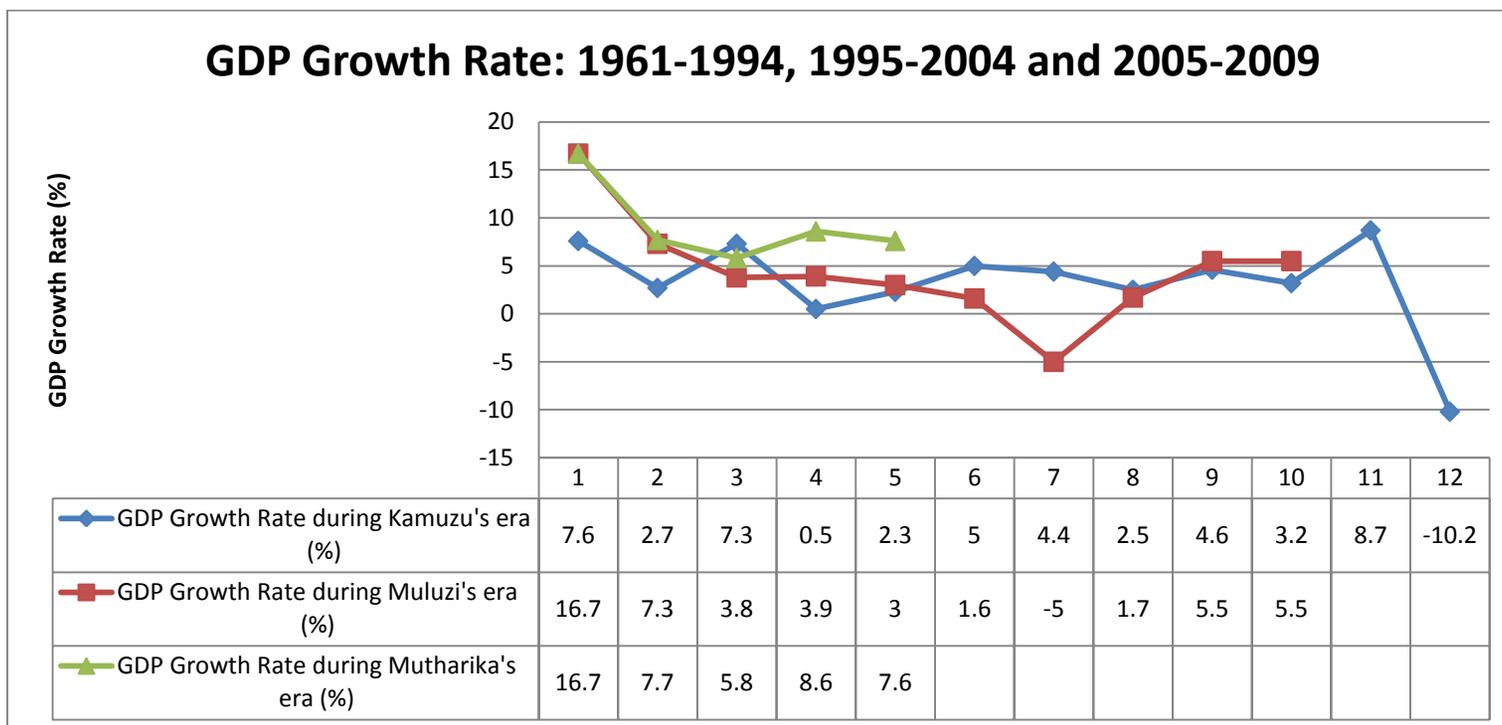
that the Malawian economy would develop should the incumbent president overstay his constitutional terms of office.

Instead of advocating for personnel continuity, it is a recommendable thing to promote policy continuity to bring to a halt this disturbing phenomenon whereby incumbent presidents feel that they have unfinished business that gives them room to seek extension of their terms of office.

In this light, I conclude that no moral imperative can morally justify an unethical action. Political leaders might come up with cosmetized justifications for their undemocratic deeds but a moral imperative cannot turn an immoral act into something moral.

## **APPENDICES**

**APPENDIX I GDP Growth Rate from 1961 to 2009**



Year No.	1	2	3	4	5	6	7	8	9	10	11	12
<b>Kamuzu's era</b>	1961	1964	1967	1970	1973	1976	1979	1982	1985	1988	1991	1994
<b>Muluzi's era</b>	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004		
<b>Mutharika's era</b>	2005	2006	2007	2008	2009							

*Source: World Bank, World Development Indicators*

**APPENDIX II**

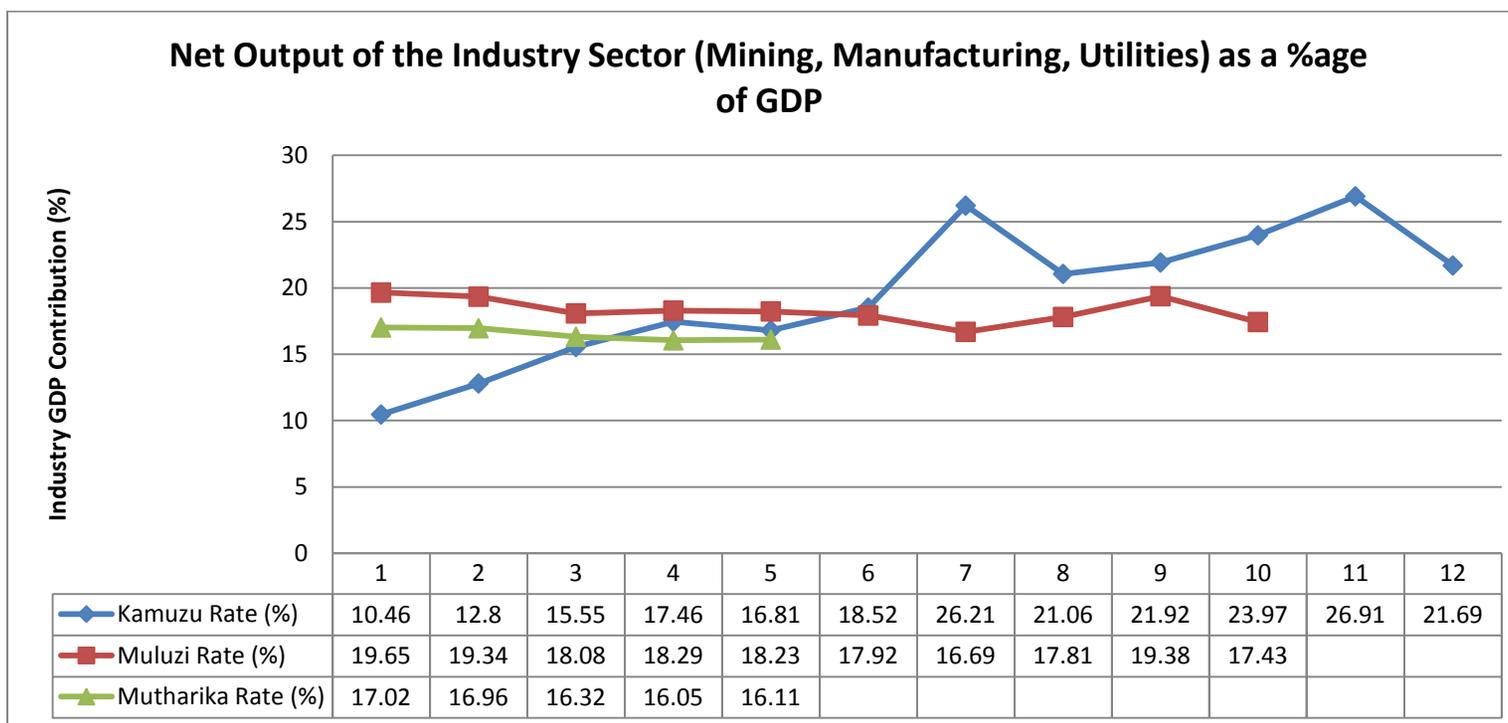
**Value of Exported Goods and Services as Percentage of GDP from 1961 to 2009**



<b>Year No.</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
<b>Kamuzu's era</b>	1961	1964	1967	1970	1973	1976	1979	1982	1985	1988	1991	1994
<b>Muluzi's era</b>	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004		
<b>Mutharika's era</b>	2005	2006	2007	2008	2009							

*Source: World Bank, World Development Indicators*

**APPENDIX III Net Output of the Industry Sector as Percentage of GDP from 1961 to 2009**



<b>Year No.</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
<b>Kamuzi's era</b>	1961	1964	1967	1970	1973	1976	1979	1982	1985	1988	1991	1994
<b>Muluzi's era</b>	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004		
<b>Mutharika's era</b>	2005	2006	2007	2008	2009							

*Source: World Bank, World Development Indicators*

**APPENDIX IV Imports and Exports in 2010**

<b>Imports</b>	<b>Value (US\$'000)</b>	<b>Exports</b>	<b>Value (US\$'000)</b>
<i>Total Imports into Malawi</i>	<i>2,173,038</i>	<i>Total Export from Malawi</i>	<i>1,066,204</i>
Mineral fuels, oils, distillation products, etc	217,432	Tobacco and manufactured tobacco substitutes	585,160
Fertilizers	206,197	Ores, slag and ash	114,318
Machinery, nuclear reactors, boilers, etc	201,723	Coffee, tea, mate and spices	87,771
Vehicles other than railway, tramway	164,554	Sugars and sugar confectionery	69,367
Electrical, electronic equipment	147,237	Edible vegetables and certain roots and tubers	27,958
Pharmaceutical products	131,626	Plastics and articles thereof	20,108
Printed books, newspapers, pictures etc	118,287	Cotton	18,181
Tobacco and manufactured tobacco substitutes	95,535	Machinery, nuclear reactors, boilers, etc	17,537
Cereals	88,382	Oil seed, oleagic fruits, grain, seed, fruit, etc, nes	16,627
Plastics and articles thereof	81,889	Articles of apparel, accessories, not knit or crochet	16,539
Other	720,176	Other	92,638

*Source: ITC calculations based on COMTRADE statistic*

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