Institutions and Actors in Legislative Decisions in Africa: *Analysing Institutional Contexts and Veto Players in Legislative Decisions in Malawi.*

Ph.D Thesis

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List of Abbreviations

AAPPG	Africa All Party Parliamentary Group
ACB	Anti-Corruption Bureau
AFORD	Alliance for Democracy
BCP	Business Committee of Parliament
CCJP	Catholic Commission for Justice and Peace
CCP	Cabinet Committee on Parliament
CDF	Constituency Development Fund
CoP	Clerk of Parliament
CSOs	Civil Society Organisations
DPP	Democratic Progressive Party
ECAMA	Economics Association of Malawi
EISA	Electoral Institute of Southern Africa
FDC	Forum for the Defence of the Constitution
FPTP	First Past The Post
HI	Historical Institutionalism
HRCC	Human Rights Consultative Committee
HRSC	Human Science Research Council
IDEA	International Institute for Democracy and Electoral Assistance
IIAG	Ibrahim Index of African Governance
IMF	International Monetary Fund
KAS	Konrad Adenauer Stiftung
MCP	Malawi Congress Party
MEC	Malawi Electoral Commission
MEJN	Malawi Economic Justice Network
MLC	Malawi Law Commission
MoJ	Ministry of Justice
MP	Member of Parliament
NDA	National Democratic Alliance
NGO	Non Governmental Organisation
NIMD	Netherlands Institute for Multiparty Democracy

NSO	National Statistical Office
OECD	Overseas Economic Co-operation and Development
PDP	Peoples Democratic Party
PETRA	Peoples Transformation Party
PP	Peoples Party
PPEA	Presidential and Parliamentary Elections Act
PPM	Peoples Progressive Movement
PSO	Parliamentary Standing Orders
RCI	Rational Choice Institutionalism
RP	Republican Party
SAIIA	South African Institute of International Affairs
SAPs	Structural Adjustment Programmes
SI	Sociological Institutionalism
SPSS	Statistical Package for the Social Sciences
UDF	United Democratic Front
USA	United States of America
USAID	United States Agency for International Development
VP	Veto Player
WB	World Bank

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The above and many more not mentioned here did everything to ensure the successful completion of this project. While I accept liability for any errors and mistakes, due diligence was given to do otherwise.

Declaration

I do hereby solemnly declare that this submission is my own original work, undertaken independently and without any illegitimate assistance. To the furthest extent of my knowledge and conviction, it contains no material previously published by any other person in its current or similar form, neither has it been accepted as or part of a dissertation for the award of any other degree or qualification within the university or any other institution of higher learning. Where reference is made to previous academic work, due acknowledgement of the respective authors is made both in the text and in bibliography of this dissertation.

Furthermore, I endeavoured to maintain my study as adherent as possible to the "Guidelines for Good Scientific Practice" (*Leitlinien guter wissenschaftlicher Praxis*) cited under §9 of the *Promotionsordnung des Promotionsstudiengangs "International Development Studies"*, to the best of my ability.

Errors and omissions in this document remain my personal responsibility.

Samson Brown Lembani
Bochum, Germany, July 2013.

Abstract

There exists sparse empirical knowledge on the functioning of African national parliaments especially how political actors respond to both formal and informal institutional incentives in legislative decision-making processes. Using institutionalism theories and veto player analysis, this study gives empirical evidence on how actors and institutions shape legislative decision-making processes in minority governments like Malawi.

Key results are as follows. The main actors are parliamentary political parties, judiciary, state president, CSOs, speaker of parliament and donors. The national constitution and parliamentary standing orders are the formal rules that regulate the behaviour of legislators. Informal institutions-patrimonialism norms, patron-clientelism and religious links also immensely influence actor decisions. The presidential open term and floor-crossing debates dominated parliament. The plenary is the most strategic veto-point where decisions are likely to be overturned.

Key terms: *parliamentary rules of procedure, informal norms, formal regulations, actors, party switching, open-term.*

Chapter 1: Introduction

'Abstract constitutions and formal institutions exist on paper, but they do not shape the conduct of individual actors, especially those in power,…political leaders in Africa have had a very instrumental view of constitutions and formal institutions, treating them seriously only when it has suited them,' (Hyden 2006:98).

'…leaders today are more constrained by formal rules in trying to achieve their most preferred outcomes. They accept electoral defeats when they might prefer to stay in office. Many of them (roughly half) stand down in the face of two-term limits when they would prefer to run for a third term. Or they change the rules so that their preferred outcome no longer violates those rules…,' (Posner & Young 2007:137).

1.1 Background and status of African politics

Until the 1950s, most of the African countries remained under the British, French, Portuguese and other colonial administrations. By this decade, only two countries on the continent (Ghana in 1951 and Nigeria in 1959) had held parliamentary elections under universal suffrage, as compared to five in Asia and 41 in Latin America (Harman 2011:65). The trend grew in tandem with the increase in African states that were getting independent in the three decades after 1960, notwithstanding the many single party authoritarian regimes that emerged. Following the 1989 transition elections in Namibia, and until the end of 2000, Nicolas van de Walle observes that 87 legislative elections in Africa 'involving at least two parties were convened in 42 of the region´s 48 states, an average of over 7 elections per year in the region. All but two of these elections resulted in the representation of multiple parties in the legislature,' (2003:299).

Political developments on the African continent have engaged researchers, scholars and international agencies on democracy in Africa to grapple with emerging trends on political parties and party systems (van de Walle 2003; KAS 2006; Basedau, Erdmann & Mehler 2007); electoral systems, elections and parliaments (Dulani & van Donge 2005; Patel 2005, 2007; Salih 2005; Hartmann 2007; Barkan 2010; Hyden 2010); coalition politics (Kadima & Lembani 2006); democratisation and regime change (Hyden 2006); and institutionalisation of political power

(Bratton 2010; Daloz & Chabal 1999; Diamond 2010; Posner & Young 2010). Indeed copious democracy and governance evaluation initiatives exist too, which analyse responsiveness to programme interventions and assess patterns of political changes on the African continent as measured against international standards. Although most of these studies overlap in terms of periods over which they are conducted and published, they significantly contrast in geographical scope of coverage, instruments and approaches used to collect, interpret and disseminate data.

Among those with a global scope are the annual assessments by the Freedom House, which conduct annual surveys and compile global comparative reports covering 195 countries since 1972, based on the conceptualisation of political and civil rights. The yearly narrative reports for every country cover democracy, civil society, elections and rule of law, mainly deduced from the UN Declaration of Human Rights. Another source of information on the state of democracy in Africa is the Bertelsmann Stiftung Transformation Index (BTI). These are global bi-annual evaluations in 128 developing countries and transition democracies since 2003. They measure the state of democracy based on 12 criteria ordinal scale and exclude countries with a population of less than two million people.

In addition, is the more inclusive and comparative global Human Development Index (HDI) used in the annual Human Development Reports of the United Nations Development Programme (UNDP) since 1990 assesses stagnation, progress and prospects for democratic governance. The HDI measures broad aspects of human development including socio-economic inequality (poverty, education, health, security) based on public data collected from all UN member countries. Likewise, the World Bank has a composite of global statistical database under the World Development Indicators that cover a spectrum of 1000 issues on development and quality of people's lives.

Evaluations that exclusively focus on Africa include the Afrobarometer and the Mo Ibrahim Foundation's Index of African Governance. The Afrobarometer survey is a comparative pan-African periodic survey series that relies on questionnaire-based personal interviews of national public attitudes on democracy, civil society, economic reforms and governance in Africa. Repeated in regular cycles, these surveys have expanded from covering 7 countries in Round 1 (2001) to 35 in Round 5 (2012). Introduced in 2007, the Mo Ibrahim Index of African

Governance (IIAG) measures trends in Africa's leadership and governance outcomes based on quantitative data of 88 indicators from 23 international data sources merged into four categories: safety and rule of law, participation and human rights, sustainable economic opportunity and human development. The standardised composite index is intended to be used, among others, as a tool and model for successful inclusive governance, in addition to providing comparable statistical measures of governance performance in African countries across years. With a coveted prize tag of $5 million initially, and $200,000 per year for life, the prize is meant to be an incentive that encourages transformational leadership and constitutional leadership alternation.

Having attempted to partly show how we know about politics in Africa, it is still evident that these democracy surveys and evaluations provide insightful but standardised and aggregated impressions on progress and retreats on the continent based on macro and formal indicators of democracy such as participation, elections, freedom of expression and rule of law. Such information offers only partial, skewed or insufficient knowledge of Africa's political social reality with significant traces of historical legacies of patrimonialism, colonialism and military rule which are difficult to codify and measure yet substantially drive or limit political change in Africa. On account of the above and other challenges regarding the quality and quantity of knowledge on the state and direction of emerging democracies in Africa, there is surging research interest that is taking an institutional-design orientation from historical and socio-cultural perspectives (Posner & Young 2010; Hyden 2010).

From the limited knowledge that exists, Chabal and Daloz paint a compelling complexion of the institutional status in Africa, linking it to two origins. First, the historical design of the weakly institutionalised heritage and the arbitrary pre and post imperialist bureaucracy, which persisted across political trajectories on the continent. This implies that the institutional apparatus in Africa are a replica of the colonial setup and legacy on the continent. Second is Africa's political culture- the instrumental concept of patrimonial, particularistic and personalised power and prestige, with its manifestations across all domains of human influence including politics, public sector and traditional spheres (1999:4).

There is an emerging interest which questions the extent to which political actors are constrained by the constitutions and 'rules of the game' adopted in Africa following the third wave of democratisation in the early 1990s. While the prevailing views are diverse and cannot be over-generalised, the emerging themes are both sceptical and optimistic. The lateral line seems to be an admission that although institutional formalities of democratic constitutions and procedures exist on paper in Africa, they are largely symbolic, weakly and selectively enforced, and substantially undermined by the force of informal practices (Chabal & Daloz 1999; van de Walle 2003, Salih 2005; Hyden 2006; Bratton 2010). This view is captured in Goran Hyden's metaphor that 'the glass is half empty,' strictly implying the absence of what ought to be present (2010:1).

This cluster of scholarship also illustrates that African regimes remain largely as systems of immense power concentration in the president (Harman 2011; Hyden 2006; Brinkerhoff & Goldsmith 2002; Clapham 1982), with volatile legislatures characterised by a dominant party system and a bevy of weak legislative parties (van de Walle 2003; Harman 2011), weakly organised civil society organizations and growing influence of donors (Harman 2011; Resnik 2012), and where traditional and religious leaders wield inordinate political influence through money and patronage politics in Africa (Bratton 2010; Dulani 2011).

With respect to political parties as the most critical agents of democracy, it is notable that the increase in the number of registered political parties offers little hope for competitive politics given their ambiguous identities and myriad organizational challenges. In terms of their organisation, Gyimah-Boadi (2007:25) aptly observes that 'African political parties have authoritarian legacies, manifested in frequent attraction to strong and hegemonic leadership. Internal democracy tends to be poorly developed and there is overemphasis on loyalty to the party and especially loyalty to the party leader. Some supposedly democratic political parties have self-appointed political leaders, major decisions are not subjected to internal debate, information is not readily shared, some have lifelong chairpersons and patrons.' Political parties-especially opposition parties on the continent suffer high levels of popular mistrust (Afrobarometer 2002, 2004; Erdmann et al. 2007:7). However, the general public mistrust and disaffection in political parties is not unique to Africa as the 2004 Eurobarometer survey reveals that only 16 % of those interviewed in Europe trust political parties (Erdmann et al. 2007:8).

Nevertheless, modest optimists on African politics align their arguments along recent empirical evidence which shows that informal institutions have in some cases enhanced the retention of and adherence to formal institutions. Nigeria is an example where in 2007, informal institutions were able to constrain and counteract attempted constitutional amendments for presidential third term (Dulani 2011). They also empirically illustrate that formal institutions are beginning to control the actions and behaviour of political actors in Africa and gradually supplanting the informal political culture on the continent (Posner & Young 2007, 2010; Dulani 2011).

They further contend that civil society organisations are becoming more organised and engaged in civic and political spheres in Africa (Salih 2005), that patronage and clientelistic politics is no longer the *defacto* political formality in contemporary African politics (Posner & Young 2010). They also argue that leadership succession through violent means is fast being replaced by competitive and regular elections, a number of regime alternations in Africa have occurred (van de Walle 2003; Posner & Young 2007, 2010), while the management of successive elections is improving across the continent (Hartmann 2007) and popular support for democracy is growing as indicated by the 72 % of Africans interviewed in 19 countries (Afrobarometer 2008). Absolute authoritarianism has fast lost its founders, infrastructure and popular support in Africa. The illiberal democracy paradigm is contradicted by the same Afrobarometer report which shows that Africa's democracies are neither becoming more democratic nor illiberal.

Evidently there is vast literature with mixed conclusions on the extent to which formal rules such as electoral systems, regime types, legislative systems, government systems, political party laws, national constitutions and other statutes offer hope for democratisation in Africa. More open-ended questions remain regarding democratic consolidation with specific reference to what and who influences the decisions of elected representatives in national parliaments. Indeed insufficient empirically-based information exists on formal or informal rules that regulate the actions and behaviour of legislators in making legislative decisions and to what extent. This includes scanty information on actors and incentives that influence the decision choices of legislators, and the sources of legitimacy which these actors possess. Such information is relevant to plausibly construct theoretically grounded implications of these factors on

democratisation in Africa. This can better contextualise the changing composition, mandates and institutional arrangements of African parliaments.

1.2 The research context, problem and argument

While the insightful essays on African parliaments such as edited by Mohamed Salih (2005) analyse African legislatures within the broad domain of democratic evolution, political culture and governance, there still exists immense paucity of empirically-based knowledge linked to political actors and institutions in national parliaments of developing countries (Barkan 2010:33; Fish & Kroenig 2009:1). There is of course, an emerging scholarship of comparative studies that is making remarkable contribution towards the search for institutional explanations to the emerging political developments in Africa (Posner & Young 2007; Dulani 2011). Even this is not specifically focusing on parliaments. While redefining the agenda for institutional analysis for African regimes which was inexplicable hitherto among pro-Western institutionalists, these comparative studies, on one hand, illustrate the tenacity of informal institutions to the extent that they eclipse formal rules (Barkan 2010; Bratton 2010; Hyden 2006).

On the other hand, they show how formal rules are gradually being institutionalised and beginning to influence political outcomes, on the other, especially in the bids for extended constitutional term limits for presidents. While accepting the continued prevalence and influence of informal practices in Africa's politics, Larry Diamond (2010:49, 53) echoes Posner and Young (2007) that 'across Africa, formal constitutional rules governing how leaders acquire and leave power are coming to matter more than ever before.'

Nevertheless, there still remains information deficiency even in the above cited political evaluations. (Azevedo-Azevedo-Harman 2011: 66-67) argues that unlike the executive and presidents who have received greater academic attention albeit its conclusions are often negative, posits that '…not much is known about how these emerging parliaments have been operating, but the little that is known tells us that they have faced a lack of institutionalisation and still struggle to assert their independence from strong executives'. It is apparent that there is limited interest to investigating how, why and when do institutions (formal and informal) and actors

(partisan and non partisan, direct and indirect) become critical in shaping legislative decisions in emerging democracies.

By failing to adequately respond to the *how* aspect, existent literature is void of coherent information on strategies and approaches that actors within and outside parliaments employ to influence political outcomes. As such, the knowledge remains shallow and incomplete with respect to the degree to which decisions of Africa's democratic parliaments can be analysed in terms of formal and informal rules. The *why* responds to motivating factors which either encourage or constrain specific behaviour patterns of actors in Africa's legislative decisions. Without such empirical knowledge, scholars and practitioners tend to base their predictions about actor motivations on intuitions, speculation or partial knowledge. The response to *when* puts the acquired knowledge on *how* and *why* into an inter-temporal perspective: specific contexts, historical episodes and events in which such decisions were made or not made. Such a three-part knowledge link is vital for the balanced contextualisation in understanding how multiparty parliaments are serving to enhance or inhibit democratic consolidation in Africa.

Except for the case of Ghana (Lindberg 2010) and the empirical findings by Posner and Young (2007, 2010), the knowledge base is narrow and informed by scanty and isolated initiatives with attempts to identify and explain how and why formal and informal institutions actually shape each other in Africa's parliaments. This scenario is paradoxical given the otherwise extensive institutional reforms and redesigning witnessed prior and subsequent to the third wave of democratisation in Africa that would attract research interest for their evolution problems and prospects. By contrast, there is copious literature preoccupied with the design of formal institutions (constitutions, electoral rules, standard operating procedures) in emerging democracies and often concluding that political actors (especially in Africa) are immune to the force of these formal institutions.

Arguably, this literature is not directly related to the conduct of legislative business in Africa but rather based on patterns and trends in regime change, governance and election management. Indeed some studies agree that institutions are inconsequential in Africa and given its limited civic culture, political actors are intuitive, calculative, purposeful and driven by ulterior motives

irrespective of existing rules (Ganghof 2003; Chabal & Daloz 1999; van de Walle 2003; Hyden 2006). Yet, this considerable and nearly exclusive emphasis on formal rules ignores the reality and often forceful interface of informal-formal institutions in contemporary political transactions in Africa (Helmke & Levitsky 2004:725; Bratton 2010:105). Though vast and meticulous, this literature manifestly neglects or at best, gives partial attention to how 'unwritten, unquantifiable' norms embedded in cultural practices and informal networks 'create, strengthen, or negate incentives' to conform to formal institutions (Dulani 2011:34; Lindberg 2010:118).

At a macro level, diminutive analytical work is known on actors and actual institutional incentives in legislatures particularly their implications for minority governments in emerging democracies. On the demand side, such empirical knowledge is critical for scholarly and comparative analysis, development cooperation and for political practitioners and experts. In contrast, institutions and actors in western democracies and Asia have received considerable scholarly analyses on conditions that shape or impede legislative decision-making processes. This academic interest relates to how institutional dispersal of political decision making power influences constitutional and policy reform decisions across regime types, party and electoral systems (Tsebelis 2000:442; Macintyre 2003:25; Haggard & McCubbins 2001; Ganghof 2003:3; Merkel 2003:1). In this regard, institutions are held responsible for determining the number of actors (Roller 2003:5) and incentives that structure decision outcomes.

As hinted above, the parsimonious analyses that exist are challenged on three grounds. First, they do not sufficiently explain contexts and institutional dimensions of legislative decision-making processes where real power and influence is expressed and contested. Second, they fall short of analysing how political actors simultaneously respond to formal and informal institutional incentives in legislative decision-making. Third and finally, the applicability of inferences drawn from studies in industrialised democracies to emerging or transition democracies remain debatable due to scope limitations, contextual variations and age differences of democracies.

In addition to reducing the paucity of knowledge on understanding how parliaments work in Africa, this study specifically investigates distinctive challenges of minority or divided governments of emerging democracies. Malawi case study provides unique insights given its

experience with minority governments across three general elections and the consequent dynamics linked to institutions and actor behavior. At empirical level, this study applies the veto player analysis to test its explanatory power and suggest conceptual adaptations compatible to unique contexts.

Theoretically, the study contributes to the limited empirical knowledge on the coexistence and interaction of formal/informal institutions in African legislative politics. This goes further to empirically challenge, falsify and/or qualify existing theoretical hypotheses, knowledge and debate that in Africa where poorly institutionalised party systems exist, compounded by the domination of patrimonial clientelism, formal institutions are inconsequential and parliaments are reduced to an appendage of the executive. By design, this study is not directly connected to the broad popular debates on civil society, representation, elections, and accountability of legislatures in Africa which have occupied democracy specialists to date (Barkan 2010:34). It is therefore essential to rationalise the choice of institutions, actors, legislature and legislative decisions in this study, before turning to study aims.

1.3 Rationale for institutions, actors, legislature and legislative decisions

It is critical to preliminarily introduce key concepts for this study namely *institutions*, *actors and legislative decisions* in the outset to show their intricate connectedness and justify their choice and relevance for this study. For one theoretical reason, identifying institutions and actors in legislative decisions dovetails with the '*Who* gets *What*, *When* and *How'* definition of politics innovated by one of the renown twentieth century political scientists, Harold Lasswell. At the core of this study is to identify *who matters* (actors) *and how* (via institutions) in legislative decisions. This is done by analysing key drivers of change or guardians of status quo in specific legislative decisions, and how they achieve such outcomes.

Douglass North (1990) prefaces his book by asserting that "the present and the future are connected to the past by the continuity of a society's institutions." Institutions, as constitutions, or laws (Bickers & Williams, 2001:41) are the basis for organised, predictable and restrained human interaction and decision choices. Institutions create offices, designate its actors/duty bearers, prescribe eligibility, selection and removal procedures, tasks to be accomplished,

incentives and sanctions (Ostrom 1996:2; Skach 1993:258). Thus, institutions in their different shades (formal or informal, written or unwritten, vague or clear, old or new) shape actor choices (Lindberg 2010:153), provide a reliable source in which to identify endogenous and exogenous actors, observe their interaction contexts, identify incentives that drive their actions, inactions and expected behaviour. However, two extremes of compelling views prevail among scholars of institutions on Africa. On one side are scholars who share a common perspective along with Goran Hydén (2006) that formal institutions are embryonic and weak in Africa, often undermined by and subservient to the supremacy of informal institutions (Daloz & Chabal 1999; van de Walle 2003; Diamond 2010; Bratton 2010).

Hydén candidly argues that in Africa 'abstract constitutions and formal institutions exist on paper, but they do not shape the conduct of individual actors, especially those in power,' (2006:98). Theoretically, this perspective dovetails with the view of 'opportunistic and calculative' rational behavior of political actors advanced by rational choice institutionalism discussed in the next section. On the other side, the claimed absence of effective formal institutions in such assertions profiles unwritten informal institutions of 'patrimonialism, patronage and personal rule' to infinite extremes of supremacy in Africa that render formal rules and written procedures inconsequential at best, and merely superficial, at worst.

The more optimistic scholars include Diamond (2010); Lindberg (2006) and Posner & Young (2007). The latter use empirical evidence to elucidate that '…leaders today are more constrained by formal rules in trying to achieve their most preferred outcomes. They accept electoral defeats when they might prefer to stay in office. Many of them (roughly half) stand down in the face of two-term limits when they would prefer to run for a third term. Or they change the rules so that their preferred outcome no longer violates those rules,' (Posner & Young 2007:137). Starkly opposed to Hydén's assertion, this sanguine view, though cautious, sets a hopeful perspective of an emerging institutionalisation of formal rules in addition to shedding light on the understanding of how formal and informal incentives mutually influence the general behaviour and decisions of political actors in Africa.

Broadly, this study attempts to identify actors as both constitutional and non-constitutional role-players who utilise formal positional power and extra-institutional means and incentives to influence legislative decision outcomes. These actors are variedly endowed with formal or informal power, resources, influence and leverage from rules, institutions, agreements and social connections. Among themselves, this power is covertly and overtly exercised using formal and informal strategies to influence specific political outcomes. Central to this study is the process and context analysis of formal and informal incentives which influence actors in legislative decisions.

Although legislatures, also referred to as parliaments or national assemblies (Salih 2005) vary in size, composition, tenure, operating procedures and traditions (Patel & Tostensen 2007:79-80), one core function common to nearly all is that they *legislate*: that is to enact or amend laws through passing of bills and implementation oversight on policy legislations (Salih 2005:3; Barkan 2010:34, 37). Institutionally established in national constitutions, legislatures are the primary policy and law-making arm of government in nearly all contemporary representative democracies (Patel & Tostensen 2007:79; Carey 2008:431). Notwithstanding their structural and operational challenges, it is beyond contestation that African parliaments are expanding their influence on governance (AAPPG: 2008:14).

John Aldrich writing about political parties in and out of legislatures describes the USA Congress as 'where democracy happens.' The legislature is where the electorate, the elected, the media, the lobbyist and the activist meet (2008:555). Strikingly, legislative studies on Africa have received limited attention in comparison to numerous democracy studies that have focused on judiciary, rule of law, elections, and electoral systems (Barkan 2010:34). Moreover, while laws as institutions create organisations, actors and rules of the game, the laws themselves are created and modified by legislators within some given operational procedures and political context. The laws and policies so enacted irreducibly affect vast populations often across generations. This is how an institutional analysis of legislatures-where rules are enacted, becomes intriguing mainly for the reason that a democratic legislature is 'where democracy happens,' hence the need to answer the question: do rules matter in the house of laws?

Focusing on the legislature increases understanding of what goes on in the 'house of laws', what regulates actor-behavior therein, and how its decisions are made. Legislatures also matter as mechanism of achieving vertical and horizontal accountability of the rulers to the ruled (Barkan 2008:1). Although some legislatures are still weakly institutionalised, poorly resourced and often experience executive interference, Barkan notes that legislatures in Africa are beginning to matter (Ibid).

Legislative decisions refer to choices collectively taken by elected representatives of the legislature after scrutiny, debate and voting (Barkan 2010:34). These may include passing or rejection of proposed constitutional amendments and fiscal policy proposals (i.e. national budget). Irrespective of regime type, electoral system, its heterogeneity, divergent perspectives and inherent controversies, this decision making power is exercised within prescribed rules (McGann 2007:458) and delegated from sovereign citizens through a regular and legitimate presidential and parliamentary vote (Cox & McCubbins 2001:21). Thus, analysing legislative decisions as they are made or influenced by actors within a formal/informal institutional context increases our understanding of how parliaments work in Africa.

1.4 Aim of the study

With the overall aim of contributing towards understanding how parliaments work in Africa, the study seeks to specifically:

(a) locate key actors, the sources of power and their roles in legislative decision-making
(b) examine and empirically demonstrate which and how formal and informal institutional incentives influence actor behaviour in legislative decision-making
(c) identify major legislative decisions and patterns in actor behaviour across time and issues
(d) provide an empirical analysis of how institutions and actors influence the legislative decision making processes in minority governments
(e) analyse contexts within which such decisions are negotiated, made or reversed

The purpose of the study is to examine the extent to which legislative decisions are an outcome of existing formal and informal institutional arrangements influencing actor configurations and decision choices. This is intended to contribute towards an empirical understanding of whether

rules matter in African parliaments by explaining how actors and contextual factors influence legislative decisions.

1.5 The Research Question

This study responds to the question: *how do veto players and institutions shape legislative decision making processes under minority government in emerging democracies like Malawi?* To do this, the study examines three key legislative decision areas: (a) floor crossing, (b) national budget, and (c) open/third term. The study analyses the interplay of actors and institutions that influenced the three legislative decisions spanning a period of 17 years (1994-2011) by attempting to answer three general questions and two-sub questions:

1. To what extent does the institutional architecture influence the dispersal of legislative decision making power in Malawi?
   - *How do political institutions (electoral system and regime type) impact on the legislative-executive relations?*
2. Does the composition and role of veto players change according to changes in legislative business and if yes, how?
   - *Are political parties a critical veto player in legislative decisions, and who are the other non-constitutional role-players?*
3. What are the determinants (incentives and sanctions) of consensus building and other political behaviours among legislative decision makers?

This study assists in reducing the knowledge gap and shortage of information- what Fish and Kroenig (2009:1) call 'dissatisfaction and curiosity', regarding where political power resides which influences governmental agencies and organs of the state- in this case, parliaments. Specifically, addressing the question: what and who influences outcomes in legislative decisions in Malawi, and how? Fish and Kroenig add that no work on any official bodies such as presidencies, judiciaries, militaries, ministries or other agencies- 'provides the depth or breadth of coverage' that legislatures do (Ibid).

1.6 Outline of thesis chapters

The rest of this thesis proceeds as follows. Chapter two presents key theoretical perspectives and contemporary scholarly works. To recount, these are formal and informal institutions, actors *(veto players)* and legislative decisions. The theoretical review on institutions focuses on the three institutionalisms: rational choice, historical institutionalism and sociological institutionalism. This part also examines existing theoretical propositions for informal institutions. The chapter also proposes a conceptual model for institutions, actors and legislative decisions. It further discusses the veto player analytical tool, its core arguments, typologies and limitations. The chapter concludes with key assumptions of this study.

Chapter three puts the Malawi legislature into its historical, political and institutional context. It reviews literature on the legislative decision-making institutional framework under one party era and multiparty dispensation, stressing the absence of opposition in the former with its single veto player- the executive president. This is done to show contrast with the 1994 democratic constitutional design. Then the section presents the constitutional premise, functions and statutory powers of the legislature. This is meant to reinforce the theoretical and empirical relevance of this study. The section extends to providing an overview of the legislative process.

Chapter four presents the research design and methodology. It also presents tools used for data collection analysis and interpretation. It concludes with research challenges and how its effects were minimised. Chapter five provides empirical evidence responding to the research question. The results also test the research hypotheses drawing logical linkages and inferences. Chapter six summarises empirical results and conclusions. The section ends with suggestions for future research and statutory reforms.

Chapters 2: Theoretical framework

2.0 Chapter preview, aim and scope

This chapter presents major theoretical arguments and scholarly work on institutions and veto players. It sets the theoretical scope and framework which informs this study. The chapter is split into three subsections. The first part introduces the concept, definition and typologies of institutions- *formal* and *informal* including the three variants of institutionalisms. It further analyses the effects of institutions on legislative decisions, making inferences from other studies to draw similarities in the choice of variables that rationalise this study.

The second part presents the concept of actors in legislative decision-making processes using the analytical perspective of *veto player analysis.* It reviews key assumptions, institutional basis, constitutive elements and how to count institutional veto players. The section also abstracts the dispersion of institutional power and consequences for decision-making using the analytical model of power dispersion paradox. The third and final section derives a conceptual model for this study and concludes with tentative hypotheses.

2.1 Definition of institutions: formal and informal constraints

Political institutions have gained prominence among students and scholars of political science in both developed and developing democracies (North 1990; McCubbins & Haggard 2001; Tsebelis 2002; Macintyre 2003). These studies analyse national policy choices from diverse institutional frameworks of electoral systems, regime types, party and parliamentary systems in South-East Asia, South America, Europe and Africa (Ibid). Considerable consensus exists around the essence, theories and effects of institutions. This consensus resonates around the wide acceptance that institutions provide the 'revealing aperture' through which to understand, construct and explain power relations across social, economic and political spheres (Bratton 2010:103). Since institutions 'explain, justify and legitimate behavioral codes,' empower and constrain individuals, sanction non-compliance and are internally and externally enforced, it is impossible to understand powers, limits and operations of the legislature, judiciary and bureaucracies without looking to institutions (March & Olsen 2008:3).

March and Olsen define institutions as 'constitutive and prescriptive rules and practices, relatively invariant in the face of turnover of individuals, and relatively resilient to the idiosyncratic preferences and expectations of individuals and changing external circumstances...prescribing appropriate behaviour for specific actors in specific situations,' (March & Olsen 2008:3). Crucial in this definition are elements of relative invariability and resilience of institutions across time and regimes. Implying, rules must be impersonal-not serving an individual's interests and thus remain durable overtime.

Elenor Ostrom (1996:2) defines institutions as 'generally agreed decision-making rules, especially about regulating individual conduct, information transmission as well as decision choices.' Kenneth Shepsle aptly affirms that institutions are scripts that define actors, prescribe and regulate behavioral options, fix the sequence of decision processes and actor choices (2008:24). Macintyre relates rules to the quality of decision outcomes by stating that when individual political leaders enjoy wide latitude of unrestrained discretion, policy commitments are of doubtful credibility (2003:21). This suggests that institutions must provide that latitude and guarantee of permissible actor behavior.

The seminal works of Douglass North are probably the most cited by scholars and researchers of political institutions (Bratton 2010:103). North defines institutions as both formal and informal devices that provide the template of permissible or constrained human interaction by structuring behavioral incentives (North 1990:4). Hence, this study applies this more inclusive definition of political institutions. Two constitutive elements in this definition are very essential. First, that human behaviour is constantly constrained or compelled by both formal- explicitly codified and legally enforced rules, and informal- tacit, unwritten but generally accepted and internally enforced norms of behavior. Second, that embodied in these formal or informal constraints are incentives and sanctions which influence decision choices of actors (Hodgson 2006:2-3).

Scharpf attributes the actor choice between permissible behavior options to the institutional rules that prescribe 'actor constellations and modes of interaction,' on one hand, and 'institutional incentives and disincentives affecting actor preferences,' on the other (2000:774). As used in this study and distinguished from organisations; institutions are 'rules of the game,' while

organisations, including political parties, firms, banks, parliaments and their members are the players (Hodgson 2006:9). The interface between organisations-whether as single or collective actors or indeed as structures in which are individual actors, on one hand, and 'rules of the game' on the other, leads to the latter's creation, survival and transformation (Ibid).

This study limits itself to institutions as formal and informal constraints of actor behavior. In a democracy, institutions (such as regulations, statutes, procedures, judicial rules of decision and constitutions) are designed to regulate political decisions and outcomes (Bickers & Williams 2001:41). Through their inherent incentives and sanctions, institutions ensure predictable optimal outcomes by constraining discretionary or arbitrary political behavior. Various theoretical perspectives are consolidated into a set of institutionalism theories discussed in the next section.

2.2 Theories of institutions

Vast scholarship has been dedicated to the study of political institutions for several decades to understand policy developments and actor choices across several research subfields in the social science discipline (Scharpf 2000; Thelen 1999; Hall & Taylor 1996). Approaches to explain political institutions resulting in theoretical propositions and hypotheses on institutional factors, political actors, and outcomes are termed institutionalism (March & Olsen 2008:4). Three major variants that have gained tremendous acceptance and application in political science, sociology and economics are: rational choice institutionalism, historical institutionalism and sociological institutionalism (Hall & Taylor 1996; Thelen 1999). Although these institutionalisms are not markedly exclusive, they are distinguished for their empirical approaches, conceptual tools, assumptions and interpretation of actor behavior and sources of institutional formation, survival and change (Thelen 1999; Hall & Taylor 1996; North 1990).

In an attempt to providing an illustrative analytical framework to the study of human and organizational behaviour, Richard Scott introduces the *regulatory*, *normative* and *cultural-cognitive* pillars of institutions, aligned to each of the three paradigms of institutionalisms, respectively (2001:52; 2004:11). While conceding interpenetration across boundaries of and by the three variants, Scott isolates definitive elements of each institutionalism to conceptualise strands that create harmony and variance in contemporary institutional analysis.

These pillars are briefly discussed under each institutionalism below. Due to intentions to adopt an eclectic approach in this study, the three institutionalism variants are discussed in the next sections explaining their constitutive elements, core assumptions and how political behavior and choices are interpreted.

2.2.1 Rational choice institutionalism

Rational choice institutionalism has preoccupied scholars for more than four decades. Shepsle (2008:24) observes that among its notable scholars are Crawford & Ostrom (1995); Weingast (1996, 2002); Hinich & Munger (1997); Laver (1997); Shepsle & Boncheck (1997); Ostrom (2005) and Shepsle (2006). Similar to the rational choice theory of democracy, the rational choice institutionalism heavily borrows from economic constructs of utilitarianism, principal-agency, transaction costs and theoretical abstraction. In this conception, institutional rules are viewed as external constraints and incentive structures held to compel individual behavior irrespective of prevailing social norms (Bates 1998; Weingast 1998; Hall &Taylor 1996).

As portrayed in table 3, its constitutive set of behavioral assumptions include that political actors have a fixed set of preferences and that calculative strategies are used towards the attainment of these preferences (Hall & Taylor 1996:12, Sharpf 2000:770). It is further assumed that actors, faced with collective action dilemmas, have complete information and sufficient capacity to process it to determine available range of choice options (Sharpf 2000:774). Thus, canonical rational choice institutionalists postulate that political interaction processes and decisions are driven by egocentric, utility-maximizing and power-oriented actors.

Central to rational choice theory are imported and applied economics terms namely *rent-seeking, transaction costs* and *principal agency.*[1] In public choice, where the *principal* is the voter and the (s)elected representative is the *agent,* Shepsle hints at two 'agency problems' integral to rational choice theory: namely *adverse selection* and *moral hazard*. In the former, there are certain attributes, motives, and characteristics (for example, the credibility of credentials, trustworthiness, health status, policy preferences) of the prospective agent being concealed to the

[1]Jönsson and Jonas (2004) note that the concept of transaction cost applies when considering why some political leaders are averse to deliberative and collective decision making because of its attendant costs.

(s)electorate. With this hidden information, the (s)electorate, nevertheless makes a choice against or in favour of an agent (Shepsle 2008:29). The latter, he adds, relates to veiled strategic agent's behaviour, unknown to the principal. This may include whether the agent, when found in an unobserved arena (like secret vote, cabinet or party caucus) would still act in the best interest of the principal (Ibid).

The notion of *transaction costs* entails that the process of creating institutions that limit governmental power and enforce property rights (i.e. consultations, drafting and negotiating contracts and agreements) is costly. Thus, once inherited, an institutional apparatus becomes expensive to change unless the perceived payoffs from institutional change are greater than the costs of changing them. Hence, institutions either persist or are adapted in forms that permit the elites to exploit its weaknesses (Acemoglu et al, 2001:1371). Accordingly, rational choice institutionalism views institutions as providing information that reduce uncertainty and impose penalties for deviance, thereby increasing predictability of corresponding behaviour of actors to achieve optimal outcomes from gains of cooperation and exchange (Hall & Taylor 1996:7, 12). Importantly, this theoretical approach offers critical illustrations into the asymmetric power relations influenced by the design of institutions, which tends to distribute power disproportionately between and among actors (Hall & Taylor 1996:7). This paradigm was used in understanding what influences the actions and choices of political actors in the Congress of the United States of America (Shepsle 1998).

Scott's *regulatory* pillar in his analytical framework of institutions conceptually comes closest to the elements of rational choice scholarship: characterised by 'expedience' as the basis for compliance, coupled with the coercive force of behavioral rules and the legitimacy of legal sanctions against instrumental behaviour of actors and incentives to reward compliance. Scott (2001:52) notes that the conception of regulatory systems is embraced by most economists, including economic historian, Douglass North (1990).

While rational choice institutionalism is highly esteemed for providing the functional genesis and survival of institutions, based on the effects that follow from their existence (Hall & Taylor

1996:19), in addition to providing tools to study political outcomes under stable institutional conditions (Bates et al 1998a), it is criticized for its severe limitations.

First, the theory is critiqued for championing the supremacy of 'methodological individualism,' purposive and opportunistic behaviour of politicians. It narrowly interprets political behaviour outside existing structural norms, socio-cultural constructs and formal regulations by arguing that individuals are exclusively driven by calculative and selfish motives.

By contrast, the world reality of political life is a complex of mixed information and power asymmetries, bounded rationality and incomplete information (Shepsle 2008:33-4; Hall & Taylor 1996:19; Bell 2002:483; Williamson 2000:600) such that even rational actors are overwhelmed by unprecedented and sometimes costly outcomes of their actions. This entails that a decision maker's behaviour is conditioned by and adapted to existing institutional settings and incentives including cultural considerations.

The other deficiency for rational choice institutionalism is its failure to fully specify and account for historically-located social complexities (Bell 2002:492), thus limiting its applicability. In addition, the mere fact that rational choice analysis is based on theoretical abstraction renders it devoid of accounting for observable empirical events (Thelen 1999:372). To the extent of such conceptual limitations and methodological criticisms, the theory has undergone reviews that point to deficiencies addressed by its rival historical institutionalism as discussed below.

2.2.2 Historical institutionalism

Historical institutionalism emerged as a theoretical approach around the same time as the rational institutionalism but introduced a more pragmatic 'critical juncture' approach and the 'path-dependence' logic of evolution and transformation of institutions (Hall & Taylor 1996:10). Unlike rational choice which is based on abstract theoretical deduction, historical institutionalism analysis is premised on empirical observations using both deductive and inductive logic of analysis (North 1990; Hall & Taylor 1996; Thelen 1999; Bell 2002).

This analytical paradigm defines institutions as constituting 'the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or

political economy,' (Hall & Taylor 1996:6). This inclusive definition of institutions extends beyond formally codified rules in constitutions to include informal norms and bureaucratic procedures that structure 'collective behaviour' and 'relations among legislators, organized interests, the electorate and the judiciary,' (Ibid).

Thus, historical institutionalism does not dismiss the purposive behaviour of individuals advanced by rational choice institutionalism (Hall & Taylor 1996:7). Among its incipient scholars include Max Weber and Maurice Duverger (Sanders 2008:40). The thrust of this theory is in the resilient legacies and historical contingences of institutions (Sanders 2008:39; Scott 1995:49; Hall & Taylor 1996:9). The resilience aspect denotes that once a particular institutional form is adopted at a particular historical point, it tends to endure since change is costly and shrouded in a complex of uncertainties. Hence, political behaviour adapts to prevailing formal and informal institutions in forms that reinforce them (Thelen 1999:385).

Focused on the 'construction, maintenance and adaptation' of these humanly devised rules of behaviour, Sanders posits that the theory advances the logic that views human behaviour as persistent collective action of institutional actors, 'whether among executive officials, legislators, or social groups', and driven by altruistic and public-oriented motivations of common good (2008:42), than calculative selfish actions of rational choice arguments. Historical institutionalism also endorses cultural approaches, a central template of sociological institutionalism in explaining human behaviour, (Hall &Taylor 1996:17).

The *normative* pillar, in Scott's analytical framework directly relates to historical institutionalism as it instigates norms and values that may apply to the collectivity or individuals in specific positions as 'prescriptive, evaluative and obligatory' aspects (Scott 2001:54-55) of human interaction. In this case, social obligation is the basis for compliance and morality is the basis for legitimacy, driven by the logic of appropriateness. Scott (2001:55) adds that essays by institutional scholars like March & Olsen (2008) and Talcott Parsons (1951) are guided by the normative view of institutions, in explaining the stabilising influence of norms and values, and the disciplinary approaches against deviant and non-complaint conduct.

Another contrasting theoretical distinction, although not dichotomising rational choice and historical institutionalism, is in the origins of their respective theory building approaches through hypothesis formulation. Historical institutionalists derive their hypothetical propositions from 'empirical puzzles emerging from observed events or comparisons,' and use such empirical observations in testing hypotheses to account for the change or differences (Thelen 1999:373). For example, why policy responses to the 2008 global financial crisis differed so much among developing countries? This provides prior expectations in relation to observed phenomena.

By contrast, the game theory logic of rational choice premises its hypotheses from counterfactual situations in which 'observed behavior appears to deviate from what the general theory predicts: Why, given free rider problems, do workers join unions?' (Thelen 1999:374) At the heart of this logic is the attribution of factors to causation, which in this example, supposes that workers unions should not exist due to free rider problems, yet workers unions may not exist on account of many other factors, even if there were no free-rider problems. Thus, the hypothesis of free-rider problems may be falsified unless other influential factors are controlled for. Found in vast research and comparative studies, historical institutionalism approaches have been applied to analyse the politics of central banking in Australia (Bell 2002), 'origins of dictatorship and democracy' (Moore 1966), and political regime development in Africa (Erdmann, et al 2011).

For its deficiencies, the theory has received a couple of critical reviews. Some critics point to the epistemological and conceptual challenges particularly in relation to historical institutionalism's pro-Western inclination in its normative and biased leaning on formal institutions. This is informed by the 'formalist' orientation that informality dominates formal rules hence the latter do not work in practice in Africa, thereby dismissing them as redundant in understanding African politics. However, this pessimism is diminishing, paving way to emerging empirical evidence such as that provided by Posner & Young (2007) which confirms that formal institutions are beginning to matter in Africa.

Other critics of historical institutionalism highlight its bias towards explaining continuity than episodic change thereby making it inapplicable to the analysis of Africa's unstable and rapidly changing regimes and their short life-spans. On account of these incompatibility and conceptual

challenges, an institutional analysis of African political regimes was bifurcated from the institutional analyses of other global regions. However these arguments are fast becoming outdated. Granted that indeed African politics has periods of shorter trajectories, Erdmann et al (2011:6) notes that 'more recent theoretical and conceptual clarifications of this approach redirect attention to the importance of critical junctures- in other words, situations of high contingency and possible changes.'

Indeed new studies are focusing on 'critical junctures' and 'situations of high contingency,' which in some cases have created radical changes (Erdmann et al 2011; Thelen 1999). As shown in the next section, scholars are striving to resolve empirical questions from the perspective that acknowledges apparent difference, but appreciating and amplifying points of intersection and tangency between historical and rational choice paradigms that justify a composite of narrative and analytical explanations (Thelen 1999:371, 376).

Scholars like Scharpf build on what Thelen calls 'creative combinations' of the two approaches to overcome inherent limitations of each theoretical approach and present more inclusive explanations for institutional change and stability in relation to actor behaviour (Thelen 1999: 380). As historical institutionalism endorses the cultural approach advanced by sociological institutionalism, the next section expounds on the latter to show how its definitive elements and theoretical propositions relate to the other institutionalism variants discussed hitherto.

2.2.3 Sociological institutionalism

This theoretical paradigm is older to both rational choice institutionalism and historical institutionalism, Originating from the subfield of organisational theory, it has evolved for many decades, from the incipient propositions of Herbert Spencer (1876), through William Sumner (1906), Talcott Parsons (1951), Paul DiMaggio (1988) to Richard Scott (1995). Sociologists believe that institutions evolve slowly over long periods of time from instinctive individual ethics and actions to collectively and culturally shared values and enacted traditions (Scott 2001:9). This perspective is used to explain the evolution of institutions in western democracies.

Sociological institutionalism broadly defines institutions 'to include not only externally imposed and sanctioned rules but also unquestioned routines and standard operating procedures and, more importantly, socially constructed and culturally taken for granted worldviews and shared normative notions of appropriateness,' (Scharpf 2000:770; Thelen 1999:386; Hall & Taylor 1996:15). Such an inclusive definition dissolves away the conceptual divide between institutional explanations 'based on organisational structure,' and 'the cultural explanations based on an understanding of culture itself as an institution...a network of routines, symbols or scripts providing templates for behaviour.'

Thus, sociological institutionalism relates to the *cultural-cognitive* pillar of institutions in Scott's analytical framework, since acquiescence manifests as routine and *habitual* as 'the way we do these things' across generations, and its legitimacy is culturally-supported with a conventional standard logic (Scott 2001:52). Emphasis is on how social reality is conceived: where external stimuli induces habitualised 'prefigured' human responses as a function of the individual's internalised worldview merged with cultural frameworks that give meaning to signs, gestures and words (Hodgson 2006:8; Scott 2001:57). Scott adds that 'to understand or explain any action, the analyst must take into account not only the objective conditions, but also the actor's subjective interpretation of them,' (Ibid).

Hodgson (2006:5) calls 'self reflexive reasoning with regard to future events or outcomes.' In addition to habitual acquiescence, *imitation* and *compliance* are the other two forms of submission to sociological norms and values (Oliver 1991:152). Imitation refers to both 'conscious and unconscious mimicry of institutional models' as well as copying the behaviour of other trusted actors in similar situations. Compliance, by contrast, relates to the active and 'conscious obedience to values, norms, or institutional requirements,' (Ibid).

The concept of 'institutional isomorphism' elaborated by sociological institutionalism which explains the convergent and divergent path of organizational development, has been instrumental in understanding the politics of central banks-how 'common pressures, search for legitimacy, effects of uncertainty and impact of common professional norms' influenced the display of convergence patterns in changes to central banks around the world (Bell 2002:487). Sociological

institutionalism is also applauded for aptly advancing the view that actors and institutions are not only attuned to the calculus 'logic of instrumentalism,' but also, and simultaneously, respond to a 'culturally specified logic of social appropriateness,' (Ibid:488). Like its two contemporary variants, sociological institutionalism has been appraised for its deficiencies and intrinsic worth.

The dominant criticism against sociological institutionalism relates to the conception of institutions as shared cultural scripts. This is against the reality that cultural values and norms face constant contestations, resistance and rejection within and across contexts and generations for failure to solve emerging social problems (Thelen 1999:387). As these 'cultural scripts' are not always accepted, they are ultimately adapted, transformed or replaced to the extent that the assertion of institutional isomorphism- denoting uninterrupted 'continuity' of cultural values and norms across time and space is defective. In reality, new legislations, and/or constitutional amendments, policies and operating procedures, for example, are effected within contexts of competing political convictions between contending forces of status quo and those for change.

Consequently, scholars recommend for softened tribute to cognitive intuition, in tandem with more emphasis on the influence of strategic political factors (Thelen 1999:387). As with theoretical approaches in other research fields, the controversies and arguments regarding methodological and conceptual issues for rational choice, historical and sociological institutionalisms signal that the development of political institutions is work in progress.

While in practice the three institutionalisms operate in mutually reinforcing and interdependent manner as regulatory, normative and cognitive systems; their distinctions arise from the emphasis, sometime exaggerations, of their respective scholars. With regulatory scholars attributing behavioral compliance to written constitutive rules and 'effective surveillance with significant sanctions,' proponents of the normative tradition stress on social norms, values and 'relational structures.' Adherents of the cultural-cognitive construct amplify the cultural routines and intuitive templates of subjective interpretation of the real world.

The above discussion is summarised in table 1. The table captures prominent assumptions for actor behaviour, dominant characteristics and individual limitations by which these theoretical

approaches are distinguished. Constitutive elements of the rational choice institutionalism are its conception of external formal rules, its deductive analytic rigor premised on principle-agent model of neoclassical economics and abstraction logic. It assumes actors as strategic-utility maximisers and that institutions emerge and survive to reduce agency dilemmas of shirking and reneging uncertainties (Jönsson & Tallberg 2004:4). Rational choice institutionalism is criticised for failing to account for the bounded rationality and a reality of imperfect information for actors.

Historical institutionalism, on the other hand, is identified with its path-dependency (long term viability) contingencies and critical junctures of history that determine formation and change to institutions (Hall & Taylor 1996:939). Historical institutionalism is based on empirical descriptions and inductive analysis of the inter-temporal construction and maintenance of individual interests and preferences (Sanders 2008:43). It assumes that cultural conditions and norms also regulate behavioral choices of individuals. Historical institutionalism is criticised for being static as it failed to adapt to the financial crises of the 1970s. Its path-dependency claim is faulted as subjective and not statistically determined.

The sociological institutionalism paradigm attributes actor behavior choices away from rational choice's logic of instrumental rationality to the logic of social-cultural normative appropriateness of ideational routines and moral cues embedded in pre existent templates of individual behaviour (Hall and Taylor 1996: 953). It is, however, criticised for being vague on both the isomorphism conception and how cultural devices and mechanism regulate social order and constrain collective choices.

While actor behaviour can be assumed to simultaneously respond to either or all of the three institutionalism variants discussed above, it is important to note that individuals can choose to respond to institutional pressures toward conformity from an alternative range of strategic responses. These may vary from passivity to greater resistance of compromise, avoidance, defiance and manipulation (Oliver 1991:151-152). Compromise manifests through efforts to bargain, negotiate or institutional considerations. Avoidance is disguised escape and non-conformity, or taking a relaxed attachment to institutions.

Table 1: Constitutive elements and assumptions of the three types of Institutionalisms

Institutionalism	Constitutive elements	Theoretical assumptions	Limitations
Rational Choice Institutionalism (RCI)	• functionalist formal rules generated exogenously • based on abstract analysis, deductive logic • premised on principal-agent model of neo-classical economics	• actors are calculative, strategic and utility-maximising not altruistic. • institutions reduce/optimise transaction costs/uncertainty • actor behaviour anchored in rule-based influence	• cognitive limitations of bounded rationality • functionalist-static assumptions obsolete, liable to tautology • abstraction simplistic, contexts are complex
Historical Institutionalism (HI)	• formal and informal rules are generated from both context and historical origins • formation and change are contingent on path-dependency logic • social science perspective: based on empirical case-study observations and descriptive analysis, deductive reasoning	• actor choices, motives and preferences conditioned by cultural/contextual aspects and calculus reasoning • dynamic/open-ended:critical junctures allow rapid change of institutions • cultural-approach: actors follow standard norms and conventions	• operationally static: collapse in 70s- failed to adapt to change during financial crises as a critical juncture (i.e. money supply regulations. • path-dependence subjective claim than statistically determined
Sociological Institutionalism (SI)	• externally sanctioned formal rules and culturally constructed conceptions of normative routines, customs, practices and perceptions • inductive-deductive reasoning	• actor choices influenced by the diffusion of pre-existent institutional templates of social-moral cues • overlaps with historical institutionalism	• vague on how cultural devices/ mechanisms regulate social order and collective choices • limits of isomorphism conception

Source: Author's compilation on the basis of Hay 2008:58-69; North 1990:3; Sharpf 2000:770; Scott 2001:57; Shepsle 2008; Thelen 1999:369-371 and Jönsson & Tallberg 2004.

Defiance is an obstinate dismissal, explicit contestation of and assaulting the source of institutional legitimacy. Manipulation may include efforts to co-opt, dominate and neutralise the institutional force or source of institutional pressure to comply. Thus, individuals do not predictably act as legal-rational or normatively desirable or social-culturally compliant to institutional pressures. The choice of the most strategic tact is dependent on whether the gains from adopting for a particular strategy exceed the costs.

The difference between *norms* and *rules* is in how they are enforced: where the former rely on 'collective intentionality' and reciprocity hence enforced by corresponding group approval or disapproval, rules are 'explicit agreements' introduced by some authority and enforced through

sanctions (Hodgson 2006:5). Since in either case, enforcement involves a sense of discomfort for acts at variance to expected behavior, and that legal enforcement systems often acquire moral legitimacy and approval, the distinction between the two is largely eroded.

Until here, the distinctive elements between formal and informal institutions have not been fully clarified. Hence the next section captures key theoretical contributions to and constitutive elements of formal and informal institutions, as variedly referred to by the rational choice, historical and sociological institutionalisms. Unlike rational choice, both historical and sociological variants endorse and accommodate informal institutions, attributing social behaviour to the influence of cultural norms, routines and socially appropriate cues.

2.3 Distinguishing formal and informal institutions

There is substantial convergence among scholars of politics, sociology and economics in appreciating that for emerging democracies and fragile economies, most if not real political behavior and choices are better explained by prevailing informal institutional arrangements that operate in the political economy nexus to formal constraints and rules (Hyden 2006:83).

Without dismissing the relevance and influence of formal institutions, studies seeking institutional explanations on Latin America, post-communist Asia and Africa almost invariably attribute the effect of informal institutions on actor behaviour across economic, legislative and electoral systems and regime types (Helmke & Levitsky 2004:725; Hyden 2006:83; Scott 1972; van de Walle 2001, 2003). Thus, a more nuanced and balanced analysis is revealed by delving into the features and shades of powerful informal constraints, customs, social norms, horizontal and vertical power relations, bonds of family kinship and pervasive patron-client relations (Hyden 2006:55; Williamson 2000:597) that equally regulate human behaviour.

To this end, there is growing sceptism with exclusively restricting institutionally-based analyses to formal institutions classified as the abstract, legally enforced, quantifiable and written regulations or laws such as electoral laws, party laws, regime types, operating procedures, property rights, contracts, statutes and constitutions (The Asia Foundation 2010; Erdmann 2011; Bratton 2010). Distinctive elements of formal institutions included that they are explicitly written

or codified as constitutions, regulations, rules, standard operating procedures and agreements which are legally enforced by third parties like courts.

In what follows, I present a conceptual definition of informal institutions, theoretical approaches to and typologies of informal institutions, how to identify them, and how they constitute the institutional incentive structure of actor behaviour. The essence of this section is to show the growing literature affirming that apart from formal institutions, actor behavior and choices are equally constrained by factors from prevailing informal institutions, to the extent that informal institutions may sabotage or dominate formal rules (Hyden 2006:72, 83). Hyden presents the concept of *the economy of affection* to explain how mutual interdependence among actors facilitates the creation, adaptation and survival of informal institutions. To illustrate this, Hyden outlines comparative characteristics associated with formal and informal institutions. He posits that both formal and informal institutions are rooted in two separate forms of culture: *civic* for the former and *affective* for the latter (2006:93). Table 2 presents these distinctive features.

Table 2: Comparison of formal and informal institutions

Variable	Formal Institution	Informal Institution
Type of exchange	Impersonal	Face-to face
Approach to rules	Rule of law	Rules in use
Character of rules	Written	Unwritten
Nature of exchange	Contractual	Non-contractual
Time schedule	Specific	Non-specific
Actor premise	Organisational goal adherence	Shared expectations
Implications of agreement	Precise compliance	Ambiguous execution
Transparency	Potentially open to scrutiny	Closed and confidential
Conflict resolution	Third-party body	Self-enforcement

Source: Goran Hyden, 2006:84

The table shows that informal institutions are governed by face-to face relationships, premised on mutually shared expectations of reciprocity, while interpersonal transactions are exchanged within self-enforced unwritten contracts or surety and often for indefinite timeframes. This strikingly contrasts from legal norms that govern formal institutions, whose agreements are sealed by signed contracts for specific time schedules and are legally binding and enforced through courts. This separates the *civic* from *affective* political economy.

Douglass North argues for both formal and informal rules, accentuating on the latter that human interaction in all spheres of life (economic, social, political, professional) both in advanced and developing societies, is conditioned by generally accepted, often imprecise, and uncodified procedures and norms that persist and survive beyond reforms to formal rules (North 1990:36). He notes that informal rules originate and survive as the heritage of trans-generational interaction processes and the complex transfer of unwritten attitudes, beliefs, knowledge and customs assimilated as culture (Ibid:37), a perspective that is also shared by sociological institutionalism.

These manifest in three forms (a) complementing, amplifying and altering formal rules, (b) socially legitimised and sanctioned norms, and (c) internally self-enforced behavioral conduct (North 1990:40). These three aspects are in perfect resonance with Scott's (2001) typology of *regulatory*, *normative* and *cultural-cognitive* defining pillars of historical and sociological institutionalism variants discussed above. The dominant personal power relations in Africa render them effectively informal (Hyden 2006:72; Diamond 2010).

In affirmation, van de Walle (2001:51) posits that the exercise of 'political authority in Africa is based on giving and granting of favors, in an endless series of dyadic exchanges that go from village level to the highest reaches of the central state.' But, what exists for theoretical perspectives on informal institutions? Apart from the rational choice theory, the economy of affection framework illustrated by the social affection theory and the patron-clientelism theory (Scott 1972) provides instructive templates for the theoretical foundations in contemporary understanding of informal institutions.

2.3.1 Social affection theory- the economy of affection

According to Goran Hyden (2006:85) 'economy of affection' analysis is illustrative of the social affection theory elaborated by Emerson (1962) and Blau (1964). The essence of an informal political economy rests on 'reliance on hand shake rather than the contract,' and anchored in three shared principles: (a) 'whom you know is better than what you know, (b) sharing personal wealth is more rewarding than investing in economic growth, and (c) a helping hand today generates returns tomorrow,' (Hyden 2006:72).

Where it exists, the economy of affection comprises individuals who invest in lateral and mutual reciprocal (give-and-take) relationships for the attainment of desired aspirations deemed unattainable otherwise (Ibid: 73). These desired goals- whether symbolic (such as prestige or influential status) or material (like obtaining soft loans, jobs, business favours) are ascribed a 'scarcity value' seen to be hardly attainable except by investing in relations with others for the assurance prospect and avenue of obtaining them (Ibid: 73).

Hyden gives four motivations for engaging in affective relations as '(a) to gain status, (b) seek favour, (c) share a benefit, and (d) provide a common good' (2006:74). In this context, informal norms and practices are so tenaciously established that they seem to conspire against, substitute or subvert formal rules (Ibid), especially where formal rules are themselves either defunct or poorly enforced or both (Helmke & Levitsky 2006:729). The economy of affection assumes that actors prefer and depend on often imprecise interpersonal 'face-to face reciprocities, exchanges' and trust (Hyden 2006:84), over formal rules though not contradicting rational choice view of a utility-maximising actor and the exclusive trust in impersonal transactions, written rules and abstract contracts. Essentially, informal institutions arise in the economy of affection when prescriptive norms develop that order or sanction its voluntary members engaged in joint activity (Ibid: 74).

Another dominant feature in the economy of affection is the reciprocity embedded in symbiotic relationships between the well-resourced *patrons* (political and or economic entrepreneurs) on one hand, and their resource-constrained counterparts-*clients* (relatively poor but politically essential and economically relevant agents), on the other, who mutually cultivate an affective *patron-client* relationship (Hyden 2006:72). Thus, those engaged in affective relationships may do so from a position of advantage or adversity, often when confronted by opportunity or limitation (Ibid: 74, 76).

The economy of affection tool has been used by Rudra Sil (2003) to analyse Japanese *mura* and Russian *mir* communities, while Scott (1976) used its subtype, the moral economy to conclude how peasants band together in defense of their livelihood just as capitalists for their property (Hyden 2006:77).

Sil established that the legacy of these two forms of affective communities significantly shaped formal institutional practices (Ibid). Hyden (2006:78) also notes that the economy of affection can either be a threat or benefit as it locates itself between morality and law.

For instance, he observes that the principles governing clandestine operations of terrorist groups identify with those of the economy of affection given that their threat to others emanates from their ability to run as an informal institution (Ibid). Viewed from a the moral positive side, the mutual interdependence within the economy of affection facilitates for the redistribution of resources, while providing social security in contexts and settings with adverse social, economic and political and uncertainty. Closely linked to but slightly different from the economy of affection are the conception and theoretical assumptions of the patron-client theory.

2.3.2 Patron-Client Theory

James Scott (1972*)* in his illustrious documentary in *Patron- Client Politics and Political Change in South East Asia,* observes that while patron-client relationships are ubiquitous to all societies, they are evidently more observable in Third World classless nations of South East Asia, Latin America, parts of less developed Europe and in Africa (1972:91). The usage of the terms *patron* and *client* originate from the Mediterranean and Latin American regions (Ibid: 92). Scott conceives the patron-client relationship in terms of a vertical paternalistic social linkage between a local politically or financially powerful figure-*patron*, who capably use their influence in dispensing instrumental support such as subsistence supplies, security protection, material inducements, privileges and or benefits, to personal followers of lower status- *clients* (1972:92). For such benefits, clients reciprocate with their loyalty and personal assistance to the patron. The term clientelism refers to a composite of the 'strength of clan, ethnicity, and other subnational identities,…and the need for social insurance in the risky and uncertain environment of low income societies'…expressed in exchanges of opportunities, favours, employment, gifts and other seemingly courtier or noble services (van de Walle 2004:118; Diamond 2010:47, 54).

In his earlier contribution, van de Walle notes that clientelism is closely linked to corruption since the former is facilitated by privileged access to public resources and with accompanying conflict of interest (2001:51).

He pointedly notes that despite that not all forms of political clientelism are illegal, they all entail a subversion of public norms and objectives for the sake of personal gain since patron-client ties are predominantly lubricated by state resources dispersed according to a strict political rationale. Political elites expand their power through 'patronage, nepotism, and the granting of various exemptions, dispensations, and immunities from law, taxes and licenses,' usually by (ab)using discretionary public authority and or in contravention of existing formal rules (van de Walle 2001:120; Diamond 2010:54).

The preconditions for interpersonal exchanges in patron-client ties are three-fold: (a) existing disparity or inequality in the relative wealth between the two, which binds the debt of mutual obligations, (b) face-to- face interaction of the dyad that reinforces the bond of affection, and (c) direct or diffuse-absolute person bonds, not through mediating impersonal contracts (Hyden 2006:56; Scott 1972:93-95). The implied favourable conditions denote of an almost discernible positive correlation between the degree of state failure: (blocked democracy, lawlessness, lack of state social security, public security and infrastructure, limited industrial development, corruption, divisive politics) and the visible tenacity of patron-client relationships.

As clientelistic informalism permeates the realm of formalism in all its forms and shades, the latter is disarmed, disabled or undermined. Priority loyalty of subordinates, the state bureaucracy and security service is given to the patron- first, and the nation last, (Diamond 2010:54). As Bates (2008) observes, behavioral conformity under political clientelism is invested in the 'big man' at the expense of canonical civil rules of the state as actors fear the wrath of internally enforced exclusionary sanctions against deviant conduct to collectively held norms.

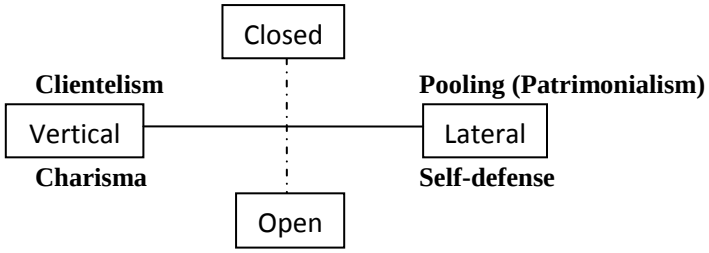
The patron-client analytical tool has been utilised by anthropologists in understanding interpersonal power relations inexplicable by formal institutional arrangements (Scott 1972:92). On the other hand, many development partners and aid organisations use the *political settlement* analytical tool in the political economy and drivers of change analyses to explain local political dynamics and capture interests, dominant actors, and informal institutions often located outside the realm of trending models for development assistance (The Asia Foundation 2010:5).

Essentially, the political settlement concept is defined by 'elite-enforced social orders, informal balance of power and informal rules of the game,' with critical influence on the agenda, direction and acceleration rate of development of a country (Ibid).

As discussed above, the social space in the reciprocal relationships of the economy of affection are vertical and lateral, inclusive or exclusive. On this basis, figure 3 illustrates the four- fold typology of analytical categories of informal institutions proposed by Hyden (2006:78). The propositions are made with due cognisance that the four types are in reality, mutually co-existent and often interdependent in the sense that groups that cooperate on the basis of self-enforcing voluntarism-*Pooling*, manifest clientelism elements too. Likewise, deviant groups (i.e. mafias or terrorists) acting in self-defense may be dependent on a charismatic leader (Ibid: 79).

Along the logic of *'who gets what'* definition of politics by Laswell (1958), *clientelism* is aptly defined by Brinkerhoff (2002:2) as 'a complex chain of personal bonds between political patrons or bosses and their individual clients or followers. These bonds are founded on mutual material advantage: the patron furnishes excludable resources (money, jobs) to dependents and accomplices in return for their support and cooperation (votes, attendance at rallies).'

Figure 1: Types of informal institutions in the economy of affection



Source: Hyden 2006:78; Bratton 2010:105, adapted by author

Indeed clientelistic relations are rational and calculative, particularistic and personal, and survive on the premise of unequal wealth between the client and patron (Brinkerhoff & Goldsmith 2002:3).

2.3.3 Patrimonialism Theory

Pooling or *patrimonialism,* derived from Max Weber's (1947) conception of a patrimonial state, refers to all forms of social voluntary cooperation among individuals operating self-enforcing unwritten rules and within legacies of traditional forms of political domination and legitimacy (Brinkerhoff & Goldsmith 2002:5-6; Hyden 2006:79-80). It is an acute form or axis of clientelism in which the public domain is filled by appointees of one centralised authority personified in the patron, who controls the apparatus by dispensing all forms of largesse to uncritical protégés and minions in return for predictable loyalty and political support (Ibid).

Featuring controlling bonds reminiscent of surrogate kinships, it is unsurprising that informal institutional practices including '*The Big Man'* exceedingly undermine and systematically supplant formal rules, official hierarchy and standard procedures (Diamond 2010:54; Hyden 2006:80; Brinkerhoff & Goldsmith 2002:6-8). The defacto motivation of patrimonial governments is not to maximise or invest in the production of *public* goods (improved health care, security, education standards and quality, markets, judicial system, road infrastructure, efficient public administration). Instead, its actors and agents are involved in predatory extraction and accumulation of *private* goods, rents through bribes, fraud, illicit markets, nepotistic appointments and promotions, dubious contracts and tax evasions for those in power (Diamond 2010:55). The longer the patron remains in power the more patrimonial practices perpetuate; otherwise regime alternation can partly mitigate this decay in governance (Ibid).

Brinkerhoff & Goldsmith (2002:9) introduce the concept of *Institutional Dualism-What Costs? What benefits?* to account for scenarios where the resultant patronage from excesses of clientelism and patrimonialism are neither purely detrimental nor beneficial. Institutional dualism therefore represents a discernible condition in which negative informal practices coexist in tandem with positive formal ones, and all too often the latter are subdued.

Negative elements may include redundant and or vague procedures, illicit rents, unaccountable public officials and where duplicity and other forms of malpractice are reinforced by unenforced or selectively enforced formal rules.

As also conceded by scholars including Larry Diamond (2010), Goran Hyden (2006, 2010), Douglass North (1990) and James Scott (1972), the classic work of Gretchen Helmke and Steven Levitsky avidly argues that formal and informal institutions are mutually constitutive and simultaneously influence actor behaviour in bureaucratic and legislative practices, markets, judicial norms and political party organisation (2004:726). This study therefore adopts the definition that Helmke and Levitsky provide for informal institutions as 'socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels,' (Ibid:727).

The choice of this definition is because it encapsulates critical constitutive elements such as socially shared rules, being implicit- unwritten and their extra-official self enforcement channels. These aspects are also captured in Hyden's differentiation of formal from informal institutions in table 2. Helmke and Levitsky (2004:726) go further to identify informal institutions with negative effects such as pervasive clientelistic and neo-patrimonial norms in Africa and Latin America that allow unfettered presidential control over state organs, resulting in executive dominance that exceeds stipulated presidential statutory powers.

However, Staffan Lindberg confronts existing literature (which abhors political clientelism as an 'optimal strategy in the context of weak institutions' inept politicians and illegitimate governments), by empirically showing that this vast and 'rigorous' literature ignores 'how formal institutions shape political clientelism,' (2010:118). He cites the example of Ghana that the office of an MP is 'conducive for the provision of private goods through clientelistic networks,' (Ibid). This justifies more inquiry into how formal institutions promote and reinforce the formation, perpetuity and adaptation of clientelistic networks in African politics, on one hand, and how particularistic informal institutions undermine and surrogate formal rules, on the other.

Further, other scholars show that informal institutions are not a trade mark practice of African or new democracies, they are seen and accepted as complementary practices even in developed democracies in Europe and America (Brinkerhoff & Goldsmith 2002). Labeling them as *unstructured institutions,* Shepsle notes that *senatorial courtesy* accords a US senator veto power on judicial appointments in their state, while *seniority* establishes 'ladders' in congressional

committees which privilege committee chairs the priority of order of speaking and questioning in hearings (Shepsle 2008:27). Albeit accepted and practiced as cooperative instruments, neither of these norms form part of the formal rules of procedure in the US Senate and Congress (Ibid).

In terms of why informal institutions are created, Helmke and Levitsky provide three motivations namely (a) formal institutions are incomplete, (b) provide second-best strategy when formal solutions are unattainable owing to attendant high transaction costs or ineffectiveness, and (c) informal rules are covert- unobtrusive to public domain (Helmke & Levitsky 2004:730), hence safer to pursue them discreetly especially when they are deplored by society. Helmke and Levitsky propose a four-fold typology in which informal institutions manifest namely *complementary, accommodating, competing and substituting*.

The failed constitutional amendment example in Nigeria and the role played by distributive norms and equitable share in public offices is an apt example of complementary informal institutions that enhanced the retention of constitutional rules limiting presidential tenure of office. Characteristic about complementary informal institutions is that they mutually coexist with effective formal institutions and the latter are functionally reinforced. In addition, as a basis for creating formal institutions, complementary informal institutions induce or provide compelling incentives for individual pursuit of goals within and in compliance to formal rules (Helmke & Levitsky 2004:728). Cited examples include various coordination and cooperation norms, routines and practices that minimise process delays, maximise merit and ease decision making in bureaucracies and opinion assignments in judicial processes (Ibid).

On the other hand, *accommodating* informal institutions are those that 'contradict the spirit, but not the letter' of formal rules, thereby varying 'substantive effects of formal rules' without openly violating them (Ibid: 729).

While not enhancing the efficiency of formal rules, accommodating institutions do not instigate change to status quo but support the stability and survival thereof (Helmke & Levitsky 2004:729). The authors give the example of accommodating informal power-sharing arrangements under divided government in Chile.

In an excessively strong presidential regime and majoritarian electoral system, the minority government secured legislative support to constitutional amendments via informal interparty executive-legislative consultative processes that increased coalitional trust and incentives for cooperation. The same applied to the Dutch post 1917 consociational practices that stabilised its democracy faced with potential political and religious instability.

Competing informal institutions are often found in post-colonial settings in which formal rules were imposed on the indigenous majority and were not assimilated in practice. Uniquely, competing institutions co-exist in tandem with dysfunctional and non-effectively enforced formal institutions, where the latter are systematically ignored or violated with impunity or both (Ibid). The setup has incentives for illegitimate transactions as formal rules are inconsequential. Complying with formal rules has higher social costs than ignoring or breaking them. Examples include clan politics, patrimonial clientelism, corruption and mafia syndicates.

Substitutive informal institutions are similar to competing informal institutions, in that they exist in situations where formal institutions or state structures are ignored or bypassed for lack of authoritative moral force. However, unlike competing institutions, they emerge to achieve desired outcomes unattained by defunct formal institutions (Ibid). Examples include norms that govern citizen-initiated community policing measures in African urban and rural settings to curb widespread crime where official police security is rare, corrupted or inefficient. Others include the extended family social support structures common in Africa and Asia to minimise adverse effects of vulnerability thereby substituting the absent state social security support to its vulnerable citizens.

Although criticized for lacking grounded explanation of rationale for their creation, some empirical evidence attributes the emergence and survival of substitutive and complementary informal institutions to the 'efficiency gains' they yield thereby reducing demand for formal institutions (Ibid:730). The next section examines how institutions distribute power among actors and how this affects legislative decisions in theory.

2.4 Effects of institutional design on legislative decisions

Electoral laws and practices, such as size and composition of constituencies, frequency of elections, and methods of getting onto the ballot also affect legislative behaviour (USAID 2000: 11). Ample literature analyses how constitutional power fragmentation relates to dispersal of institutional separation of governmental powers, electoral system, party system and bureaucratic delegation as formal institutional foundations (Hout 2005; Macintyre 2003; Roller 2003).

This cluster of work focuses on relationships of constitutional architecture and power dispersal-how party system and constitutional structure lead to troubled executive-legislative power relations that result in 'policy delay, gridlock and immobilism.' The logic is that the more widely the decision-making power is dispersed among multiple actors: executive, political parties, houses of the legislature and judiciary; the greater the propensity to delay policy decision involving sacrifice and high political costs, while limiting arbitrary action or unilateralism (Macintyre 2003: 26). These relationships are depicted in figure 2 (a) and (b).

In the modified model of figure 2(b) the labeling on X-axis initially labeled as *potential for governance problems* is replaced by *potential for policy decision problems.* In this analytical tool, Macintyre presents two contrasting arguments regarding policy decision challenges imposed by institutional power dispersal *stability* and *change*.

Figure 2(a) and (b): Dispersal of decision making power

Figure 2 (a): Dispersal of decision making power

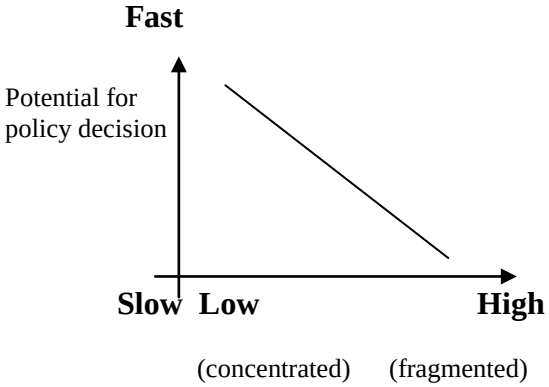
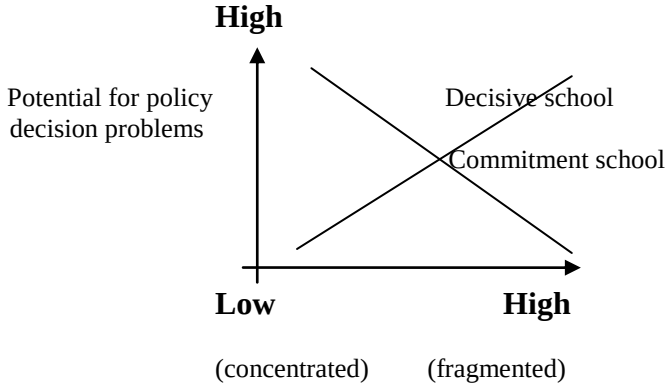


Figure 2 (b): Dispersal of decision making power

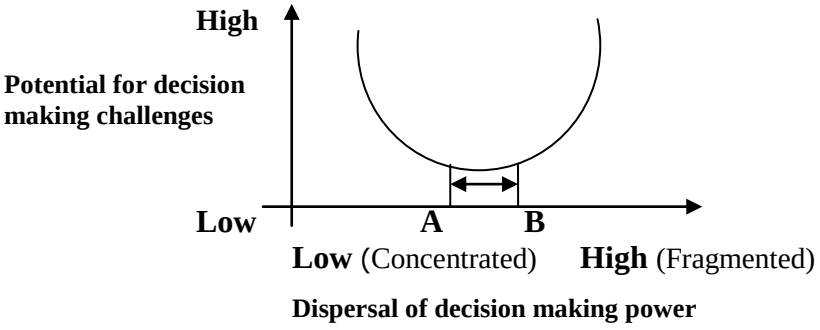


Source: Andrew Macintyre, 2003:30, adapted by author

From figures 2(a) and 2(b), the *commitment* school contends that stability of policy decision is optimised when decision-making power is fragmented among several constitutional agents (Macintyre 2003:27). Once consensus is reached over a specific policy decision, the propensity to renege or rescind is potentially low due to high transaction costs of securing consensus for reversal among many institutional actors. By contrast, the *decisiveness* argument posits that in the best interest of flexibility and efficiency, control over decision making must be centralized to avert systemic inaction, rigidity 'delay and gridlock,' (Ibid). But what is the ideal number of actors that institutions create to avoid extremes of decision stability and flexibility?

Macintyre asserts that commitment-type and decisive-type arguments are mutually and causally anchored by political institutions, which can be made more responsive to either problematic extreme scenarios, adding that in practice, this relationship is nonlinear, but U-shaped. He suggests that 'introducing additional actors with institutionalised decision-making power does reduce volatility,' and mitigates extremes of power concentration, but up to an unspecified point of inflection (Macintyre 2003:32-33). As illustrated by figure 3, the exact opposite holds: reduce the number of institutional decision makers only up to a certain point, to curtail policy rigidity. Political practice suggests that the curve in figure 3 is asymmetric, with a zone (rather than point) of inflection signified by the area AB where the optimal number of decision makers is located.

Figure 3: The power concentration paradox



Source: Andrew Macintyre, 2003:30, adapted by author

Empirical evidence suggests that incidences of extreme power concentration or power dispersion are a common feature in emerging democracies (Bratton 2010; Diamond 2010; Hyden 2006, Salih 2005; van de Walle 2003). It may be inferred that high legislative turn-over and

parliamentary party volatility may partly be indicative that voters are still experimenting towards the optimal legislative decision-making zone denoted by A-B.

In his analyses of 87 elections held in the 1990s in sub Saharan Africa, Nicolas van de Walle affirms this in his observations of an emerging 'dominant presidential system with a bevy of small and highly volatile parties,' (2003:297). Matthew Shugart (2008:347) attributes this to constitutional design of the regime types by asserting that presidential regimes institutionally exhibit *transactional* legislative-executive relationship while parliamentary systems are *hierarchical.* Parliamentary and presidential regimes are fundamentally distinguished by asymmetric structural and institutional features that define whether their inter-institutional relationship is hierarchical and transactional respectively. In presidential regimes, the legislature and the president have what Mainwaring and Shugart (1997:450) call 'competing claims to legitimacy,' due to the fact that they are both directly and exclusively elected by the electorate (Linz 1985:1; Kaiser 1997:422-423).

In addition to having independent origins under the doctrine of separation of powers, neither depends on the other for survival and with fixed terms of office for both, the system has inherent latent conflict and regime crisis that erupts when the president loses or does not secure legislative support and confidence, yet cannot be dismissed or replaced and neither can he/she dissolve the legislature (Kaiser 1997:423-424; Linz 1985:4; Mainwaring & Shugart 1997:450). Linz adds that such political crises and deadlocks often have complex, highly technical and legal mechanisms for solutions. Besides, even if the president is elected with few popular votes, presidential systems endow the incumbent with considerable constitutional (personalised) powers including that of appointing cabinet ministers, as well as being head of state and government (Linz 1985:3-4).

Further, the winner take-all majoritarianism of the plurality electoral system inspires executive superiority and intolerance and provides no incentives for moderation or cooperative behavior that may lead to the formation of coalition governments (Kaiser 1997:423; Thus they cultivate a horizontal process of inter-branch transactions (van Cranenburgh 2008:955).

In parliamentary systems, on the other hand, the executive and legislative powers are fused in one decisive agency: the legislature (Kaiser 1997:425). The president or prime minister derive their mandate from parliament, not the electorate, and therefore hierarchically answerable to and dependent on the confidence of parliament (Linz 1985:2; Shugart 2008:347). That means, with a legislative vote of no confidence, the government can be replaced and parliament dissolved at any time and fresh elections called for (Kaiser 1997:425). This acts as government stabiliser in case of an executive-legislative fall-out.

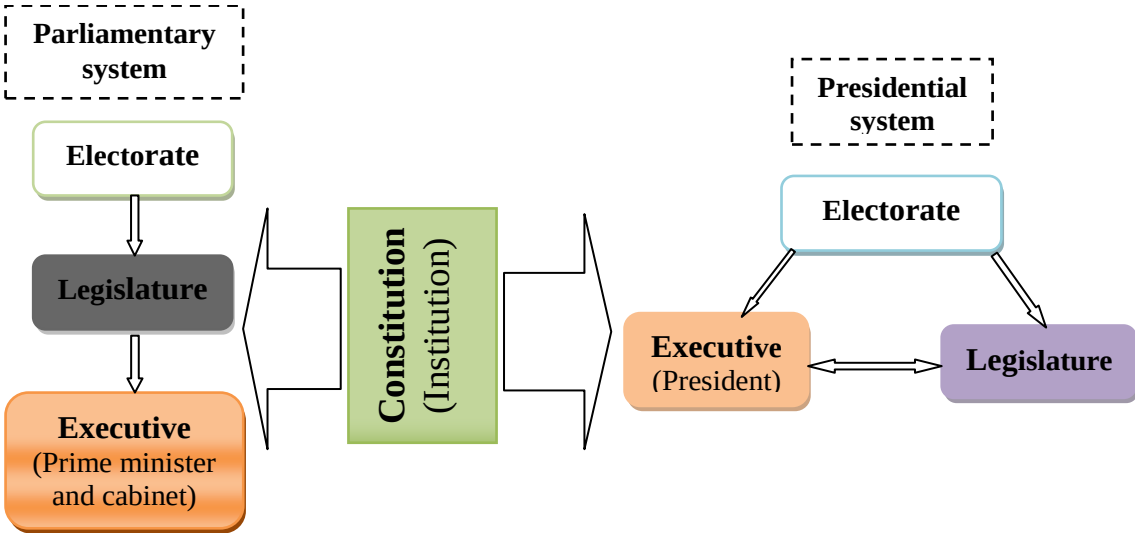
Unlike the centralised executive power in presidential systems, parliamentary systems distribute power among the symbolic president or monarchy as head of state and prime minister as head of government, on one side, while encouraging coalition formation prospects and power-sharing, where no party gets a clear majority vote in legislative elections (Ibid: 426; Mainwaring & Shugart 1997:450). Mainwaring and Shugart add that incumbents are more responsive and sensitive to concerns of coalition partners. The two regime structures are illustrated in figure 4.

Figure 4 hypothetically shows that parliamentary and presidential systems have hierarchical and transactional forms of executive-legislative relations respectively. In a transactional relationship, two or more agents derive their institutional authority independent of each other, through a popular vote. Both agents are directly and independently answerable to the electorate and neither can shorten the tenure of the other (Shugart 2008:344-47; Shugart & Haggard 2001:64).

In parliamentary systems, by contrast, the electorate delegates the legislature to select an executive (prime minister and cabinet) from among themselves. Thus, the executive is subordinate to and survives on sustained confidence of the legislature (Ibid). Whether the legislative decision-making processes will be volatile or cordial is contingent on executive-legislative relationship, itself dependent on the institutional design of regime type. Indeed, Edeltraud Roller argues in her critical review and empirical validation of indexes of institutions and veto players that under the concept of *separation of powers* in constitutional order debates since the 18th century, power distribution is a central act of institutions. She affirms that the number of actors and veto points are mainly ‘determined by *constitutional rules*, as they

establish the political "arenas" in which decisions must successively be addressed such as the legislature, the courts, and the electorate,' (Roller 2003:5).

Figure 4: The basic hierarchical and transactional forms of executive-legislative relations



Source: Matthew Shugart (2008: 347), *modified by author*

Hitherto, it is discernible that severely centralised power either due to excessive majoritarian or constitutional executive power, leads to limited responsiveness and arbitrary legislative decisions of the ruling elite, albeit it may be an efficient policy-flexible scenario. Introducing additional actors with institutionalised decision-making power reduces volatility and promotes governance (Hout 2005:25). In the last two decades, scholars have devised the veto player analytical tool for process-oriented research like legislative decision making (Ganghof 2003:3). The next section attempts to link the foregoing discussion on institutions and legislative decisions to veto players.

2.5 Actors in legislative decisions: Veto Player analysis

The veto player analysis provides an instructive model of conceptualising and identifying institutions and actors (across all regime types, party systems and parliamentary systems) whose agreement counts in order to effect change. It focuses on the constitutional structures and party

frameworks to identify and isolate individual or collective actors who have the formal veto power for policy decision change (Tsebelis 2000:441; Macintyre 2003:37). The pioneer work of George Tsebelis illustrates that every legislative decision outcome as a departure from status quo requires the agreement of a certain number of collective or individual decision-makers. Tsebelis adds that while institutions are often stable, the identity of actors and their preferences vary (Tsebelis 2002:17).

By definition, a Veto Player (VP) is an individual or collective actor with inalienable, discretionally and institutionalised power in the legislative process to defeat or impede proposed law by withholding formal approval (Tsebelis 2000:442; 2002:19,78; Macintyre 2003:38; Roller 2003:5; Stoiber 2006:5). The number of institutional VPs is set by the constitution i.e. parliamentary vs. presidential regime or unicameral vs. bicameral system (Roller 2003:6) and this number of VPs determines the degree of power dispersion discussed above. The legislature is a classic example of a collective VP given its composition as a fixed group of elected individuals who regularly make legislative decisions on majority vote basis. The president is an individual VP institutionally mandated to accede to or veto legislative bills (Macintyre 2003:39).

For instance, it requires the approval vote of the legislature as a collective player to enact a new law in the Greek unicameral multiparty parliamentarism. By contrast the USA's Congress, the Senate and President (two collective players and one individual) must agree on a new legislation in this bicameral two-party presidential system, for it to become law. Alternatively, qualified two-third majorities in Congress and Senate can overrule or disagree with the USA President (Tsebelis 2000:442; Macintyre 2003:40).

Britain offers a unique example in veto player analysis. Despite formally having two chambers, she has had one VP-the governing party (Macintyre 2003:39). However, after June 2010 post-elections formation of the Conservative-Liberal Democrats' governing coalition, two veto players emerged namely, the two government coalition partners in the Lower House, since policy change can be possible only with their mutual agreement. The House of Lords is not counted as a separate VP since it has the power to review and delay but not to veto legislation (Macintyre 2003:39). Neither is the prime minister a single VP by virtue of the hierarchical institutional

design discussed above. Thus, the prime minister cannot refuse consent to a bill that is passed by legislature. In relation to the dispersion of decision-making power, it is discernible that the number of VPs does not always positively correlate with number of veto points, but the more they are, the more the decision-making authority is dispersed. Immergut (1992:27) defines veto points as 'points of strategic uncertainty where decisions may be overturned.' The notion of veto-points is elaborated in the following sections.

Tsebelis notes that the potential for policy stability increases with increasing number of ideologically-opposed VPs and vice versa. Implying, it never becomes easier to make new decisions with each added VP as illustrated in figure 5. This connection offers some intriguing and predictable interpretations regarding policy decision. For instance, in a bicameral two-party presidential system like USA, it is envisaged that policy change is relatively difficult due to the relatively high number of VPs (three) and majority thresholds required to change or enact legislation, seconded by Britain with two VPs and Greece with one VP. However, in patrimonial systems and where the legislature is an appendage of the executive, the former is inconsequential as an independent VP since its veto power is countervailed or substituted by informal arrangements and incentives that secure executive control over the legislature (Macintyre 2003:42).

2.5.1 Differentiations of Veto Players

The section reviews the central contribution of the VP analysis. This is followed by an attempt to show the limitations of Tsebelis' work by referring to two modified contributions of theorising by Michael Stoiber (2006) and Wolfgang Merkel (2003). The last part reviews the VP measurement index proposed by Roller and the section concludes with a recap on variables chosen for this study.

Tsebelis' definition identifies two categories of what he considers the core of VPs: (a) *institutional* VPs, whose veto power is required by law or constitution for policy change (i.e. legislative chambers and president) and (b) *Partisan* VPs- which combine under themselves, non-constitutionally required partisan or semi-institutional veto players i.e. all political parties belonging to the governing coalition, powerful interest groups and party leaderships that control

their legislative groups (Tsebelis 2002:2; Merkel 2003:3-4). Aside from these two, *'Other'* VPs are identified as a separate group comprising those actors who are called '*case-by-case'* VPs including constitutional courts (Tsebelis 2000:465; Merkel 2003:3). In measuring the influence of independent variables on change or stability of the status quo, three primary attributes of VPs are used namely (a) the number of veto players, (b) the ideological congruence between them, and (c) internal cohesion of collective veto players (Tsebelis 2002:2; Merkel 2003:4).

While complimenting the work of Tsebelis and proposing his modification, Michael Stoiber argues that among VPs, others are endowed with agenda controlling- material and positional resources, while others do not. He therefore grades them according to the degree of their influence in the political game. Hence, he distinguishes them as *Effective* and *Restricted* VPs respectively (Stoiber 2006:1), adding that while the veto power of restricted VPs depends on (and therefore limited by) involvement by another VP, effective VPs have unlimited 'formative' veto power. The number of both *Effective* and or *Restricted* VPs regulate the degree of power 'concentration' and 'fragmentation,' (Ibid: 2). As also supported by Macintyre's reasoning, the attainment of highest power concentration of decision making occurs in a system with 'one and unconstrained agenda setter as an effective veto player, where the actor in power can do whatever he wants to do -at least until the next election,' (Ibid: 8).

He further gives another set of typology of *Permanent* and *Situational* VPs, in which the former are constitutionally prescribed, while the latter 'enter the system' at veto points via 'the political game,' including experts, parties and societal actors (Ibid). Stoiber observers that while voting power is critical in the conception of institutional veto players, it is not sufficient, adding that other equally influential veto players intervene the decision making processes entering at strategic points. Stoiber observes that external institutions may give veto power to international actors in national policy-specific decision making processes i.e. IMF or OECD, diplomats and constitutional courts. As *conditional* or *case-by-case* VPs, who may not have to vote on policy change decisions, the courts' constitutional mandate has the judicial blocking effect of a legislatively or politically concluded decision (Stoiber 2006:5).

Extending this logic and widening the concept of veto power that Stoiber aligns with, Kaiser (1997:436) provides a four-fold typology of veto-points. Veto points are defined 'institutional devices which may or may not be used by political actors, depending on their strategies,' (Kaiser 1997:436). Thus, the choice of the most optimal option for a veto point from this available range of alternatives depends also on intended decision outcomes by the political actors within varying reality contexts. Kaiser introduces four types of functional veto points available to different decision makes namely *consociational*, *delegatory*, *expert* and *legislatory* veto points (Ibid).

Consociational veto points are guaranteed by institutional arrangements that promote power sharing and coalition formation (for example parliamentary system and proportional electoral system) and explicitly intend to promote consensual decision making. These institutions encourage and create the emergence of actors with veto power, while discouraging unilateralism in decision-making. *Delegatory* veto points are compatible with institutions that compartimentalise legislative authority in agencies that act semi-autonomously such as federalism with federal legislatures at regional levels (Ibid). As a precondition, legislative decisions require the approval of actors at either federal or national level.

Expert veto points, Kaiser adds, are inherent in institutional designs that designate veto power to actors who are relatively isolated or insulated from elective positional power and with no political constituency mandates such as courts with judicial review powers and semi-autonomous central banks. *Legislatory* veto points are discernible in institutional designs that require supermajority thresholds for constitutional amendments. In addition, such institutions may also create bicameral parliaments- where the second chamber has legislative powers or provide for compulsory national referendas through which legislative decisions may be blocked (Ibid).

The foregoing conceptualisation of veto-points suggests that the number of veto points does not always coincide with the number of institutional veto players with elected official voting powers. Other veto players derive their veto power from external institutional devices and instruments that endow them with the blocking power over political decisions. Kaiser's insightful contribution on veto points extends the basis of exercising veto power beyond that proposed by Tsebelis. In Tsebelis' conception of institutional veto players, he confines the exercise of veto

power exclusive to those institutional actors endowed with voting power of their elective office Tsebelis 2000:441-442). The veto points approach by Kaiser enables the veto player analysis to account for actors that may influence the political decision outcomes through strategic veto points located outside the realm of voting. These may include influential actors that are non-legislators such as experts, courts, interest groups and international agencies.

2.5.2 Utilisation and limitations of the veto player analysis

While conceding the explanatory weaknesses of the VP analysis of Tsebelis, Wolfgang Merkel (2002:1) esteems the theoretical applicability of Tsebelis' work as demonstrated by the catalogue of scholars who have empirically tested the theory and mostly confirmed its predictions. Topics analysed using the VP theory include the extent of government expenditure in the German Federal Republic (Bawn 1999), the reduction of business and income tax in Western industrial countries (Hallerberg/Basinger 1998); legislation in Italy (Kreppel 1997); labor-laws in OECD countries (Tsebelis 1999), the economic policy of the Kohl government (1982-1998) (Zolhnhoefer 2001); structural changes in the household of OECD countries (Tsebelis/Chang 2002); social security reforms in the German Federal Republic (Siegel 2002); and constitutional policy and legislation in Eastern Asia (Croissant 2002).

However, despite this elaborate construction of analytical tool and the merits thereof, this study, like others, seeks to test the VP analysis for its explanatory power. First, is the implied or relative detachment of this theory from the influence of historical institutionalism-legacies of path dependency. The VP tool does not acknowledge how perceptions and preferences of collective and individual VPs is shaped and influenced by past choices and the uncertainty for change rather than maintaining status quo, and aversion to high transaction costs. Second is the failure of VP theory to distinctly account for the role of international actors- the International Monetary Fund, World Bank and donor governments.

Albeit they operate outside country statutes, it is undeniable that international agencies and donors form part of the context within which policy choices and changes are determined especially in African (Vanberg 2004:995). These actors exert enormous influence on policy choices and legislative decisions for poor countries through, for example, the Structural

Adjustment Programmes (SAPs), development or budget support and other instruments. This would make the theory applicable to developing countries, which are threatened by aid sanctions from external actors if certain policy proposals are not reversed or effected.

The third weakness is the imprecise naming of VPs especially those designated as 'other.' By giving examples that are exogenous to his definition of VP, Tsebelis acknowledges the need for a broader definition. Fourth and finally, is the apparent mix-up of partisan/semi-institutional and institutional VPs (combining governing coalition parties, party leaders) to which Merkel proposes a distinction between 'competitive' and 'cooperative' VPs (Merkel 2003:27).

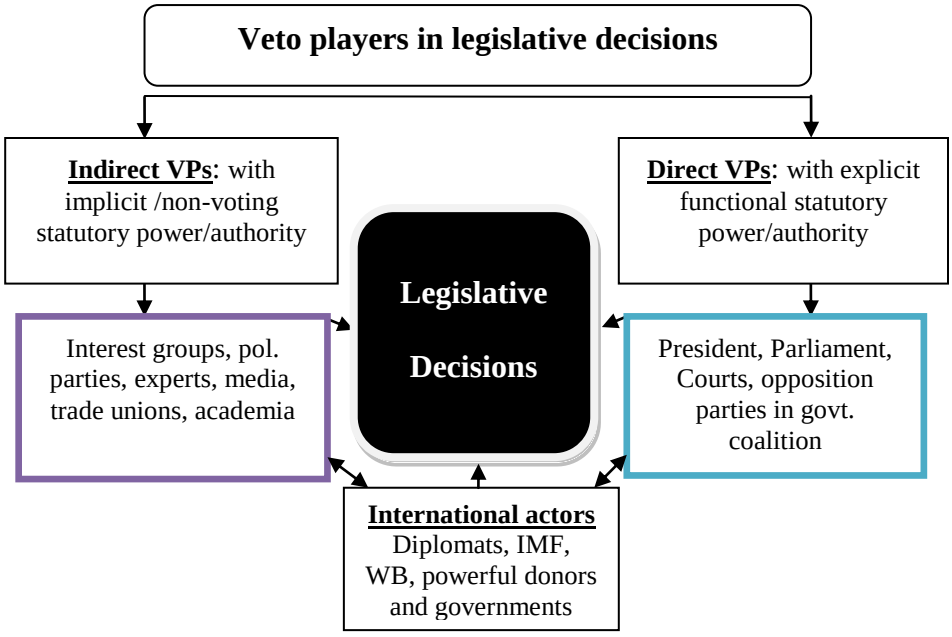
Owing to the ambiguities and complexity of VP typologies discussed above, this study proposes an inclusive 'label' for VPs that have explicit, implied and external institutional sources of influence to the legislative decision-making processes. This logic further seeks to locate local actors, including eminent civic leaders and civil society organisations (CSOs) and interest groups, who wield immense influence in the political economy and invariably sway decision choices of legislators.

Hence, the working model for veto players in this study follows the typology classification captured in figure 5 under which this study conceptualises VPs in three categories. First are *Direct* institutional VPs, whether conditional or permanent as long as they have *explicit statutory functional powers*. This includes but not exclusive to collective or individual VPs, with or without voting power such as the president, legislative parties, opposition parties in government coalition and constitutional courts.

The second broad category encompasses those *Indirect* VPs with *implicit/implied statutory powers*. They may be partisan or non-partisan actors, formal or informal, whose veto power is implicit in constitutions, parliamentary standing orders or any other laws. This category includes experts with delegatory power such state advisors or technocrats, civic or religious interest groups, media, academia, pressure groups and trade unions. They enter the legislative process through what Tsebelis calls the 'political game' (Tsebelis 2002:79) and Stoeber calls it the actual political reality (Stoeber 2006:6). Striking at specific situational veto points including those of

'expertise or delegation,' these actors can block, influence or dictate decision choices for VPs with voting power (Ibid).

Figure 5: Operationalising legislative actors



Source: Author

Third is the broad category that combines all international actors including diplomats, the IMF/WB and powerful governments who have resource and political control over poorer-donor dependent democracies, deriving their power from international and bilateral agreements. They influence specific local policy choices and constitutional amendments. The study empirical findings validate this abstract conceptualisation. Although the actors do not have the direct voting power, they influence political outcomes through diverse ways including threats to suspend aid, contact with legislators, and supporting local advocacy and lobbying groups.

2.6 Measurement of institutions and veto players

The search to deductively determine generally agreed empirical validation indexes that measure political institutions has come under intense consideration among scholars and critics of institutions and the veto player approach. Edeltraud Roller asserts that veto-player indexes are widely used in empirical analyses studying the effects of institutions (Roller 2003:1). These indexes were developed from a factor analysis of ten institutional characteristics.

The first dimension comprising: (a) the composition of cabinets, (b) executive-legislative relations, (c) party systems, (d) electoral systems, and (e) interest groups. The second dimension is defined by (a) centralised versus decentralised government, (b) legislatures, (c) constitutions, (d) judicial review and (e) central banks (Ibid:2). She however faults these indexes on the basis that they are not constructed via a theoretically plausible/deductical approach, hence doubts if they measure what they are intended to.

Roller posits that applicable institutional indexes in empirical studies on process effects of political institutions on decision outcomes should satisfy the following three-fold criteria: '(1) measure power distribution (2) institutional context, and (3) where authority is exercised, i.e. either the governmental system (formal or constitutional structure) or the relationship between governing and oppositions parties (informal or partisan structures),' (Roller 2003:6). Since the validity of Liphart's indexes remain on trial scientific consideration, this study seeks to satisfy Roller's proposed criteria through assessing prime constitutional characteristics of institutional power distribution by examining the regime type, legislative system, electoral system, party system and legislative-executive relationship as depicted in figure 5.

2.7 Application of institutionalism approaches and the veto player analysis in this study

To provide institutionally-grounded explanations to the behavior and legislative decision choices of political actors in this study, specific aspects of the three theoretical variants are applicable for various reasons. The empirical analysis identifies which institutions (formal and/or informal) were influential at different process stages of the three legislative decisions. The narrative then attempts to cluster the emerging institutions under rational choice, historical or sociological institutionalism. Simultaneously and guided by the criteria set in the conceptual model, the study delineates formal from informal institutions while attempting to show the nature of their relationship from the empirical results. This is followed by locating actors under each legislative decision from the perspective of institutional sources of their veto power as argued by the consulted literature. By using empirical evidence, the analysis transcends the limitation of theoretical abstraction. By identifying situations in this study that proximate critical junctures that were definitive for the change or retention of institutions, the study seeks to challenges or confirm the argument that historical institutionalism is applicable to the analyses of politics in

Africa (Erdmann, et al 2011:7). The veto point approach is instrumental in identifying direct and indirect actors who use their diverse positional powers to influence political outcomes from alternative entry points into the political game.

In addition, the 'path-dependency,' 'critical juncture' and 'social-cultural' institutionalism aspects assist in the process analysis of how the rational actor behaviour is also structured by historic institutional legacies and contingencies of patrimonialism, patron-clientelistic relations and social cultural aspects linked to the economy of affection. The empirical analysis on the extent to which existing formal institutions influence actor behaviour and decision choices assists in supporting or falsifying whether informal institutional norms accommodate, compliment, substitute, compete with formal institutions. Using the institutional measurement indicators of electoral system, legislative system and regime type, the study analysis seeks to confirm or reject propositions of the veto player analysis regarding institutional sources of veto power and how in practice, the institutional design structures the executive-legislative power relations. Inferences made from the empirical results assist to adopt, or modify, or reject the theoretical hypotheses.

2.8 Research hypotheses

The following tentative hypotheses are developed from the research aims and refined by the literature consulted in order to empirically respond to the question: *how do institutions and veto players shape legislative decision making processes under divided government?* The intention is to (a) assess how actor behaviour and choices in legislative decision making processes are influenced by the formal institutional design- electoral and party system, regime type and parliamentary system, (b) identify which informal institutions can also explain actor behaviour, and (c) assess the nature of relationship between formal and informal institutional incentives in conditioning actor behaviour and choices. Hence this study hypothesises that

(a) The more fragmented the decision-making power among veto players; the greater risk for paralysis in legislative decisions

(b) The higher the concentration of decision-making power in one or fewer veto players, the higher risk of arbitrary legislative decisions

Hypotheses (a) and (b) are mainly tested from comparing legislative decisions taken between 2005-2009 under divided government (extreme opposition majority parliament) versus those taken in the period 2009-2011 (extreme government majority parliament). In addition the study explores emerging patterns in how formal and informal institutions simultaneously influenced actors in legislative decisions across regimes between 1994 and 2011. This study further seeks to establish the cumulative effect of indirect veto players such as civil society organisations and donors especially under conditions of divided government and fragmented party system. These claims are further expounded in the chapter on research methodology and data interpretation regarding how empirical results support or falsify theoretical and hypothetical propositions.

In summary, the foregoing chapter has provided the theoretical framework for this study by analysing scholarly works and existing theoretical contributions to the key concepts: institutions and veto players relation to how they influence executive-legislative power relations. This is assessed from the perspective of institutional power concentration and fragmentation. In addition to analysing the three variants of institutionalism, the section has also reviewed theoretical approaches to informal institutions and further demonstrated how specific aspects of these institutional approaches are applied in this study.

The literature on characteristics and typology of informal institutions theoretically illustrate the contexts and how formal and informal institutions co-exist. For example, by complementing, accommodating, competing and substituting institutions each other. The section concludes by appraising the effects of political institutions on legislative decisions. The subsection on veto players is linked to the earlier part on institutions which asserts that the institutional design determines the number and authority of institutional VPs.

The veto player analysis is used in modified form in this study to address its explanatory limitations in identifying and classifying institutional and extra-institutional VPs in legislative decisions. Hence, this study proposes a working model that identifies VPs in three categories: those endowed with direct institutional power, those with indirect institutional powers and the international actors. The section also reviews measurement indicators for institutions and VPs. Informed by this literature.

Attempts to balance our understanding of democracy in Africa from the perspective of legislative studies need to focus on how power relations are structured by formal and informal institutional conditions. They should account for the identity of incentives and contexts within which actors are constrained and/or compelled, which are themselves located in local historical and political contexts. Hence, the next chapter provides an overview of social and geo-political contexts within which this study is located.

Chapter 3: Literature Review: Malawi Legislature, Procedures and Actors

3.0 Chapter preview, aim and scope

This part elaborates on historical, political and institutional foundations of the Malawi legislature through literature review. First, the section draws on broad perspectives of scholarly discourse that connects actors, institutions and legislative decisions from the pre and post independence Africa. This is an extension to and not repeating the preliminary overview in chapter one. Then the section presents the constitutional basis and core functions of the Malawi legislature. It also captures major legislative decisions for the period 1994-2011, with emphasis on those covered by this study. Further, this part amplifies the rationale for the chosen decisions. The section concludes with an overview of legislative rules of procedure and how they control legislative behaviour.

3.1 Legislatures in Africa: from post-independence to democratic constitutions

While most African countries with their nascent and fragile democracies hype of their almost five decades of post-colonial independence, Mauritius- the multiethnic Indian Ocean Island's 40 years of democracy, independence and sustained development are attributed to post-independence institutional design that promotes alternation and informal coalition compromises- a constitutional power dispersal of democratic governance (Brautigam 1999:138). This strikingly contrasts the dominant pattern in most African democracies which centralise power with extremely limited regime power alternation (Clark & Gardinier 1997; van de Walle 2003: 301). With such limited alternation and ardent retention of centralised executive power in the presidency, it is unsurprising that most Africa's democracies have experienced legislative instability and stunted democratic consolidation.

Joel Barkan observes that almost two decades after the reintroduction of multiparty democracy in Africa, and even after the composition of parliaments and formal rules changed, most parliaments still operate according to practices established prior to the 1990s'autocratic regimes in which the predominantly single-party legislatures existed as an appendage of the executive (2010:36). As in the past, for example, almost all cabinet members and their deputies are chosen

from among governing party legislators, some of whom combine their legislative and ministerial roles together with other senior party portfolios.

It is also discernible that legacies of institutional, policy and regime choices established at independence or installation of democracy (or both), have an enduring effect on and tend to structure many of the legislative choices, processes and outcomes of latter governments (Brautigam 1999:139; Acemoglu 2001:1387).

Yet the transition democratic reforms in Africa implied not only change of political systems and actors, but also a significant re-orientation of legislative decision making processes and formal rules (Morrow 2006:151; Barkan 2010:36;37) aligning them with the newly adopted constitutional order (Patel 2000:22). It is evident that among transitional democracies, diverse institutional reforms (largely driven by external pressure) resulted in varied legislative compositions and altered the executive-legislative power relations (Barkan 2010:37). In some cases, the compositions, mandates and modes of interactions among legislative actors have rapidly changed, while in others there has been obstinate retention of status quo (Ibid:36).

A prominent shift was apparent from decades of post-independence single party homogeneous legislatures, to excessive parliamentary parties in Africa's multiparty era as empirically affirmed by Nicolas van de Walle. Notably, of the spectacular 87 elections convened in sub Saharan Africa in the 1990s, 17 legislatures comprised 10 or more political parties, adding that the average number of parliamentary parties rose 'between the first and second elections from 6.3 to 6.5,' respectively (van de Walle 2003:302).

Indeed Posner and Young (2007) are optimistic that regular and competitive elections in post 1990s' Africa signify that formal institutions are gradually supplanting informal political norms. However, with reference from the various evaluations and assessments of governance, regimes and democracy in Africa discussed in the first chapter, and drawing on other impressions from the few comparative empirical studies on Africa's legislatures, the condition of parliaments in Africa is indeed characterised by what Barkan calls 'retreats' and 'progress' and can modestly be summarised as follows.

- The emerging party system is that of mainly dominant ruling parties (i.e. in South Africa, Namibia, Zimbabwe, Uganda, Tanzania, Nigeria, Botswana) with many fragmented and weak legislative opposition parties (van de Walle 2003).

- Opposition parties suffer from even greater mistrust and unpopularity compared to ruling parties in Ghana, Namibia, Nigeria, Cape Verde, Uganda and South Africa, casting doubts on prospects for regime alternation. This also manifests in declining legislative representation of most opposition parties in successive elections. (Gyima-Boadi 2007:26; Afrobarometer 2002, 2004).

- Governing parties thrive on exploiting incumbency privileges, state resources and monopolistic public media, while opposition parties are largely financed by founding presidents. Serious democratic and ideological deficits are evident in both governing and opposition parties. Electoral manifestos are issueless and similar while electoral support is ethnic-based (Gyima-Boadi 2007:27).

- Except in Mauritius, there is no culture of formal legislative coalitions on the continent. Nonetheless, there are cross-party informal coalitions over certain issues for reform notably in Uganda, Kenya, Zambia Nigeria, DRC, and RSA, resulting in retention of constitutional democratic provisions or progressive amendments (Barkan 2010:48; Kadima 2006).

- Most African parliaments portray a conflation of both the institutional, procedural and functional formality that mirror western legislatures and a prominent political culture and practice compatible with their socio-economic contexts (Salih 2005:247). Post-independence African political parties historically emerged in a non-democratic colonial order of apartheid, repressive context and extractive taxation. With no time for conscious institutional reforms, they become liberation movements, trade unions and native associations pressing for independence (IDEA 2007:30).

- Formal institutions seem to enhance the perpetuity of clientelistic politics on the continent through the dispensing of private goods where neo-patrimonialism and patronage are the entrenched defining elements of the 'Big Man' political culture and economy of affection in, for example, Zambia, Kenya, Ghana, Burkina Faso and DR Congo (Lindberg 2010:118-119; van de Walle 2003; Chabal & Daloz 1999; Gyima-Boadi 2007:28, 30).

It is within this regional context that this study focuses on the functioning of parliaments under divided governments. The next section highlights the rationale for the Malawi case study followed by a review of its post-independence and democratic legislative institutional features and functions.

3.2 Rationale for Malawi as a case study

First, unlike many sub-Saharan African countries in which either old ruling parties retained their majorities or new ruling parties secured majority seats in the transition elections, Malawi did not only change ruling parties in 1994, but also successively maintained minority/or divided governments across three general elections until 2004. The combined legislative seats of opposition parties were more than those of the ruling parties, making the former effectively control parliament, while the latter controlled the executive. This is what is being referred to as *divided government* in this study. Cox & McCubbins (2001:34-35) define a divided government as a situation that occurs under minority governments where the partisan control of the executive is different from that of the legislatures often resulting in gridlock. Invariably, the scenario created recurrent legislative instability, confrontations and paralysis of government legislative business.

However, there is no coherent and empirically-based analysis that has comprehensively explained how institutional design influenced executive-legislative power relations in Malawi. Intuition leads to the conclusion of obvious rent-seeking rational actor politics that regulate power balance under a divided government between 1994 and 2009. Yet, this logic is insufficient to explain continued legislative paralysis under majority government experienced in Malawi between 2009 and 2011.

A handful postgraduate level empirical studies on the Malawi parliament have addressed aspects such as legislative opposition politics and democratic consolidation (Kasinje 2011), political factors contributing to floor crossing (Maganga 2011), effects of high incumbency turn-over on representation (Alfazema 2009), political party influence in legislative representational gap (Liwimbi 2009) and the impact of institutions on intraparty democracy (Lembani 2005).

Towards reducing the existing knowledge gap, this study investigates the possible effect of institutional factors-formal and informal, by linking events of the period to actors and institutions that were both influential as well as involved. Thus, potentially Malawi offers uncommon lessons as this study covers legislative-executive relations under periods of both minority and majority governments.

Second, the democratic Malawi has witnessed remarkable and expanding trends of floor crossing flexibilities. It started with as few as 7 MPs in 1995/1996 crossing from their sponsoring political parties- mainly AFORD and MCP, to the government side- UDF or ad hoc pro-government legislative support, to as many as 70 MPs (from UDF and MCP) in 2006/2009. The most noteworthy episode being when the President Mutharika himself abandoned his 2004 sponsoring political party-UDF, to form his own new party in 2005 and survived a full tenure. The trend was similar following the fourth general elections of 2009. Between 2009 and 2011, almost all the 32 MPs elected on no party (independent) ticket, joined the President's party, DPP- even though it had already secured a comfortable legislative majority of 114 seats out of 193.

This study analyses incidences and incentives that influenced actor behaviour in the ensuing unprecedented events of cycles of parliamentary instability and power wrestling and the role of courts. This is done by locating institutional incentives, actor behavior patterns and implications for legislative decision-making. Thus, the Malawi case study also permits the identification of non-voting/non legislative but critical veto-players in legislative decisions. This is theoretically significant as it provides the empirical basis for challenging the explanatory power and premise of the veto player analysis, some its original assumptions and propositions.

Third, Malawi's economy is largely dependent on foreign assistance from donor nations and international agencies such as the World Bank and IMF (Patel et al 2007:3) in terms of support for democracy consolidation, development aid and budget support, accounting for nearly 40 % of Malawi's GDP. Since the end of the cold war, donor aid conditionalities on governance, policy choices and statutory reforms have permitted greater external pressure at critical political junctures for Malawi such as the transition to democracy and during the constitutional debates to remove presidential term limits (Resnick 2012:1-2). This analysis offers the missing dimension in accounting for the influence of external actors in legislative decisions of donor-dependent democracies.

Further, the executive-legislative wrestling in the opposition-controlled legislature peaked around the passing of the national budget in relation to prioritising the implementation of the floor crossing clause against those legislators deemed to have crossed the floor. The stand-off was sustained by extended court injunctions. This study further assists to identify the interests, composition and source of influence of actors that emerged around these issues. At the analytical level, this dimension further dares Tsebilis' veto player analysis explanation that stops at acknowledging veto players located outside national statutes or constitutions, situating courts as 'other,' and not constitutional veto players.

Finally, given the relatively constant number of veto players, the lack of clear ideological distance among the political actors and the weak internal cohesion within legislative political parties in Malawi, it is intriguing to test the strength and explanatory power of the veto player theory[2] in understanding preferences and incentives behind actor behaviour which manifested in political polarisation and delayed passing of national budgets between 1995/1996 and 2005/2006 and 2008/2009 in parliament. This includes analysing how the prevailing legislative-executive relations over these periods impacted and stalled the implementation of Section 65.

Further, findings in this study form an important basis against which to test the unconditional proposition by Tsebelis that agenda setting in presidential systems rests with the legislature

[2] Tsebelis (2002:2) asserts that policy stability or retention of status quo increases with increased number of veto players, increased ideological distance among actors and when actors are internally cohesive.

(Tsebelis 2002:3; Ganghof 2003:2). The Malawi case study offers unique insights into the composition and classification of veto players and the influence of institutions across legislative decisions. These insights contribute to the empirical knowledge of how parliaments work under minority government in emerging democracies, thereby assist in improving the conceptualisation of the veto player analysis.

3.3 The constitutional design in post-independence Malawi

From independence, the post-colonial executive sought to institutionally guarantee a compliant legislature in four ways. First, Section 2 of the 1966 Constitution stipulated that the nation and government of Malawi would be 'established upon the four cornerstones namely: Unity, Loyalty, Obedience and Discipline,' (Kanyongolo 2003:243). Second, until Malawi reverted to multiparty democracy in 1994 after 30 years of independence, members of the parliament were a homogenous group from the defacto single party-the MCP (Dulani 2004:8) under the aegis of the 1966 one party legislation. Although the 15 August 1961 first multiparty elections were contested by three political parties, both the political plurality and parliamentary system were short lived as losing parties disappeared.

The MCP majority government amended the 1966 constitution, effectively replacing parliamentary with a presidential system, and outlawed multiparty democracy, making Malawi an official one-party state (Lwanda 2004:50). By default or design, the institutionalisation of one-party and the four cornerstones entailed an installation of a regime culture and legacy of aversion and intolerance to criticism, opposition and dissent (Ibid:51).

The one party legislature had no veto power, as it passively endorsed and legitimised all executive proposals- induced by unity, loyalty, obedience and discipline. Under this architecture, there was one absolute veto-player, the executive life president, Kamuzu Banda. Third, the independence constitution also vested in Kamuzu Banda, the prerogative to dissolve parliament at will and call for early elections as if it was a parliamentary regime.

Fourth, in an apparent subversion to and negation of the single member constituency electoral law for legislators, the President had the power to handpick any person to become a member of

parliament without a constituency[3] (Kanyongolo, 2003:243; SAIIA 2004:7). This had the cumulative effect of vesting in one person-Kamuzu Banda, the power to determine the eligibility and number of legislators in the national assembly, thereby guaranteeing patronage. This institutional power concentration in the president was consistent in most post independence African states (Salih 2005:11), rendering legislatures subservient to and uncritical appendage of the executive. To what extent did the enduring legacies of the one party era influence the constitutional bargaining and features of the democratic Malawi?

3.4 The constitutional design in democratic Malawi

The 1966 hegemony of single party legislature and the 1971 constitutional life presidency of Dr Kamuzu Banda became obsolete by 1994 in the wake of international and local pro-democracy agitation against the despotic regime. The pro-democracy revolt of university students and the incisive Pastoral Letter of the Catholic Bishops in 1992 blended with sporadic efforts by political pressure groups markedly undermined the legitimacy of the one-party rule in Malawi.

Subsequent to the 1993 national referendum whose outcome favoured multiparty democracy, a transition multiparty constitution was readily adopted in 1994 and the first multiparty parliament was elected in 1994. MCP was dislodged and became the largest legislative opposition party. Notably, the single-member constituency representation and the FPTP electoral system were retained in the constitution under Section 80(2) and Section 96 of the Presidential and Parliamentary Elections (PPE) Act No.31 of 1993. Asymmetrical to the executive supremacy under the one party era, the 1994 constitution came with fundamentally new restrictive provisions on the presidency.

First, the infinite presidential tenure was outlawed and replaced with a maximum of two five-year term limits[4] to fortify against indefinite re-election of incumbents that was hitherto veiled under the life presidency (Morrow 2006:153; Dulani 2011:119). Second, the constitutional power to block legislation by parliament was restored through the reintroduction of plurality

[3] For example, 38 out of 125 MPs in 1981 were Dr Banda's nominees with no specific constituencies to represent.
[4] Malawi Constitution, Section 83(3)

democracy,[5] including the official recognition of a legislative opposition, thus guaranteeing more and heterogeneous legislative parties. Third, presidential powers to appoint MPs were also revoked. Fourth, presidential powers to dissolve parliament were entirely annulled with automatic dissolution date of the legislature expressly stated in the democratic constitution.[6]

Notwithstanding these changes in the formal rules, substantial formal and informal instruments remain at the disposal of the executive to retain effectual control over the legislature in Malawi. These include the presidential powers to prorogue parliament,[7] executive prerogative to appoint MPs and none MPs as ministers[8] through which to dispense or withhold particularistic patronage and executive control over parliament and the latter's operational budget.

Another institutional feature in the democratic Malawi is the Malawi Political Parties Registration and Regulation Act (1993) which is an enormously permissive party law. More than 35 political parties were registered by 2005 and between 10 and 15 political parties have participated in each of the four general elections held every five years since 1994. Unlike some observations that the FPTP system[9] does not adequately represent voters (SAIIA 2004:1; KAS 2006:15), legislative parties varied from three in 1994 and 1999 elections, to eight and six in the 2004 and 2009 general elections, respectively.[10] This trend resonates with those prevailing during the same period across Africa (van de Walle 2003:302).

Nixon Khembo notes that 'low formation costs' is an incentive for the creation of many political parties (2004:132). In the case of Malawi, he adds, that the simple majority electoral system encourages the formation and retention of many political parties even if such parties are non-effective because the prospects of ascendancy to the presidency for 'political entrepreneurs' are higher than where the electoral system requires qualified majority thresholds for a presidential winner (Ibid).

[5] Malawi Constitution, Section 40 (a-c)
[6] Malawi Constitution, Section 67(a)
[7] Malawi Constitution, Section 59(b)
[8] Malawi Constitution, Sections 92(1); 93(1); 94 (1)
[9] Malawi Constitution, Section 89 (2)
[10] Notably 8, 11, 15 and 10 political parties contested in the 1994, 1999, 2004 and 2009 elections respectively.

The Malawi constitution under sections 7, 8 and 9 distributes state power among the three branches of government: the executive, legislature and judiciary respectively. These provisions also establish limits and separation of powers and independence of each branch from the undue influence of the other. While the executive is mandated to originate all legislations and policies including implementation of all laws and policies, the legislature enacts laws. The judiciary is constitutionally tasked with the impartial interpretation, protection and enforcement of the Malawi Constitution and all other prescribed laws of Malawi.

In practice, these branches are semi-autonomous. Ideally, this ensures mutual transparency, accountability and effective checks and balances, which are essential tenets of democratic governance. The legislature checks on the executive through its constitutional powers to impeach the President if convicted of gross constitutional violations, in addition to exercising its legislative powers to approve or veto the national budget, or withhold confirmation of presidential appointees into senior public offices like diplomats, the Chief Justice and Police Inspector General (Kanyongolo 1998:7). Legislative proceedings are regulated by procedures in the Parliamentary Standing Orders within the institutional limits of the Constitution.[11]

Another important organ of the state that plays a key role in influencing the composition and number of members of parliament is the Malawi Electoral Commission (MEC). Established under Section 75 of the constitution, the MEC is mandated to review the number of constituencies and constituency boundaries at intervals not exceeding five years to ensure approximately an equal number of eligible voters based on population density, communication and geographical considerations.[12] However, it is notable from table 3 that constituency boundaries have not been reviewed as regularly as constitutionally stipulated. Notably, since independence in 1964 when parliament had 53 seats, and 1998 when parliamentary seats rose to 193, constituency boundaries were reviewed six times. For over 12 years since 1998, constituency boundaries, and by extension number of parliamentary seats, had not been revised.

[11] Malawi Constitution, Section 56(1).
[12] Malawi Constitution, Section 76 (2) (a) and (b).

Table 3: Demarcation of constituencies since 1964

Year	1964	1973	1983	1987	1992	1993	1998
Number of Constituencies	53	63	101	112	141	177	193

Source: MEC Strategic Plan (2012:30)

When constituency boundaries are determined by the MEC, its recommendations are submitted to Parliament for confirmation. While parliament may reject such recommendations 'parliament cannot alter both the number and boundaries of the constituencies,' (MEC 2012:30).

In terms of its geo-political and social context, Malawi is a unitary state of about 14.1 million inhabitants (NSO 2008). The democratic Malawi has retained the British plurality electoral system, for its presidential and legislative elections. The country has a 193-seater unicameral legislature. Legislators serve for five-year term [13] intervals (Dulani & van Donge 2005:202). Unlike the single party constitution in which the president had powers to dissolve parliament, the democratic constitution specifically states that parliament stands dissolved "on the 20th March in the fifth year after its election." Although the 1995 Constitution provided for a bicameral legislature, the enabling provision for the Senate (Section 64) was repealed by parliament through Bill No.4, 2000 passed in early 2001 (Patel 2008:25; EISA 2007:30).

This effectively removed Senate from the constitution, amidst strong and futile resistance for its retention by traditional leaders and civic rights campaigners (Patel 2008:25). Despite being endowed with rich soils, massive fresh water and inhabited by probably the world's most warm-hearted and peaceful people, Malawi is ranked among the world's 20 poorest nations on position 171 out of 187 according to the 2011 Human Development Index.[14] Malawi remains a highly donor-dependent subsistence economy (Lwanda 2006:527, Morrow 2006:152, Resnick 2012), trapped by recurrent power cuts, low life expectancy and acute foreign exchange shortages. What institutional functions does the Malawi parliament perform?

[13] Malawi Constitution, Sections 8; 48(1).
[14] See UNDP: http://hdrstats.undp.org/images/explanations/MWI.pdf

3.5 Institutional functions of the Malawi legislature

As with many other parliaments, the three institutional functions of the Malawi Parliament are oversight, legislation and representation (Patel & Tostensen 2007:80; Dulani & van Donge 2005:202; SAIIA 2004:22). Section 66 of the Constitution stipulates these specific legislative functions and powers including to:

(a) receive, debate and pass or reject Government Bills and Private Member's Bills,
(b) initiate Private Member's Bills and reject/accept them,
(c) debate and vote on motions related to other issues including indictment, impeachment and conviction of the President or Vice President, and
(d) debate and pass the national budget prior to government spending and collecting taxes.

Through its thirteen parliamentary committees,[15] the Malawi legislature also exercises its oversight function of summoning both public and private organisations for public hearing on their performance and accountability (Dulani & van Donge 2005:203; SAIIA 2004:24). Presiding over parliamentary proceedings is the Speaker, elected by a simple majority vote of legislators at the first sitting of a new legislature.[16] The Speaker has the power to enforce Parliamentary Standing Orders, decide who speaks in the legislature and also execute parliamentary or judicial decisions. The President exercises constitutional legislative powers by assenting or withholding assent to bills duly passed by Parliament.[17] Courts interpret, enforce and protect the integrity of the constitution[18] of Malawi. They control the legislature through judicial review in determining the legality of legislative actions and decisions based on the concept of constitutional supremacy.[19] This interplay of actors legitimises legislative decisions while re-enforcing horizontal accountability among the three branches of government.

[15] Four Portfolio Committees are established under Section 57(7) of the Constitution: Legal Affairs; Defence and Security; Budget and Finance and the Public Appointments. Extra eight Committees are established under Standing Order 155(1) including Public Accounts; Health and Population; Commerce, Industry and Tourism.
[16] Malawi Constitution , Section 53(1)
[17] Malawi Constitution, Section 73
[18] Section 12 (iii) of the Malawi Constitution says that 'The authority to exercise power of the 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.'
[19] Malawi Constitution, Sections 9 and 103(1)

The time for parliamentary meetings in Malawi is insufficient compared to neighbouring Zambia where parliament meets for between 31 and 41 weeks per year (Chinsinga 2009:135). Parliament in Malawi only meets for 10-12 weeks per year: 6 weeks during budget session in June/July and 4-6 weeks in October/November (SAIIA 2004:23). This leads to inadequate time for MPs to conduct prior research on bills, seek expert advice on budget documents and review committee reports that may include public submissions (Ibid). Implications include constant wavering of debate procedures, limited informed debate and often rushed decisions with relatively little scrutiny. For example, Danielle Resnick (2012:7) observes that in 2010, six bills were passed in two hours, affirming the extent of limited legislative debate.

While this study is not intended to review all the decisions made by the four parliaments (1994-2011), there are some decisions that received intensive and extended media publicity and broad public interest as shown in Table 4. These include the abolition of the Senate from the constitution in January 2001 after it was rejected in previous sitting of parliament (Meinhardt & Patel 2003:45), removal of MPs' recall provision (Ibid; Patel 2008:24), change of the national flag, Injunctions Bill, Press Trust Reconstruction, and the Marriage Act Amendment Bill.

As shown in table 4, and given that the Malawi constitution does not expressly provide for or officially recognise political coalitions, the amendment to Section 80 (5) (b) in 1995 was to indirectly cater for post-election coalition in the face of opposition dominated parliament. Thus, a constitutional provision was introduced allowing the president to appoint and fire a second vice president at will from a political party other than the state president's own party. It was under this new provision that President Muluzi later appointed Chakufwa Chihana of AFORD as Second Vice President of the Republic following their agreement to form a government coalition thereby weakening the dominant legislative opposition. Although the 1996 AFORD-UDF government coalition collapsed a year later, Muluzi exploited the same close in 2001 when he and Chihana renewed their coalition bonds in anticipation for the needed legislative majority ahead of the open/third term bill as discussed in detail in the next section.

Table 4: Major constitutional amendments between 1995 and 2001

Year	Constitutional amendment and objective
1995	Section 64 removed. This clause enabled voters to recall and replace their legislator if satisfactorily found serving other interests other than those of the electorate. At the time, both UDF and opposition MPs felt increasingly insecure with this provision.
1995	Section 80 (6) (c) amended. Limiting past criminal record of presidential candidates to seven years. Around this time, the UDF sought to constitutionally protect President Muluzi over his 1968 theft conviction.
1995	Section 80 (5) (b). The clause was amended to indirectly formalise post-election coalition formation by allowing the President to appoint and fire a Second Vice President at will from a party other than his own. This was later to allow President Muluzi appoint AFORD's Chakufwa Chihana to the position to weaken the legislative opposition.
2001	Section 68 removed. This clause provided for the second chamber of the legislature. Sensing potential for legislative blockage of yet to be introduced open/third term bill, the abolition of the Senate constituted the reduction of the number of legislative veto players.
2001	Section 65. Floor crossing clause was extended to include and ensnare opposition MPs aligned to the anti-open/third term pressure groups.
2001	Section 50. The quorum for passing constitutional amendments was reduced from two thirds to 50+1%. In view of the constant parliamentary boycotts by opposition MPs against predominantly pro-ruling party legislations, UDF which had more than 50% of legislative seats sought to guarantee that its business would be passed un-intercepted.

Source: Author's compilation on the basis of Acts of Parliament, various years.

An equally important constitutional change was the 2001 amendment to section 50 in which the quorum for the legislature to pass constitutional amendments was reduced from two thirds to 50+1%. This reduction for voting threshold was significant and politically vital at the time given that the president's ruling party had more than 50% seats in parliament but not two thirds. The logic was therefore to guarantee that government legislations would pass even in the face of opposition parliamentary boycotts. Following this amendment, the UDF led government passed the bill amending Section 65-the floor crossing clause and elaborated below. As the next section shows, three decisions are the focus of this study not only due to their occurrence in other countries but also the relatively greater intrigue, anxiety, debate, controversy and implications on actors and institutions in Malawi.

3.6 Rationale for the three legislative decisions

This study focuses on actors and institutions which influenced three legislative decisions between 1994 and 2011. These decisions are (a) open/third term, (b) floor crossing and (c) national budget. Since democratisation, a peculiar feature of the Malawi legislature that partly explains the context of institutional reforms and roles of actors has been the minority numerical

share of parliamentary seats by the governing party between 1994 and 2009. But to what extent can the legislative gridlocks be explained as an institutional effect of the plurality electoral system, which in Malawi as elsewhere, has successively given the presidency to individuals and political parties with minority votes?

As table 5 shows, the UDF secured 93 seats in 1999 and 85 seats in 1994, while the MCP got 56 and 66 seats respectively in 1994 and 1999. AFORD MPs went down to 29 in 1999 from 33 in 1994. Four candidates were elected as Independent MPs in 1999. However, the combined share of legislative seats favoured the opposition majority over those on the government side. The scenario reoccurred in 2004 thereby creating a *defacto* divided governments. While the president's party controlled the executive in both instances, the legislature was dominated by the opposition. This resulted in recurrent legislative instability and paralysis.

Table 5: Performance of Malawi political parties in four general elections

Political Party	1994	1999	2004	2009
United Democratic Front (UDF)	85 (48%)	93 (48%)	49 (25%)	17 (8.8%)
Malawi Congress Party (MCP)	56 (31.6%)	66 (32.6%)	58 (30%)	27 (14%)
Alliance for Democracy (AFORD)	36 (20%)	29 (15%)	6 (3%)	1 (0.5%)
National Democratic Alliance (NDA)	N/A	N/A	8 (4.1%)	N/A
Republican Party (RP)	N/A	N/A	15 (7.8%)	0
Peoples Progressive Movement (PPM)	N/A	N/A	8 (4.1%)	0
Movement for Genuine Democracy	N/A	N/A	3 (1.6%)	N/A
People's Transformation Party (PETRA)	N/A	N/A	1 (0.5%)	0
Democratic Progressive Party	N/A	N/A	N/A	114 (59%)
Independents	N/A	4 (2%)	39 (20%)	32 (16.6%)
Total Number of Electoral Parties	**8**	**11**	**15**	**6**
Total number of Seats	**177**	**192**	**192**	**193**

Source: Author compilation on the basis of Malawi Electoral Commission, various years,

N/A: Indicates non-existence- either the party/group was not registered or abolished

Invariably, the three successive minority governments were characterised by protracted legislative hostility and unilateralism between the government and opposition (Chinsinga 2009:126; Dulani & van Donge 2005:205). The legislature became the arena for innovative exchange of patronage incentives and rent-seeking between the two sides (Patel 2008:22).

Table 5 also indicates marginal losses of legislative seats in four elections for all political parties (except DPP) mainly due to the combination of weak party cohesion and limited intra-party democracy which have been both the course and result of party fragmentation and factionalism. Within this legislative context, major constitutional amendments that raised considerable public interest include parliamentary floor-crossing, removal of the senate and presidential tenure of office (Patel 2008: 24; EISA 2007:20). Given that floor crossing, presidential tenure and national budget are of interest for this study, the three are reviewed in turns in the next sections to locate their relevance within the historical and regional context. The discussions also attempt to identify interests that were at stake and which actors were identified with those interests. This is prefaced by a historical account to the notion of constitutional term limits.

3.7 Tracing the origins of constitutional term limits concept

Traceable historical evidence of the concept of term limits dates back to the ancient Greek civilisation of 7th century BC and the early Roman Republic. During this period, 'the citizens of the Greek state of Dreros-on-Crete passed a law that set strict limits on the number of times any individual could serve in the office of the state's chief magistrate, the *Kosmos*. The law, which was inscribed in stone, provided that an individual that had served as *Kosmos* for a period of ten years could not serve again in that position until at least a period of ten years had passed...,' (Dulani 2011:63).

Over the years, constitutional term limits have become an integral constitutional feature of many countries especially in all emergent democracies with marked cross-constitutional variations in the number of years that constitute a term, ranging from four year to seven year[20] complete terms. For example, the USA Constitution's 22nd Amendment requires the incumbent president to seek renewed presidential mandate after the first four years and that no individual president can extend his/her tenure beyond two successive four-year terms.

[20] For a fair global sample term on presidential constitutional term limits, see http://www.bbc.co.uk/search/news/?q=presidential%20term%20limits

Most presidential regimes however, have institutionalised a maximum of two 5-year presidential term limits for incumbency in an individual's life time.

Rarely found in parliamentary systems, term limits are a global regular constitutional attribute in presidential regimes fundamentally because the longevity of the tenure for the prime ministers or the chief executive in a parliamentary system is conditional upon the sustained confidence and support of the legislature. This is elaborated later under figure 6. Common to both ancient and modern states, the rationale for setting constitutional term limits has been to negate one individual's lifetime privileges of incumbency and encourage prospects of alternation among all eligible candidates in elective public office. This restricts potential for the emergence of self-serving monarchical class of political elites while ensuring citizen preferences remain protected, unsurpassed and not subservient to those of their elected agents.

3.7.1 The terrain for constitutional term limits in Africa

Attempts by incumbent presidents to seek unlimited re-election via the removal of constitutional limits should be informed by formal and informal institutional arrangements on one hand, and contextual factors, on the other. At institutional level, infinite presidential term limits in Africa were rarely ad hoc, but often legitimised by constitutional amendments. For example, Kamuzu Banda's life presidency was legitimated by the 1971 party convention decision of the MCP which led to the subsequent constitutional amendment enacted by the single party legislature. Within the formal actors who fulfilled these legal obligations were the informal-level unobservable rent-seeking motivations anchored in the patronage infrastructure of political entrepreneurs who were endowed with party-government influential links.

The perpetuity of the one-party political economy via limitless presidential tenure guaranteed personal and collective insulation from economic and political shocks and uncertainties. On the other hand, development aid acted as a reward for capitalist conformists like Malawi's founding president, which in the era of the East-West divide, donor nations gave aid to allied African governments regardless of the poor human rights and governance concerns over the recipient countries.

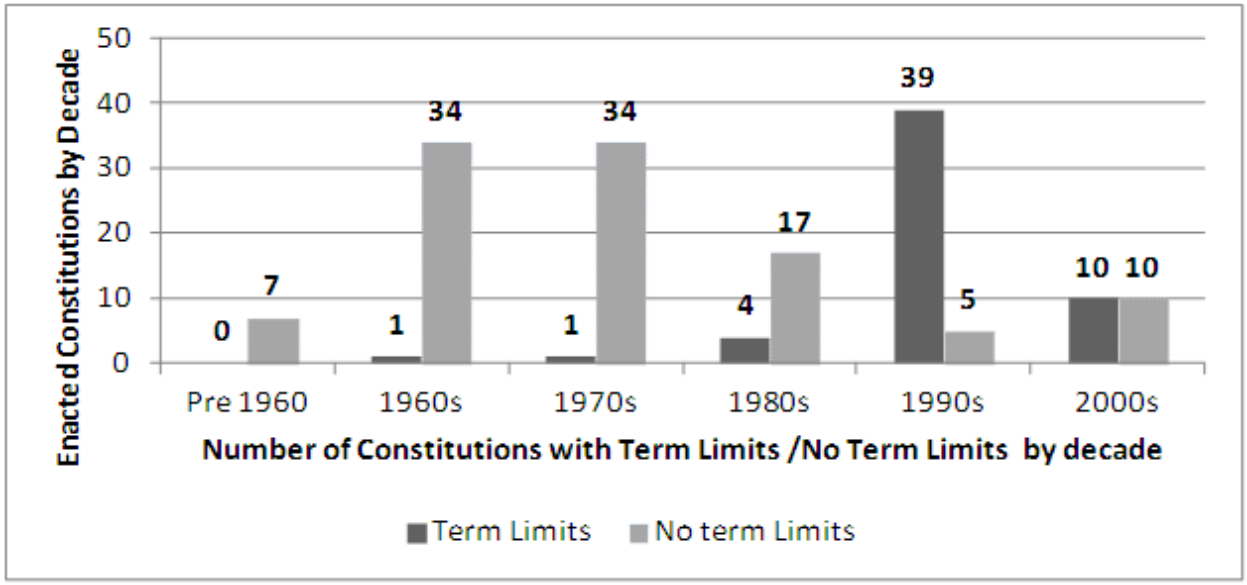
Thus, sustained and uncritical development aid legitimised the unlimited presidential tenure cogently with the supportive patronage politics in Malawi until the pro-democracy and good governance awakening of the 1990s.

Sean Morrow observes that even in the face of 1993/1994 institutional reforms and political transition, the fabric of patronage politics was hardly disturbed in Malawi (2006:153). Changing presidential term limits have been a significant test to the fragile democracy in Africa in two dimensions. First, the extents to which democracies emerging from one-party authoritarian regimes are willing to dispense with the legacy of life presidency in all its forms opting of democratic consolidation. Second, whether parliaments in Africa remain an appendage of the executive or they are successfully transforming into independent state organs capable of defending common good and defying the pressures and pleasures of insidious clientelism.

In his PhD thesis on *Personal rule and presidential term limits in Africa,* Dulani aptly illustrates the trend on the phenomenon from pre-independence constitutions as seen in figure 6. He observes that while only 6 out of 98 pre-1990 constitutions enacted in Africa contained presidential term limits, the trend dramatically changed with 49 out of 64 post-1990 constitutions specifying presidential term limits (2011:120). This sharply contrasts with most post-independence constitutions in Africa which favored single party personal rule with limitless president-for-life tenure for incumbents. Examples included Jean-Bédel Bokassa in Central African Republic, Francisco Nguema in Equatorial Guinea, Kwame Nkrumah in Ghana, Kamuzu Banda in Malawi, Gnassingbé Eyadéma in Togo, Idi Amin in Uganda, and Mobutu Sese Seko in Zaire (Posner & Young 2010:65). Figure 6 presents an institutional re-orientation in democratic Africa that expressly limits presidential office tenure. Nonetheless, threats to remove term limits have been equally significant as reflected by the decade 2000s.

It is apparent that term limits have been resisted by incumbents and their vanguards, resulting in many successful constitutional changes for unlimited presidential tenures compared to the few that retain term limits in Africa, Latin America, Asia and Eastern Europe (Posner & Young 2010:65).

Figure 6: Evolution of presidential term limits in Africa, 1960-2010



Source: Dulani 2011:120

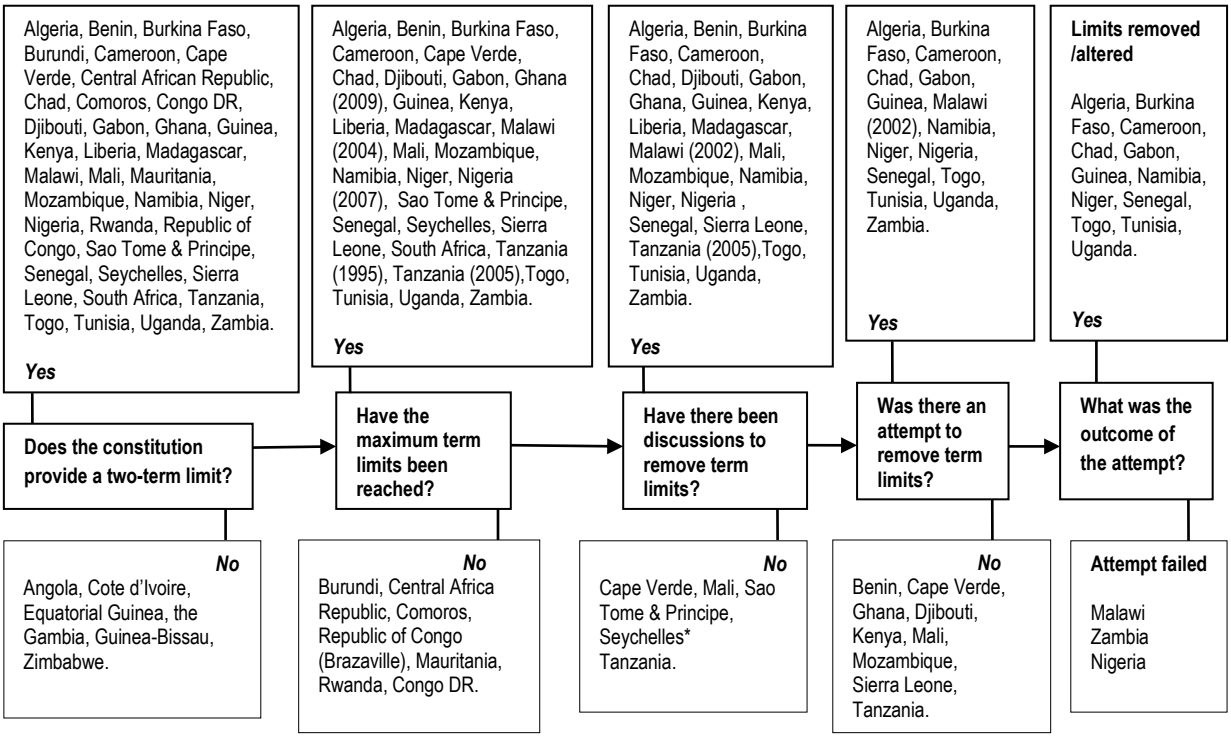
Front-line advocates of infinite term limits have been predominantly rent-seeking agents within the elaborate patronage infrastructure of political entrepreneurs with personalised political links. Even in cases where term limits were defended and retained, incumbents decided to defy them (as did president Afwerki of Eritrea, Nujoma of Namibia, Compaoré in Burkina Faso, Museveni in Uganda and Nazarbayev of Kazakhstan), or grafted their anointed successors (Akech 2011:99) hopeful to retain control on political levers as done by Russian president Putin, Rawlings in Ghana, Moi in Kenya, Muluzi in Malawi and Chiluba in Zambia. South Africa's president Thabo Mbeki unsuccessfully attempted to retain the control of the ANC (Posner & Young 2010:65).

Both Dulani (2011) as well as Posner and Young (2010) illustrate the trend on presidential term limits in Africa as seen in figure 7. Evidently, the survival of presidential term-limits in new democracies is threatened by countervailing forces reminiscent of single-party era. As figure 7 demonstrates, notwithstanding such inimical trends, there is inspiration set by the nine iconic African presidents[21] who prevailed over the pressure to seek a third term and bowed out when their second term expired (Diamond 2010:49). Of the remaining nine, three presidents: Bakili

[21] Posner & Young (2010:65) These included Kérékou of Benin, Antonio Monteiro of Cape Verde, Jerry Rawlings of Ghana, Daniel arap Moi of Kenya, Alpha Konaré of Mali, Joachim Chissano of Mozambique, Miguel Trovoada of Sao Tomé and Principe, France Alberto René of Seychelles and Benjamin Mkapa of Tanzania.

Muluzi in Malawi, Fredrick Chiluba in Zambia and Olusegun Obanjo in Nigeria attempted to eviscerate constitutional two-term limits. All were blocked by a combination of gallant resistance from civil society groups, parliaments and staunch opposition from within their ruling parties' prominent executive committee members, vice presidents and MPs (Akech 2011:99; Posner & Young 2010:66). Among those presidents who successfully circumvented constitutional term limits were Idriss Déby of Chad, Omar Bongo of Gabon, Lansa Conté of Guinea, Sam Nujoma of Namibia, Gnassingbé Eyadéma of Togo and Yoweri Museveni of Uganda (Diamond 2010:49; Posner & Young 2010:66). However, it is notable that in addition to the intended reduction of presidential incumbency tenure, term limits are encouraging regime alternation and the prospect of alternating partisan identities of incumbent presidents on the African continent. For example, of the fifteen presidential alternations that occurred between 1990 and 2009 following expiry of their constitutional tenures, six previous governing parties were succeeded by erstwhile opposition of parties in 'Benin (2006); Cape Verde (2001); Ghana (2001, 2009); Kenya (2002); and Sierra Leone (2007),' (Dulani 2011:138).

Figure 7: Presidential Term Limits in Africa: 1990-2009



* Seychelles has a three-term limit

Source: Adapted by author from Posner & Young (2010:64) and Dulani (2011:143)

Since compliance to term limits may serve as an indicator for democratic consolidation and respect for rule of law (Posner &Young 2010:68), this study investigates most influential formal and informal institutional incentives, contexts and actors in the debate and failure to remove term limits in Malawi. This includes examining whether Malawi's donor dependence imposed pressure on the eventual outcome of the debate.

3.7.2 Open/Third Term Bill in Malawi

Coincidental to the contentious floor-crossing debates taking place between 2000 and 2003, was a more critical agenda by the Muluzi administration to seek a constitutional amendment extending the president's tenure of office beyond the two-5 year term limits. As a historical legacy, this attempt can be linked to the life presidency constitutional order similar to the 1970 and 1971 scenario when the MCP changed its party constitution and the national constitution respectively to legitimise Kamuzu Banda's life-time or limitless tenure of office. Unlike the MCP single party legislature, the UDF minority government needed to dangle incumbency incentives to secure legislative support for its intended constitutional amendments.

With the amended Section 65[22] in place to punish dissent, the government required the guarantee of an informal and pliable opposition coalition to secure two thirds majority so long as the Speaker would not be moved to invoke Section 65 against those in support of the third term campaign. The parliamentary tensions escalated with new dynamics as the MCP experienced bitter presidential leadership struggles between Chakuamba and Tembo before and after the 1999 general elections (Kadima & Lembani 2006:123).

As Tembo campaigned for Muluzi in 1999 following his humiliating loss to Chakuamba for the MCP presidency (Khembo 2004:118), Muluzi and UDF legislators positioned themselves to exploit support from the Tembo-MCP faction. Tembo was successfully supported by a UDF motion elevating him to Leader of Opposition in Parliament (Meinhardt & Patel 2003:44) in exchange for support to the open term bid, while Chakuamba was expelled from parliament.

[22] The Section 65 amendment was not reversed despite the court ruling. In essence and to date, the extended part remains an illegitimate law.

Given the UDF's slim majority relative to the needed two thirds threshold, the UDF had in early 2001 also proposed a constitutional amendment to allow Muluzi to appoint 20 MPs (just as was allowed under the one party constitution). The bill was later shelved.

3.8 Floor- crossing: global and regional trends

The floor-crossing concept refers to a scenario in which a member of parliament switches allegiance and support from their party to another. Despite the existing empirical evidence of floor-crossing and vast evidence of how African regimes seek to regulate the practice among legislators, there is limited academic curiosity to explore the forms in which it manifests, how it is regulated and its links to Africa's political culture (Goeke & Hartmann 2011:264; Maganga 2011:28).

While most scholars have been biased towards understanding electoral systems, party financing and party registration and regulation laws, anti-defection laws are more peculiar and prevalent in emerging democracies but rare in established democracies. In the former, they are defended as 'temporary measures to consolidate a chaotic party system,' (Janda 2009:1; Goeke & Hartmann 2011:264) as is the case in most emerging African democracies. This can partly explain their limited discourse in established western democracies with their strong party systems.

Although floor-crossing is perceived as likely to occur where party system and party cohesion are weak, it is also occasioned by lack of intraparty democracy, the personality cult, ineffective regulatory institutions and lack of ideological distinction among and between political parties (Maganga 2011; Goeke & Hartmann 2011:264). Goeke and Hartmann further argue that in 99.9% of floor-crossing cases, MPs move from the opposition to governing parties, mostly lured by incumbency incentives of patronage and clientelism (2011:265).

Floor-crossing rules are therefore legislated to secure the stability of legislative parties. Before turning to Malawi, the next section draws parallels on the concept of floor crossing from other comparable country frameworks as an integral aspect of their national constitutions. These examples include: Ghana, India, Namibia, Nepal, Nigeria, Singapore, South Africa, Zambia and Brazil, despite these countries' diverse geo-political trajectories.

Article 97(1) (g-h) of the Ghanaian constitution states that a legislator will lose their parliamentary seat 'if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or if he was elected a member of Parliament as an independent candidate and joins a political party.' However, article 97(2) elaborates that notwithstanding paragraph 97(1) (g-h) 'a merger of parties at the national level sanctioned by the parties' Constitutions or membership of a coalition government of which his original party forms part, shall not affect the status of any member of Parliament.' [23]

Kenneth Janda cites Malhotra (2005)[24] in showing that India, which 'enacted different variants of anti-defection laws in 1973, 1985, and 2003,' has an anti-defection law that says an MP can lose their parliamentary seat for either voluntarily resigning from their electoral party or merely 'for voting (or abstaining from voting) in the House contrary to any direction issued by the political party to which he belongs,' (Janda 2009:2). This law expressly makes it illegal for an MP to vote against or abstain from voting on agreed party position. Article 48 (1) (b) of the Namibian constitution states that an MP's seat falls vacant 'if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such a political party.'[25] Similarly, article 49 (f) of the Constitution of Nepal states that an MP's seat falls vacant 'if the party of which he was a member when elected provides notification in the manner set forth by law that he has abandoned the party.'

In Nigeria, article 68(1)(g) of the country's constitution stipulates that an MP loses their seat for 'being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected.' On the other hand, article 46 (2)(b) of the constitution of Singapore, prescribes that an

[23] Constitution of the Republic of Ghana, 1996

[24] Malhotra was the Secretary General of the Indian Parliaments who extensively reviewed 'the established laws, rules, practices and procedures and conventions,' for 40 Commonwealth countries. His study revealed that laws in 23 Commonwealth countries expelled MPs for switching party affiliation, while 7 of the 23 countries also made it illegal even to voting against one's party

[25] Constitution of the Republic of Namibia, as amended in 2010

MP loses their seat 'if he ceases to be a member of, or is expelled or resigns from, the political party for which he stood in the election.'[26]

South Africa, with its Proportional Representation (PR) electoral law, offers both an intriguing and unique exception where floor crossing is constitutionally permitted within a specific time frame. In June 2002, South Africa made constitutional amendments allowing representatives in the local, provincial and national assemblies to change party allegiance without losing their legislative seats (Kotzè 2007:72). Unlike Section 43(b) of the 1993 interim constitution which markedly stated that 'membership would be lost automatically in instances of floor crossing' (Ibid:73; Goeke & Hartmann 2011:270), Section 47(3) (c) of the 1996 constitution the floor crossing clause states that a member of the National Assembly ceases to be an MP when she/he 'ceases to be a member of the party that nominated that person as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A.'[27]

Following the determination by the South African Constitutional Court in October 2002 which upheld the legality of floor crossing, and the subsequent repealing of the Loss or Retention of Membership Act in March 2003, floor crossing is permitted in the period 1-15 September in the 2nd year and 4th year following an election,' (Kotzè 2007: 75). Finally, in Zambia, article 71(2) (c) stipulates that an elected legislator is deemed to have crossed the floor '…if he becomes a member of a political party other than the party of which he was an authorised candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a political party or having been a member of a political party, he becomes independent.' [28]

Table 6 provides 41 countries that have laws against parliamentary party defections. As classified using Norris' (2005) types of democracy, but based on the 2007 Freedom House data (Janda, 2009:4). The table shows that 19 out of 58 (33%) of the countries classified by Freedom House as semi- democracies have anti-defection laws compared to 13 out of 54 (24%) of newer democracies and 5 out of 36 (13.88%) older democracies with anti-defection clauses. Only 4 out

[26] Constitution of the Republic of Singapore, 1965 as amended in 2010
[27] Constitution of South Africa, 1996
[28] Constitution of Zambia, 1991 as amended to 1996

of 45 (9%) non democratic countries have floor crossing laws while all established western democracies are absent from the list.

Nevertheless, as argued by one Canadian anti-floor crossing liberal blogger- Jeff Jedras (2011),[29] denying floor crossing further tightens the 'suffocating yoke of party discipline,' adding that an MP need not risk their job for contradicting their party position especially under the FPTP electoral law where the voters' choice is for an individual, more than the party. It is apparent from the foregoing examples that floor crossing was generally conceived and institutionalised in the above countries to minimise or constrain discretionally movement of legislators from and (bind them to) the political parties on whose ticket they were elected into parliament. As a consequence of voluntary non-compliance to this clause, all such legislators lose their seats.

Table 6: Nations with laws against parliamentary party defections

Type of democracy, 2007	Number of Nations	Those with floor-crossing laws	Nations with floor-crossing laws
Older democracies	36	5 (14%)	India, Israel, Portugal, Trinidad & Tobago
Newer democracies	54	13 (24 %)	Belize, Bulgaria, Ghana, Guyana, Hungary, Lesotho, Mexico, Namibia, Romania, Samoa, Senegal, Suriname, Ukraine
Semi-democracies	58	19 (33 %)	Armenia, Bangladesh, Fiji, Gabon, Kenya, Macedonia, Malawi, Uganda, Mozambique, Nepal, Niger, Nigeria, Papua New Guinea, Seychelles, Tanzania, Sierra Leone, Singapore, Sri Lanka, Zambia
Non democratic	45	4 (9%)	Congo (Democratic Republic), Pakistan, Thailand, Zimbabwe
TOTAL	**193**	**41**	

Source: Kenneth Janda, 2009: 4, compiled by author

Along the same logic, framers of the Malawi constitution envisaged similar scenarios and included the floor-crossing clause. In their cogent analysis of floor crossing in Africa, Goeke & Hartmann classify anti-floor crossing bans under five categories: (a) on becoming a member of another political party; (b) for voluntarily resigning from one's electoral party; (c) on voluntary

[29] National Post, 21.06.2011*: In defence of floor-crossing MPs*
http://fullcomment.nationalpost.com/2011/06/21/jeff-jedras-in-defence-of-floor-crossing-mps/

resignation or following expulsion from the party; (d) voting against the party; and (e) on joining any association or party whose objectives or activities are political in nature (2011: 271-272). Malawi falls under both categories (a) and (e).

Notwithstanding deficits in democratic leadership and management of political parties, the floor crossing clause- (Section 65) of the Malawi Constitution as amended in 2001, empowers the Speaker to penalise perpetrators by declaring vacant, the seat of any member of the National Assembly, who voluntarily decides to resign from their electoral party, and 'joins another political party represented in the National Assembly, or has joined any other political party, or association, or organisation whose objectives or activities are political in nature.' It is apparent that the amended clause in the Malawi case extends to the realm where an MP loses their seat for being linked to associations and organisations with politically-oriented objectives and activities.

Despite being highly contentious, party defections are inevitable in Malawi and can largely be attributed to self-reinforcing formal and informal institutional arrangements in two ways. First, under the FPTP system, the party in of the state president may have minority legislative seats and unable to meet the statutory threshold of two thirds to enact constitutional amendments and pass other administrative and oversight bills. Second, given the excessive power in the presidency and the legacy of patronage, the scenario provides recipe for lucrative incentives, rewards and prospects for cabinet appointment, targeted constituency development projects and dispensing of other forms of state incumbency largesse. Floor crossing is perpetuated as governing parties lure opposition MPs with these and other indirect patronage inducements in exchange for support to government legislative bills, public appointments and policy decisions (Patel 2008:27).

To what extent is floor crossing significant in Malawi? Patel notes that about half of all the 25 by-elections held between 1994 and 1999 were as a consequent to floor crossing (Ibid). While more legislators crossed the floor between 1999 and 2004 over the open/third term debate, the most registered defections exceeding 65 MPs were after 2005 occasioned by the State President resigning from his sponsoring UDF party to form his own party-DPP (Ibid; Goeke & Hartmann 2011: 275; Resnick 2012: 8).

Informed by institutional theory of clientelism, patronage and patrimonialism, this study empirically explores the extent to which flooring in Malawi can be attributed to calculative and tactful exploitation of institutional weaknesses in the party law, electoral law and national constitution by actors.

On the other hand, other scholars observe that the amended Section 65 was purportedly introduced and passed to target and sanction dissenting voices of UDF and AFORD MPs who opposed Muluzi's third term bid (EISA 2005:21; Dulani & van Donge 2005:214; Chinsinga 2009:123). The proposal attracted sharp opposition and condemnation from these 'rebels' who actively networked and collaborated with civil society groups through the Forum for the Defence of the Constitution (FDC) and the National Democratic Alliance (NDA) pressure group.

Despite widespread public condemnation against the content of the proposed extension to Section 65, parliament passed the floor crossing amendment bill in June 2001 by 131 MPs. These were all UDF MPs supported by those that were loyal to the John Tembo faction[30] of the MCP. Soon thereafter, seats of all legislators deemed and petitioned to have crossed the floor[31] were declared vacant and incumbents were expelled from parliament in November 2001 (Dulani & van Donge 2005: 214). While this was done to ensure limited resistance to and pave way for the third term bill, a judicial interpretation on the constitutionality of the amended Section 65 and its enforcement were successfully challenged in court and all affected MPs were re-instated (Ibid). This study empirically seeks to show critical actors (direct and indirect) who emerged across the recurrent episodes of floor-crossing, their incentive and veto points.

3.9 National Budget and Section 65 deadlock

The hallmark of Malawi's 17 years of democracy have been the (a) lack of an absolute parliamentary majority by any single party, (b) recurrent legislative squabbles and paralysis occasioned by defections, and (c) the consequent inaction on critical legislative business. The resignation of Mutharika and many other MPs from UDF to form the DPP and the eventual

[30] See Kadima & Lembani 2006 for detailed account of political party splits and coalitions in and out of parliament.
[31] The initial seven victims of the amended Section 65 were Brown Mpinganjira, his wife Lizzie Mpinganjira, James Makhumula, Peter Tchupa, Gresham Naura, Gwanda Chakuamba and Hetherwick Ntaba.

relegation of UDF into an unprecedented opposition fermented fierce bitterness between the executive and the legislature (Patel 2008: 27; Goeke & Hartmann 2011: 275; Resnick 2012: 8).

The quest to remain in government at all costs on the part of Mutharika and his DPP exacerbated several defections from the opposition UDF and MCP whose numerical strength in the legislature had been weakened (Ibid). Incidentally, the period between 2005 and 2009 saw the UDF and MCP acting and being perceived as a homogenous opposition with one common 'poaching' enemy-the DPP minority government. This was notable in many respects and decisions.

For one, they used their combined parliamentary majority (UDF and MCP) to reject several presidential appointees to key public offices, plotted to impeach the President Mutharika and predicated the passing of the national budget on the simultaneous discharge of Section 65 petitions (Chinsinga 2009:127). Specifically, the opposition parties petitioned the Speaker to declare over 80 parliamentary seats vacant and call for by elections to replace MPs who hitherto had either declared having defected to the government or had done so by association with or support to the government. While the neutrality of the Speaker was questioned between 1999 and 2004 for the selective application of Section 65 as being mostly invoked on anti-government MPs (EISA 2007:34), the opposite was the twist of events in the period 2004-2009.

In 2004 apparently, the Speaker was Rodwell Munyenyembe from AFORD and his two deputies were both from the MCP. Even after Munyenyembe died in mid 2005, the next Speaker- Louis Chimango who was from MCP, and was deputised by Esther Mcheka-Chilenje Nkhoma from the opposition RP, was rated sympathetic to the government for not speedily acting on the those pro-government opposition MPs. Predictably, the opposition refused to pass the national budget unless in tandem with the implementation of Section 65.

The 15th July 2007 landmark Supreme Court ruling which upheld the constitutional validity of Section 65 was one step away from dislodging the DPP government, to the determined opposition who were on guard to wrestle power from Mutharika and the DPP. After all, the Speaker was now constitutionally armed and cleared to declare the seats of the concerned MPs

vacant. This would pave way for impeachment proceedings against the president and an opposition-led interim government pending fresh elections. However, the DPP and Mutharika were saved by a court ruling which faulted the impeachment process on grounds that there were not yet any impeachment procedures under which its motion could be legitimised.

Noted from the foregoing account, the courts remained the battle ground as the government and its supportive MPs instantly obtained court injunctions restraining the Speaker from declaring their seats vacant (Chinsinga 2009:130).[32] The injunction obtained by Zomba Central MP-Yunus Mussa on behalf of 41 MPs, for example, effectively meant that the Speaker could only invoke Section 65 on the petitioned MPs if the injunctions were vacated or the judicial review was concluded. Faced with increasingly wide spread criticism, the opposition relaxed their demands, reluctantly paving way for the nation budget to be passed by parliament while the matter remained unresolved until parliament was dissolved on 20th March for the May 2009 general elections.

Hitherto, the opposition block reluctantly conceded their loss in this political battle while the government sighed for relief. As Chinsinga succinctly puts it "for two consecutive fiscal years (2007/2008 and 2008/2009) the budget making process was almost completely paralysed because the opposition MPs held onto the budget as the sole bargaining chip to force the government to allow the speaker to invoke Section 65 on the legislators deemed to have crossed the floor," (2009:130). Once more, the majority opposition and the minority government MPs acted as two separate veto players. But what is the process of decision making in Malawi?

3.10 Rules of procedure and the legislative decision-making process in Malawi

The legislative decision making process is summarised in figure 8. Before interpreting the legislative decision making process as illustrated in the figure, three initial explanations on scope of applicability, essence and exceptions of the figure are essential now. First, the figure applies specifically to the decision-making procedure for the *legislative* or *law-making* function of the legislature in Malawi. Other functions-*oversight* and *representation*, are not necessarily executed through this procedure.

[32] Also see *Section 65 Saga*, Nation Newspaper, 9 April 2009.

For example, the confirmation of appointees for senior public officers such as diplomats, court judges and police inspector general, as an oversight function of the legislature, does not follow this procedure. Second, the figure excludes the detailed intra-process procedural aspects such as moving a motion, first, second and third reading of the bill, in order to ease clarity and reduce complexity of the process, while retaining essence. It seeks to conceptually portray endogenous stages of critical uncertainty at which a proposed legislation can be reversed, rejected or withdrawn using empirical results.

Third, the figure identifies direct and indirect actors that are integral to the law-making decision process that deliberately excludes other intervening actors such as the judiciary and political party caucuses. Essentially, figure 8 illustrates five stages in sequential order of the law-making process namely: bill origination (1) (from five main sources: (a) international agencies/donors, (b) government ministry or department, (c) civil society organisations, (d) members of parliament and (e) the Malawi Law Commission); scrutiny of proposed bills (2a) and legislative agenda prioritisation (2b); creation of Order Paper (3); plenary debate and voting (4); and bill assent or veto (5a) and bill referral for review (5b). Before discussing these stages, it is important to clarify on procedural rules that govern the legislative decision making - Parliamentary Standing Orders.

3.10.1 Parliamentary Standing Orders

Parliamentary Standing Orders (PSOs), also known as Rules of Procedure, are the primary and elaborate 'rules of the game' in legislative business, subject to the constitution, which facilitate orderly functioning of all parliaments by fulfilling critical purposes (Malhotra 2003). First, PSOs stipulate how the speaker of parliament and deputies are elected and or removed, including their roles and how such tasks are done. PSOs also prescribe attendance or majority thresholds by which legislative decisions can be taken. Third, they elaborate the basis for establishing portfolio committees-a group of parliamentarians appointed by their political party leaders (based on the proportionality of the party's numerical representation) to perform specific assignments.

Parliamentary Portfolio or Standing Committees are named variedly across parliaments but often correspond to ministries, departments or policy areas. For example, Health, Education, Budget

and Finance Committees, which may opt to create Subcommittees or Special Committees (Yamamoto 2007: 15-16). Most parliamentary business is accomplished in these committees which have explicit and vast powers including to hold public hearings, receive petitions from interest groups on specific matters and to summon public officers to appear before an oversight inquiry of a legislative committee to give evidence under oath (Inter-Parliamentary Union 2010:4,5). In principle, committees provide the needed explanatory detail on a matter, which when reported to the full parliament, assists the latter to make informed deliberations and voting choice decisions (Yamamoto 2007: 16).

Members of parliament can be assigned to more than one portfolio committee at a time whose tenure is determined by the PSOs as well. As devices of order during proceedings in plenary, if a member does not agree or is offended with an intervention or expression made by another, they can interject on a 'point-of-order,' calling the other party as being 'out-of-order,' having contravened a specific provision of the PSOs. Thus PSOs are a step-by-step guide that regulates the actions, priorities and orderliness of parliament. As a guide and unlike the national constitution, some aspects of the PSOs in Malawi can, by a resolution of the legislature be waived, suspended or revoked. For example, time limits for debates, required attendance thresholds, contributions and speeches on an issue, and parliamentary question time (Malawi PSOs 2003: 2(1)).

3.10.2 The legislative decision-making process

Figure 8 captures roles and actors deemed most critical to the bill procedure.[33] The bill origination stage (1) comprises five possible sources of legislation. The Malawi Law Commission (MLC) periodically reviews existing laws and conducts stakeholder workshops to solicit public and expert opinion on how specific laws can be improved and from this they draft a bill showing how the proposed new law will be. The draft law is presented to the Ministry of Justice (MoJ) as a draft *Public* or *Government Bill.* As practice has showed, the MoJ reserves the right to retain or rework (extensively or minimally) on all draft laws presented to them.

[33] The bill procedure is laid out in Part XXXVIII of the Malawi Parliament Standing Orders dated 22 May 2003.

Even at this first stage, the MoJ exercises veto power to effectively change the content and essence of any draft law.[34] Apart from the MLC, a government ministry or department can also originate legislation and submit to the MoJ for drafting as a draft *Public/Government Bill*. Similarly, a government ministry or department can receive and adopt (as its own) proposed legislation from CSOs[35] or from international agencies (i.e. World Bank and IMF) and or donors[36].

Another source is an MP, who can also originate what is called a *Private Members Bill*[37] as was the case with the open/third terms bill. As such, the bill is introduced in the legislature as a *Private Members Bill*. The technical drafting of all government bills and checking for consistency of pre-drafted bills is vested in the MoJ. The MLC and CSOs uses own lawyers to draft proposed or new legislations. Notwithstanding the originating source and format in which proposed legislation is received, the MoJ is a critical actor with its legal power to partially or wholly modify all draft legislations. During the second stage (2a), the cabinet committee on parliament receives and considers proposed legislation as received from the MoJ.

Depending on the originating source of the bill, the Cabinet Committee on Parliament (CCP) can work in collaboration with a particular special cabinet committee. For example, the CCP can work with the special cabinet committee on national security if the proposed legislation relates to national security or home affairs. Recommendations of the CCP are presented to the next level (stage 2b) comprising all cabinet ministers, and is chaired by the president for collective responsibility and prioritisation of government agenda for parliament.

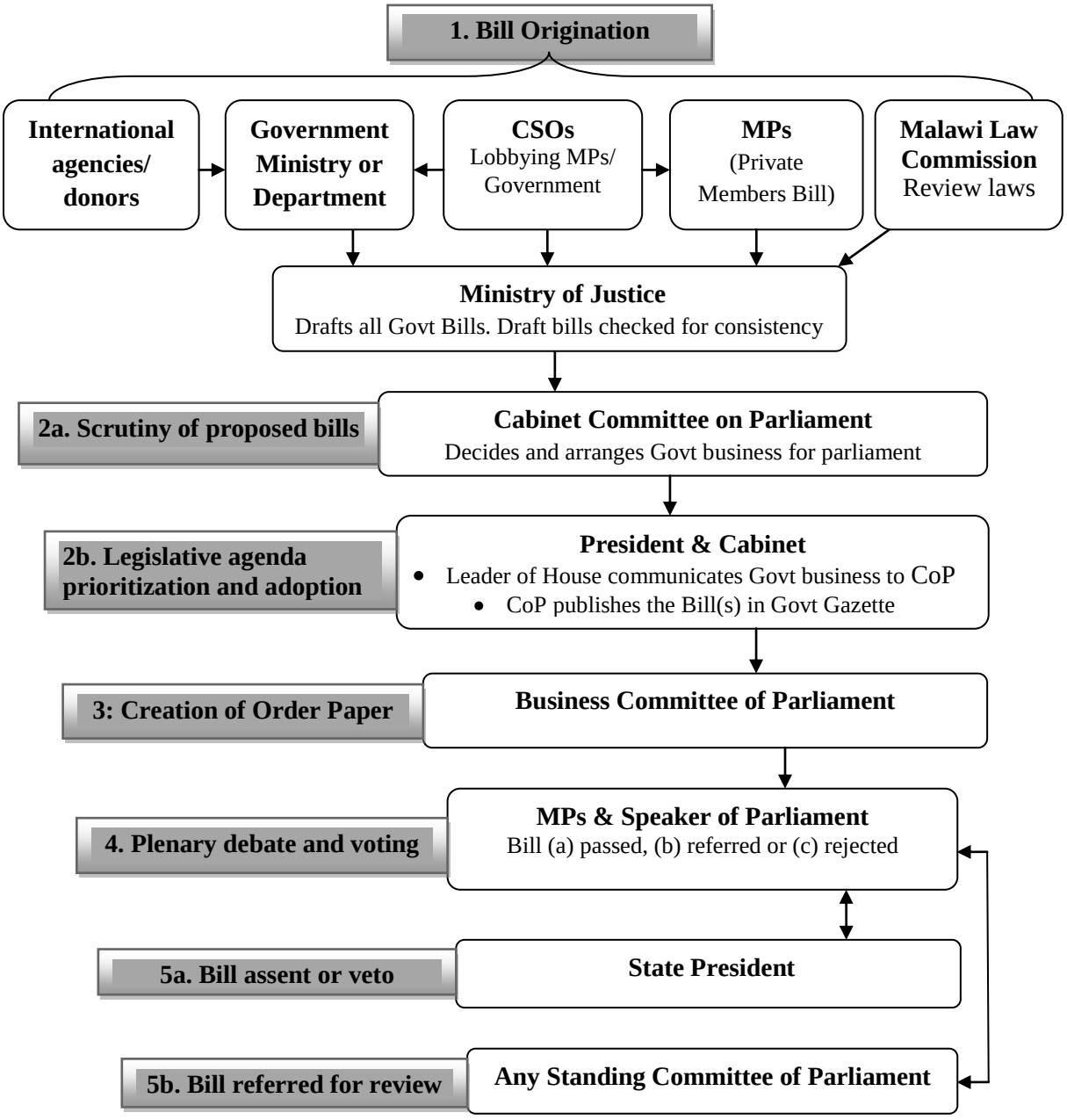
[34]In an interview with Henry Chingaipe on 26.10.12, he gave an example of how the Corrupt Practices draft law submitted by the MLC to the MoJ excluded the requirement for the Director of Anti Corruption Bureau (ACB) to seek consent from the Director of Public Prosecution (DoPP) domiciled in the MoJ, before commencing prosecution proceedings against anyone even after satisfactory investigations. However, the final bill that was sent to cabinet and passed by parliament not only contained this prior requirement but added a new clause granting the DoPP irrevocable powers to order discontinuance with any matter submitted to it by the ACB. This is despite that both state institutions have similar legal competences and endowed with public prosecuting mandates.

[35] Interviews with CSO leaders and some MPs revealed that the NGO Bill originally came from and was drafted by the NGO fraternity (this author was part of the original drafters) although the final law was substantially changed to the disaffection of the NGOs.

[36] An interview with former Attorney General revealed that the Money Laundering Bill was drafted and imposed on the Malawi Government by a powerful donor country to curb terrorism.

[37] A Private Member is any MP excluding a minister and deputy minister but including all backbenchers on the government side. This category includes the front and back-benchers on the opposition side.

Figure 8: Legislative decision making continuum for Malawi



Source: Author ***Note:*** Govt = Government

Once the government legislative agenda is conclusively determined at cabinet level, the MoJ is instructed to publish the bill to the general public through the Government Gazette[38] and print it for circulation to MPs through the Clerk of Parliament (CoP). Simultaneously, and through the

[38] Interview with Assistant Clerk of Parliament, Jeffrey Mwenyeheli, 19.10.12

CoP, the Leader of the House formally communicates on government business for a proposed meeting of parliament. This government agenda is then presented to the Business Committee of Parliament (BCP),[39] which is chaired by the Speaker of Parliament (SoP) at third stage (3) for consideration on dates and time allocation for each bill. This stage also enables the party in government (especially under minority government) to measure and anticipate the degree of support or resistance by the opposition to the proposed legislative agenda. The outcome of the BCP culminates in the daily agenda for the parliament called *Order Paper* (stage 4) where the bill is debated and voted on by MPs in plenary. Voting is done during the plenary phase referred to as *Committee of the whole House.* Once passed by parliament, the bill is submitted to the state president for assent at fifth stage (5a) after which it is gazetted and published as an *Act of Parliament*.

The presidential assent is expected to be made within 21 days after the bill is presented to him/her. Where the plenary refers the bill to a relevant portfolio committee of parliament for further scrutiny and refinement at stage (5b), such a committee will present its report to the whole house at an appointed date for re-consideration, debate and voting. If the president withholds assent to a bill, he/she is required to return the vetoed bill to the speaker of parliament giving written reasons for withholding assent.[40] Such a bill can only be debated again by parliament after the expiry of 21 days and not later than 3 months of being received by the SoP.[41]

If such a bill is debated and passed a second time, it cannot be vetoed again once presented a second time to the president for assent. Once a bill becomes an Act of Parliament, it is an enforceable law on a date stipulated in the Gazette.[42]

While these stages and actors are stipulated by formal laws- mainly the national constitution and PSOs, two process-related points need clarification. First, that it is standard parliamentary practice and procedure in Commonwealth parliaments (including Malawi) that the government legislative agenda must be outlined at the state opening of Parliament by the president. The

[39] The BCP comprises the SoP, Leader of the House –also known as Leader of Government Business, whips of all legislative political parties and leaders for each of the legislative political parties
[40] Section 73 of the 1999 Malawi Constitution
[41] Interviews with Assistant Clerk of Parliament and former speakers of parliament
[42] Section 74 of the 1999 Malawi Constitution

opening speech must, of necessity, give an indication of the type and number of bills and when those bills will be brought to parliament.

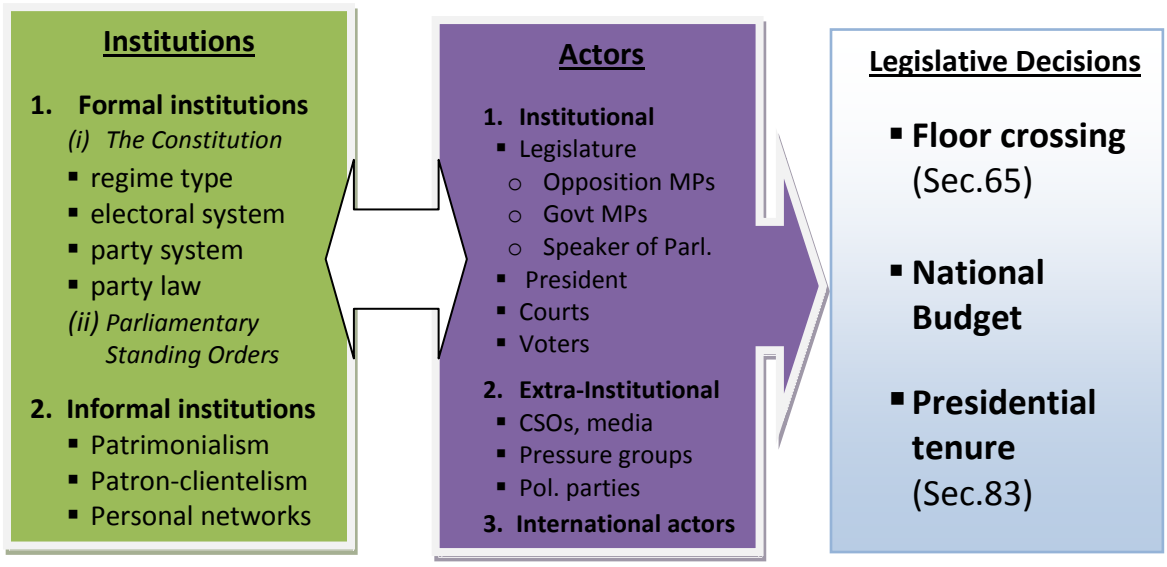
The assumption is that by the time the president opens parliament, cabinet would have compiled and approved all bills to be brought to Parliament. In practice, these expectations were barely fulfilled by the Muluzi and Mutharika administrations. Often, 'surprise bills' were introduced in parliament by Leader of Government without any prior official publicity and unreferenced to, in the presidential state of the nation address. Second, the foregoing process and actors are not decoupled or immune from the extra-legislative actors and informal institutions that exert considerable influence that 'can block but not enact legislation,' (McGann 2006:445). This study has insightful empirical contribution in this respect.

3.11 Conceptual model

Figure 9 depicts the hypothetical relationships that guide this study. It provides the conceptual summary of key concepts in this study: institutions, actors and legislative decisions. The formal constitutional design makes broad provisions under which ancillary and elaborate legislations are enacted to specify the country's regime type, electoral system, party system, legislative type and party law (Bratton 2010:104). Regime type refers to whether the state has a unitary or federal, presidential or parliamentary form of government. Any of these forms of government entails a particular dispersion or concentration of power as discussed under Shugart's model of power distribution. It also explains whether the implied executive-legislative relationship will be hierarchical or transactional (Shugart 2008:347, 348).

Legislative system refers to whether it is a unicameral-single chamber legislature or bicameral-dual chamber (parliament and senate). This information assists in identifying the number of veto players that have legislative veto power in legislative decisions. On the other hand, the electoral system defines whether the electoral law is majoritarian, also known as plurality or First- Past-the Post (FPTP); or it is Proportional Representation (PR). The electoral law stipulates the eligibility criteria for electoral candidates, governing procedures for the entire electoral process and how electoral votes are translated into seats in the legislature and the threshold (whether simple majority or two round system) for the winning candidate in presidential elections.

Figure 9: Conceptual illustration of institutions, actors and legislative decisions



Source: Author

The electoral law also defines roles and mandates of all actors in the electoral process including political parties, media, civil society organisations, donors, electoral management body, courts and voters. Similarly, the party system shows whether a particular democracy has a single dominant party that successively controls the legislature and the executive, or a two-party system where control of government and parliament alternates, or even a fragmented party system where more than two parties control the executive and legislature either in succession or formal/informal coalitions. This illustrates the likelihood of government stability or volatility, through the degree of inclusivity-formations of government of national unity or monopoly of state power through single party dominance.

The party law also sets preconditions for political party registration and or deregistration. The regulatory component of the party law imposes obligations and fixes legal parameters for permissible organisation and operations of political parties in a given country. As the supreme law of the land, the constitution also expressly grants authority on how other state agencies and branches of government (including judiciary and legislature) will enact and enforce their

respective internal operational guidelines and standard procedures. The PSOs are included as core formal rules of procedure in legislative business.

Further, the conceptualisation of informal institutions in this study is that of '*socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels,'* (Helmke & Levitsky 2004:727). To confirm that informal institutions are harder to observe and quantify (Bratton 2010:206), others have classified them to include 'personal networks, clientelism, corruption, clans and mafias, civil society, traditional culture, and a variety of legislative, judicial, and bureaucratic norms,' (Helmke & Levitsky 2004: 727).

In this study, informal institutions are represented by three indicators: patron-clientelism, patrimonialism and personal networks for the purpose of separating the political actors from the rules they follow (North 1990). Clientelism is the 'vertical expression of political loyalty to providers of patronage.' Patrimonialism or pooling refers to the lateral or 'vertical exchanges within small groups.' Personal networks comprise traditional or religious links that facilitate social affection relationships based on personal trust, clan or tribal connections governed by voluntarily espoused and collectively shared norms, values and beliefs.

The foregoing chapter has presented literature review on historical and institutional context of presidential term limits, floor crossing and national budget. Notably Malawi's one party era, excessive executive presidential powers (especially over legislative tenure, size and decisions), and legacy of political intolerance were neatly institutionalised, legitimised and enforced by both the single-party constitution and procedures and the post-independence constitution for more than three decades. Preceding the dawn of multiparty democracy in the early 1990s, these institutions were changed to adapt to the democratic dispensation. The democratic constitution redefines formal and expected roles, actors, incentives and limits for political actors.

The above discussion also demonstrates that reducing legislative analyses to institutional or constitutional veto players in African legislative processes limits the explanatory depth and undermines the forceful reality of patrimonial and clientelistic forces (Bratton 2010:104) that often substitute intertwine with formal institutions and formal actors. Through the analyses of the

three legislative decisions, the study intends to demonstrate critical formal and institutional actors, processes of interaction and institutional incentives that shape and influence legislative decision outcomes.

The next section covers the procedure of preparing for this study, the study design, study sample and data collection tools, data analysis and interpretation. In general, this part shows how the empirical data will be processed to respond to the research objectives and answer the research question.

Chapter 4: Research design and methodology

4.0 Chapter preview, aim and scope

The research design and methodology followed a sequence of five phases. The initial phase comprised defining the research problem, research question and its sub-questions and aligning them to the theory. The second and third phases combined three major tasks: (a) identifying data needs- the type of information necessary to answer the research question, (b) determining the research sample size, its characteristics and common attributes of cases within each sample subgroup, and (c) preparing the questionnaire and secondary data collection template and how the data would be analysed and interpreted. The fourth phase comprised actual field research, data processing, analysis and preliminary interpretation of empirical results. This phase allowed for identification of information and interpretation gaps for necessary adjustments. The fifth phase comprised two aspects: presentation of interim empirical results for verification and validation at two stakeholder workshops, and actual drafting of the thesis.

Two main types of data were collected: primary and secondary data. The former was mainly through interviews using a semi-structured questionnaire while the latter was through desk research- reading reports, publications, parliamentary standing orders, government gazettes, acts of parliament, hansards and the constitution. Secondary data was used to verify specific information including dates when specific bills were presented to parliament or passed into law and published, or share of legislative votes on specific bills. Other sources such as newspapers also assisted in identifying specific groups and networks and how they supported or prevented specific legislative decisions.

This chapter presents the research process in terms of field research preparations, data collection and analysis. The first section covers data collection instruments, period of field research, sampling approach used and its rationale, sample size and its subgroups, and research challenges. This is followed by an overview of how the data was processed, analysed and interpreted in responding to the research question.

4.1 Study sites and data collection tools

The interviews were done from the end of June to mid December 2011 in the cities of Lilongwe, Zomba and Blantyre. Lilongwe being the administrative and political capital of Malawi is where most public officers including MPs, state technocrats, NGO leaders and media experts were accessible. Likewise, a substantial proportion of the CSO leaders, media experts, political party leaders, former legislators, most judicial officers and some researchers are based in Blantyre. Zomba is where the University of Malawi's main campus, Chancellor College is located, and therefore home to most academic researchers that were interviewed.

One standard semi-structured questionnaire was developed and pre-tested. Thereafter, the questionnaire was adjusted in terms of number of questions and revised to make the questions simpler. To this effect, some questions were removed, adjusted or reworded to aid clarity and reduce interview time to about 45 minutes. The questionnaire had pre-coded and close-ended questions whose responses were denoted and recorded in numeric measures. See final questionnaire in the appendices. The questionnaire was organised into three parts, each focusing on veto players, legislative decisions and political institutions, respectively.

In order to gain more insights into actor composition, their roles and source of influence in and across specific legislative decisions, the first part had five questions. The questions asked respondents to indicate from their own understanding about (a) the main actors that shape or influence legislative decisions; (b) specific roles of the actors mentioned in (a); (c) sources of influence or power for the actors identified in (a) and (b); (d) how the credibility or desirability of legislative decisions relates with increasing or decreasing the number of actors; and (e) *veto points*- points of highest uncertainty and likelihood that a legislative proposition would be withdrawn, amended or rejected in the legislative decision-making process, especially under a minority government.

The second part which concentrated on legislative decisions asked informants about the (a) major functions of the legislature; (b) the most remembered legislative decisions of parliament since 1994; (c) major actors that emerged across the legislative decisions mentioned in (b); factors or incentives considered influential behind the choices and actions of legislative decision-

makers. In addition, a specific question was asked to existing and former legislators only regarding what factors influenced their actions and legislative choices.

The third and final part enquired about political institutions. This part asked about (a) whether the conduct of parliamentary business is influenced or regulated by any formal rules, and if so, which rules; (b) the link between power concentration and fragmentation with regard to executive-legislative relations; (c) whether informal institutions influence the legislative decision processes asking for examples of such informal institutions; (d) the extent to which formal rules and procedures influence the distribution of legislative decision-making power in Malawi, (e) specific laws that permit non-constitutional actors to influence legislative-decision outcomes; and (f) specific suggestions for policy recommendations for an effective interface of institutions, actors and legislative decisions in Malawi.

4.2 Sample of Interviewees

The interviewees were identified based on their expertise using stratified selection approach. Martin Marshal (1996:522) observes that qualitative research primarily answers how and why aspects of the research questions by investigating individual perceptions, attitudes and experiences and interpretations of own and other people's behavior. He adds that stratified random sampling allows subgroups of the sample to be studied better especially if the subjects are known to the researcher. As such, the broad interviewee categories were preselected according to the researcher's personal knowledge and experience of Malawi.

Eight expert categories were identified namely (a) parliament, (b) judiciary, (c) CSOs, (d) media, (e) key political leaders (non legislative), (f) state/government experts, (g) academicians and (h) private lawyers. In total, 56 interviews were conducted using a semi-structured questionnaire with these purposively identified informants. The purpose for the eight categories was to have a balanced sectoral representation of perceptions and experiences. It was neither intended nor possible to secure an equal number of interviews per category owing to logistical constraints as discussed below. Detailed composition of the sample groups and how they were re-categorised follows next.

During data analysis, the eight subgroups were collapsed into three categories. The first category is *old and current MPs and key political party leaders.* From among the *legislators,* twelve (12) individual interviews were conducted, representing 21.42% of the total sample. This category comprises previous and present legislators, including former speaker and deputy speakers of parliament, party whips and leader of government in parliament. On the other hand, *political party leaders* are senior party leaders who are non MPs, but have positions of influence on legislative parties and are keenly and actively engaged with legislative developments.

Five (5) interviews (8.93%) were done with representatives of these political parties: AFORD, PETRA, PP, and the UDF. The key political party leaders also served or continue to serve in key party leadership positions such as party president or vice president and secretary general. It was not possible to interview secretaries general from two key parliamentary parties: the MCP and the DPP due to unavailability for both. The common factor among this interviewee category is that they are all partisan actors-their opinions and actions are shaped by office seeking or office retention motivations and party interests. The category of *old and current MPs and key political party leaders* represents 30.36% of the total sample.

The second category comprises three subgroups and has a composite name after each of them: ***Academicians, civil society and media experts.*** The *academic experts* are mainly prominent university lecturers/professors in political science, history, and law. They regularly feature as media commentators on various legislative decisions. They are also prominent researchers or/and have presented relevant conference or academic papers on the subject since 1994. Five (5) interviews, representing 8.93% of the sample were conducted with the academicians. On the other hand, ***civil society experts*** comprise individuals who are linked to civil society/non-governmental organisations (NGO) initiatives on various legislative decisions in the period under review. These were identified from the Economics Association of Malawi (ECAMA), Malawi Economic Justice Network (MEJN) and the Malawi Human Rights Consultative Committee (HRCC-a network secretariat representing over 92 civic groups and NGOs which are involved in democracy, political, socio-economic governance and human rights. Eight (8) interviews were conducted with this subgroup, representing 14.29% of total sample.

Under the last subgroup ***media experts,*** seven (7) interviews were done representing 12.5% of the total sample. This group comprises senior journalists working for the major newspapers (Daily Times and Nation Newspapers), private radio stations (Capital FM, Trans World Radio and Zodiac Broadcasting Station) and Media Council of Malawi. The print and electronic media plays a crucial role in legislative decisions through coverage of legislative proceedings and/or exposing issues before they come to the legislative agenda. For example, the open/third term issue was first made public by the Nation Newspaper before it came to parliament and while government/UDF elites were coy at rife rumors that they were planning to table it in parliament.

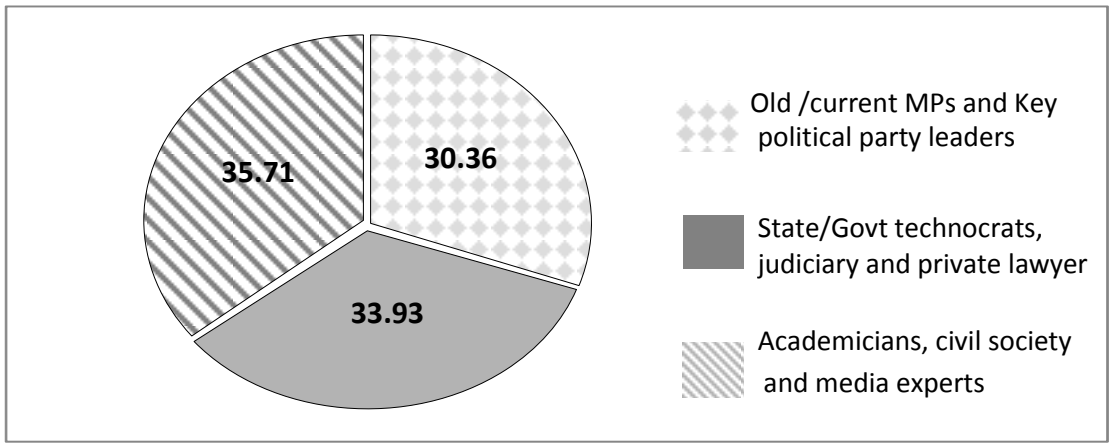
Common among all the three subgroups are two elements. First, they operate as non-state actors-independent of direct government control. Second, they shape public opinion on the conduct of mainstream political actors: the executive, judiciary and legislature who are at the centre of the legislative decision making process. Therefore, their positions are assumed to be impartial and non-partisan but integral to public opinion formation in society. This category: ***academicians, civil society and media experts,*** represents 35.71% of the sample size.

The third category constitutes experts from the judiciary, private legal practitioners and state or government technocrats. Accordingly, it is labeled ***State, Government technocrats, judiciary and private lawyers***. From the *Judiciary*, seven (7) interviews representing 12.5% of overall sample were conducted with High Court Judges and Justices of the Supreme Court of Appeal and court registrars. Since 1994, the judiciary in Malawi has the constitutional power of judicial review and had made determinations on the constitutionality of some legislative decisions. Hence, they are critical informants to this study.

Under the subgroup *State/Government technocrats*, ten (10) interviews were conducted, representing 17.86% of the sample total. These are experts working in state or government institutions such as Legal Aid, Law Commission, Human Rights Commission, parliament secretariat and the attorney general's office and were considered critical informants to this research. Officers from Parliament are experts on parliamentary procedures and practice as they advise the Clerk of Parliament on procedure of legislative business. The Law Commission and Human Rights Commission experts make law reform recommendations to government in

addition to providing legal advice to the public, legislators and government, just as done by legal experts in the attorney general's office and legal aid. The subgroup of ***law experts*** comprises senior private lawyers who do not only make media inputs on critical legislative matters, but have valuable knowledge and expertise on laws. Although only two (2) interviews representing 3.57 % were done under this specific sub category, the actual number of trained lawyers interviewed (either as MPs, state/government technocrats, court judges, court registrars and academic law experts) is nineteen (19), representing 33.9% of the total sample. These experts are deemed competent and knowledgeable about institutions, legislative decisions and the overall Malawi political social, economic and political context. Figure 8 summarises interviewees per category while table 3 presents the sample size per sub category.

Figure 10: Summary of interviews by professional background (in percentage)



Source: Author

Table 7: Research sample and interview categories

Proportion of interviewees by professional category			Collapsed category
Interviewee category	**Frequency**	**Percentage (%)**	**Percentage (%)**
Parliament (old & new MPs)	12	21.43	
Key Political Leaders	5	8.93	**30.36**
Judiciary	7	12.50	
State/Government technocrats	10	17.86	**33.93**
Law Experts	2	3.57	
Civil Society Experts	8	14.28	
Media Experts	7	12.50	**35.71**
Academic Experts	5	8.93	
Total	**56**	**100**	**100**

Source: Author

4.3 Data analysis and interpretation

All the data was entered into SPSS to run descriptive statistics such as frequency distributions and cross tabulations in order to observe trends and construct relationships of responses. In addition, Microsoft excel was used to generate graphs and charts as presented. Thus, the study utilises both qualitative and quantitative approaches. The quantitative aspect is applied in the sense that the research variables and concepts were pre-determined at planning stage. The qualitative approach is illustrated by the use of content analysis of data collected under open-ended questions and responses under *'Other'*. Data was analysed using SPSS and excel to generate and represent abstract concepts and ideas.

With the Malawi legislature as the case study, the unit of analysis is *legislative decisions* as a dependent variable while actors and institutions are co-dependent variables. The simplified hypothetical abstraction is that formal or informal institutions influence the behaviour of veto players in legislative decisions, for example:

Institutions ⇨ Veto Players ⇨ **Legislative Decisions**

Some important concepts and constructs cannot be quantified hence, usage of general category labels and variable labels whose scores are nominal. Nominal data compares and contrasts inter-temporal and intergroup patterns or trends, records personal experiences, attitudes, views and perceptions (Reynolds 1984:9-10). Essentially referred to nominal scale variable because (a) individuals assigned to a category are homogenous and mutually exclusive to only one class according to a particular trait or attribute; (b) the categories are simply names that show how groups differ from each other, and can be arranged in any order deemed suitable to the investigator and (c) labels are only descriptive and qualitative- they show nothing about the magnitude of the differences (Ibid).

Data analysis is the process of determining patterns and relationships from the information collected during the research and explaining how such patterns and relationships are linked to the phenomena under inquiry (Bless, Higson-Smith & Kagee 2006:163). This study utilises qualitative data analysis in which descriptions of views and perspectives by respondents are firstly presented un-interpreted and as captured from the informants' responses.

This is followed by inferences to explain what may have caused the existent conditions, circumstances or actor behavior. Both inferential and descriptive comparisons are utilised in order to determine similarities or differences between views or responses across categories.

These similarities or differences are insightful in understanding the variation in perspectives and views across the three individual groups in the sample. Using frequency distributions and cross tabulations and based on recorded views, perceptions and opinions, dominant views as determined by peak percentage ratings are interpreted as the median opinions. Perceptions and opinions entered within a subcategory are interpreted on the basis of their associations. Between and among the subgroups, the sum of opinions are ranked and compared to show patterns of common perceptions, significant contrasts and make inferences from observable relationships.

The analysis in this study adopts the scheme of *analytic narratives* (Bates et al. 1998) in that the empirical data is collapsed from stories and personal experiences to being systematically interpreted into explained constructs. This is done while identifying comparable and generalisable patterns, actors, modes and incentives in which to locate political behavior in legislative decisions of Malawi's political economy.

4.4 Assumptions for the research sample

Linked to the above elaboration of research sample and its subgroups, the choice of the sample is based on the following key assumptions:

- That it is obtained from a definite population with well-known composition of its actors and competent informants.
- The subgroups/expert categories satisfactorily represent the research population.
- Responses from within categories of a homogenous subgroup have no marked differences in their opinion, irrespective of skewed gender representation.
- Inter-category opinion comparisons can be made to triangulate facts, minimise bias and attribute exclusive perceptions to sample subgroups.

- Civil society comprises civic interest groups like non-governmental associations/ networks, trade unions, and religious groups whose role include lobbying, advocacy, civic/political education and defense for socio-economic, political and human rights.

4.5 Research challenges

Four major challenges were critical during the field research. First, was that most of the research interviews were done during lunch breaks or after work hours, on weekends and public holidays. This was due to non-availability of research informants during normal working hours owing to their tight work or travel schedules. Second, I was unable to get extra leave days from my official work to concentrate on the research project.

To partly overcome this, a part-time research assistant- Patience Chifundo Chilera, was engaged and trained to assist with both setting up appointments and conducting some of the interviews. Patience was a graduate of political science with requisite research skills to provide the backup support. This decision was of course at an extra cost to cover fees, travel and meals for the her to do the work. Third, some of the respondents who could not be personally interviewed were asked to complete the questionnaire and send it back. Except for two, all such respondents were able to send back the completed questionnaire albeit until three months after the designated research period for some of them.

Fourth was the nationwide fuel scarcity in Malawi during the entire research period. This made inter-city and local travel impossible at worst and most expensive at best, as fuel was scarcely available on black market at a non-receipted price that was three times higher than the official pump price. On one occasion, I travelled from Lilongwe (about 320 km) to Blantyre but failed to conduct any interviews because the fuel tank was empty on arrival, and public transport could not reliably bring the researcher to the homes of the booked informants on time. Nevertheless, the flexibility of having interviews on weekends, after-work hours and even posted way after the initial research period was a major breakthrough which was also possible due to the advantage of personal connection of the researcher to most of the informants.

4.6 Verification and validation of interim empirical results

Following the analysis of research data, preliminary empirical findings were presented for verification and validation at two workshops in July 2012 in Lilongwe and Blantyre. Each workshop was attended by 27 and 36 participants, respectively selected from parliament secretariat, former and present legislators, judicial officers, NGO/CSO leaders, media experts, key political leaders, state/government technocrats, academia and legal experts. Nearly half of the participants were those interviewed during the initial field research in 2011, while the rest were those deemed practically or professionally familiar with the topic but were not interviewed during the field research.

The workshop feedback aimed to facilitate the validation of the research findings owing to the sensitivity of the topic and profiles of those interviewed. I also intended to extract fresh insights from the participants and inspire an exchange and reality-check of views on particular issues. This reality-check was further supplemented by the personal interviews held with eminent informants during the July 2012 visit. These included the former State President-Dr. Bakili Muluzi, and two former Speakers of Parliament-Mr. Sam Mpasu and Mr. Davies Katsonga, to gain from their post-incumbency insights. Others were the re-known historian-Dr. Desmond D. Phiri, and two former attorney generals- Hon. Justice Maxon Mbendera (then serving as High Court Judge) and Justice Dr. Jane Ansah (then serving as Supreme Court Justice of Appeal). Refer to the list of interviewees and of workshop participants in appendix 3.

As in the first round of interviews, all conversations with respondents were conducted with confidentiality assurance to ensure frankness of testimony. In keeping with such ethical considerations, direct references of expressed opinions to specific sources are accordingly limited to avoid explicit and implicit identification of informants in the presentation of study findings. I have opted for general or categorical sources especially in footnotes. However, specific sources of opinions are disclosed in exceptional instances to retain fact validity balance albeit with sufficient regard to none betrayal of individual confidentiality.

To conclude, this chapter has elaborated on the critical steps taken, sampling approach and methodology used in data collection, analysis and authentication of results of this study. This

part has also covered the periods when the research was conducted and locations, the sample size and the rationale for categorising the sample into its constituent subgroups. Categorisation of respondents was done to detect, reduce and control for ‘errors of bias and measurement’ that may often occur during data collection and can potentially distort study findings. Classification errors arise when data is wrongly ascribed to a specific class or category.

The section also highlights the research challenges and how they were minimised, in addition to presenting key research assumptions and ethical considerations. The next chapter presents study results and interpretation.

Chapter 5: Research findings

5.0 Chapter overview, aim and scope

This chapter presents the empirical findings of the study and it is sub-divided into four parts. The first three sections are each focusing on one of the three main concepts of the research topic and research questions, namely actors, legislative decisions and institutions while the fourth section is the conclusion for the chapter. The first section discusses results on actors who were identified as most critical and influential in the legislative decision making processes in Malawi in general. This part also presents responses to the question on roles of these actors in legislative decisions, followed by findings on source(s) from which actors derive (or are perceived to get) their functional powers. In relation to theory, the veto player analysis is re-examined in terms of the extent to which its assertions are supported or contradicted by empirical results that institutional veto players are identifiable in constitutional provisions as the ultimate source of legislative power.

The second part presents findings on formal and informal institutions that influence legislative decisions in Malawi. Essentially, this part addresses the scholarly debate by confirming or qualifying the extent to which formal and informal institutions influence the choices and conduct of actors in legislative decisions in Africa. As is the focus on specific formal rules, elements of informal institutions are also identified and explained in the empirical analysis to the extent that they were influential in the outcomes of the three legislative decisions. The third part presents actors and institutions that were critical in and specific to each of the three legislative decisions, namely open/third term, floor crossing, and national budget.

The fourth part concludes this chapter with empirical findings on institutional aspects that respond to theoretical assumptions and hypotheses that formal institutions such as regime type and electoral system affect power distribution (power concentration or fragmentation), executive-legislative relations and by extension, legislative outcomes. Hence, this section presents an analysis of how the legislative configuration, and therefore the legislative-executive relationship, can be attributed to the institutional effects inherent in Malawi's regime type and electoral system. This is done by identifying inter-temporal patterns and occasions in the

legislative decision making processes that are linked to critical junctures and path dependency legacies. The results are presented in tables and figures wherever applicable.

5.1 Actors in legislative decision processes in Malawi

Ample literature argues that any change in legislation or public policy can be attributed to the influence of actors either as individuals or collectives. These actors are endowed with formal and informal power to block or permit that change. The significant role of actors is the hallmark of major political economy analytical frameworks including Tsebelis' veto player analysis as well as the political settlement analytical framework (The Asia Foundation 2010).

Essentially, any policy or legislative action (or inaction) is fundamentally determined by prevailing dynamics among dominant actors that seek to advance diverse and often competing interests, agendas, and preferences within a given political and institutional domain. Irrespective of the identity of these vested interests (whether altruistic or egocentric, socio-economic or political), particular decision outcomes are advanced or blocked by the existing powerful and identifiable actors. Identifying these core elites and/or critical groups assists in understanding sources of political influence and power relations that primarily shape or control the direction and pace of decision outcomes.

Taking a cue for these approaches, the first part of this study was an enquiry aimed at locating the most influential actors with positional influence in legislative decision making. Thus, informants were asked to indicate in their own understanding about the main actors that shape or influence Malawi's legislative decision-making processes. Respondents were asked to tick whichever was applicable from a list of options. The question had multiple responses as seen from table 8.

The results indicate that there is some variation in the perceptions of respondents regarding key actors when the results are disaggregated across the three interviewee categories (parliament & key political party leaders, state, government & judiciary experts and the academia, CSO & media experts). Table 8 shows that all (100%) of the respondents under the *parliament and key political party leaders* category consider parliamentary political parties and the state president as

the two most influential actors in legislative decision making processes in Malawi. The absolute (100%) perception for the state president as one major actor is also shared by respondents of the *state, government and judiciary experts'* category. Further, 95% and 90 % of the *academia, CSOs and media experts'* category consider parliamentary political parties and the state president as the most influential actors in legislative decisions, respectively.

Table 8: Main actors that influence legislative decision-making in Malawi by interviewee category. Cross-tabulations of responses in percent (%)

Interviewee category	**Main actors in legislative processes**							
	Parliamentary political parties	State President	CSOs	Speaker	Donors	Opp. parties in govt. coalition	Voters	Judiciary
Parliament & key political party leaders	**100**	**100**	**88.2**	**64.7**	**76.5**	**70.6**	54.5	41.2
State, Government & Judiciary experts	**94**	**100**	**78.9**	**63.2**	52.6	**63.2**	**62.5**	**55.6**
Academia, CSO & Media experts	**95**	**90**	**70**	**70**	**65**	50	31.2	40
Aggregate %	**96.4**	**96.4**	**78.6**	**66.1**	**64.3**	**60.7**	28.6	45.5

Source: Author's empirical findings

The marginal inter-category rating variations may be explained by the fact that the *Academicians, CSOs and media experts* are often critical of, and tend not to overstate positional powers of public officials, hence the relatively conservative or low ratings. On the other hand, the basis for the shared perception between *Parliament and key political party leaders* and *Government/state technocrats, judiciary and private lawyers* may be influenced by the constant, direct, formal and informal interaction between and among these groups, which enhances these perceptions towards absolute or unequivocal levels. While it is potentially possible that the bias of positive self-assessment may have contributed to the high ratings by the *Parliament and key political party leaders* with respect to the importance and influence of legislative political parties and the state president, it may also be argued that these actors are intricately and practically knowledgeable, about their own roles and influence in legislative decision-making processes.

Overall, it is notable that parliamentary political parties and the state president are accorded the highest ratings by the three categories as the most influential actors. In addition, civil society organisations (CSOs), the speaker of parliament, donors and opposition political parties in government coalition, are equally identified as critical actors in legislative decisions, with each receiving above 60 percent rating and with minor percentage differences between them. Other actors are the judiciary and voters, both with below 50 percent ratings.

The modest ratings on the speaker of parliament as a critical actor in legislative decisions may partly be explained in terms of two aspects: his role regarding floor crossing issues on one hand, and as the presiding officer of legislative business, on the other. First, the two contending forces related to floor crossing are (a) the growing perception that the speaker has the constitutional obligation to determine the validity of and act on recurrent petitions from political parties demanding removal of their MPs who cross the floor, and (b) the court injunctions restraining the speaker from acting on the petitions pending judicial review as obtained by the concerned MPs.

Between the two forces is the speaker's dilemma to act impartially and constitutionally. Floor crossing has been exacerbated by each successive minority government`s inevitable need for opposition legislators' support since 1994. As often and as many legislators cross the floor, avid reactions from opposition party leaders emerge, exerting pressure on the speaker of parliament to act against MPs deemed to have violated the constitutional floor crossing clause- section 65.[43]

Thus, the speaker's actions or inactions are prompted by either political party petitions or court orders, respectively. Either way, such decisions and actions fundamentally influence the perception that the speaker of parliament is a critical actor in legislative decisions as acting either way affects the numerical configuration of parliament, which may effectively tilt the power balance between the government and the opposition legislative parties.

Second, the speaker's role as presiding officer over parliamentary business entails that he /she has enormous discretionary power to determine how long a particular issue can be debated before being curtailed and a collective decision is taken by parliament. Subject to the speaker's

[43] Observations made by participants of the verification workshop, 16.07.2012.

personal preferences and degree to which he/she tolerates partisan influence on the matter, it is discernible that he/she can play the role of a neutral or biased 'referee'. This can manifest in how rules of legislative procedure are regulated and enforced- for instance, which MP(s) may be expelled from parliament for unacceptable conduct or utterances. In addition, the speaker has the prerogative to determine who is allowed or ignored to speak during legislative debates.

Indeed the inexorable influence of the speaker of parliament in legislative decisions is even more pronounced in how he/she interprets a voice-vote following a legislative debate. Parliamentary Standing Orders (PSOs) as rules of procedure and practice of Malawi's National Assembly, empower the speaker to determine the legislature's decision outcomes based on two alternatives forms of legislative voting: either a *voice*-vote or *roll-call* vote.[44] The voice-vote is mostly applied when deciding on matters that require a simple majority approval vote of legislators present and voting.[45] Section 90 (1) of the PSOs provides that at the conclusion of a debate, the speaker as presiding officer should seek the conclusive decision of the National Assembly on any matter before it, by putting the question in either its original or amended form, as the case requires, by saying "As many as are of that opinion say 'Aye,' as many as are of the contrary opinion say 'No.'" As the outcome may be, the Speaker declares the results as "I think the 'Ayes' have it or "I think the 'Nos' have it," on the basis of the loudest voice responses received in support or against the matter under consideration.

A roll-call vote is applied where the speaker's determination of the voice-vote is contested or disputed by either party. This scenario is referred to as 'division,' implying that the legislature is divided on the matter and a numerical simple majority vote is needed to account for this division. Chingaipe (2011:4) affirms that the appointment of the Inspector General of Police and the election of the Speaker of the National Assembly 'have to be approved and determined, respectively, by a simple majority of legislative votes.' Through these roles, it is evident that the speaker is in a controlling position that significantly influences legislative decision outcomes.

[44] Malawi Parliament Standing Orders (2003), Sections 88-96.
[45] Malawi Parliament Standing Orders (2003), Section 89.

This is also more prominent when the presiding officer's vote is required to a tie-vote on a particular legislative matter.[46]

As for the judiciary, all respondents indicated that the courts act when moved for judicial review or to make a legal determination on a specific matter. Indeed, literature on veto players concedes that where courts have judicial review powers, as is the case in Malawi, they are a strategic veto player (Kaiser 1997:436; Stoiber 2006:5). An important case cited by some respondents was the order in which the high court compelled parliament to give precedence to the passing of the national budget over the unresolved implementation of Section 65.[47] In this context, parliament was obliged to comply with the court order to rescind its decision and pass the budget as a national priority within the stated period after protracted delays occasioned by contrary preferences of the opposition legislative parties.

It can be argued that the relatively higher percentage (55.6%) of respondents from the state/government technocrats, judiciary and legal experts that perceive the judiciary as an influential actor in legislative decisions may be influenced by their technical expertise and appreciation of the judiciary as an expert veto player without direct voting power as is the case with MPs. Similarly, the below 50 % responses relates from the other respondent categories is based on the commonly shared understanding that the judiciary, based on the concept of separation of powers, does not have a direct involvement in the actual voting on legislative decisions.

This view is incomplete and not without its critics. Some scholars such as Magee (2006) argue with empirical evidence to illustrate that both judicial review powers and the principle of legal precedence afford the judiciary the *defacto* legislation-making power. These arguments go to the extent that the courts are expected to interpret the constitution and other laws- which entails assigning the intended meaning and the spirit of the written law, especially where the legislation is what Magee calls 'rarely mathematically precise,' (2006:110). This leads to the conclusion that the essence of judicial invalidation of an Act of Parliament, or declaring any part of a

[46] Interviews with officials from parliament secretariat and with former attorney general
[47] Interviews with former attorney generals, Justice of Supreme Court of Appeal and some state technocrats

statutory provision as unconstitutional, the doctrine judicial precedent[48] in case law, or reversing a legislative action/decision, effectively amounts to law-making powers.

A classic case where the courts as a veto player reversed an earlier decision of parliament was the reinstatement of Gwanda Chakuamba into parliament following his expulsion and loss of his position as leader of opposition when it was instantly given to his archrival John Tembo, who was at the time the Vice President of the MCP. During this period, the MCP was the largest opposition legislative party. Through a judicial review, the courts determined as unreasonable the grounds on which Chakuamba was expelled from parliament and quashed the legislature's decision, ordering the speaker of parliament to immediately and unconditionally reinstate Chakuamba. The cited examples illustrate that the courts are a veto player vested with constitutional judicial powers to compel the legislature to make specific decisions: to pass the national budget and to rescind its earlier decision by reinstating the expelled legislator.

The subsequent actions of the legislature in complying with the court orders (albeit reluctantly) also show that formal institutions matter as the legislature's compliance was induced by the apparent knowledge that noncompliance was tantamount to contempt of court with attendant costs as sanctions on responsible office bearers. Therefore, the foregoing responses necessitate modification to the definition of veto players in current literature. The identification of CSOs, donors, speaker of parliament and courts as critical actors in legislative decisions in Malawi provides the empirical basis to argue for a more accommodating definition and reclassification of veto players to account for scenarios such as Malawi proposed in the conceptual model.

Although courts may act only when moved and therefore classified as occasional veto players, it is insufficient to classifying them as a constitutional veto player or not based on the frequency that they exercise their work, and whether they have the legislative voting power, as Tsebelis and others seem to suggest. Rather, this must be premised on what courts do, the institutional basis of their power and the effect of what they do on the decisions of the legislature. The foregoing account suggests that any legislative decision or actions, is liable for contestation in court for

[48]The doctrine of precedent in English Law binds a lower court (i.e. the High Court) to uphold a Supreme Court ruling if a matter of similar material facts was decided earlier by the superior court.

judicial review or constitutionality determination. This leads to the courts invoking their veto power that effectively blocks, nullifies or reverses parliamentary decisions and actions.

Besides, even as a collective institutional veto player, parliament only meets and enacts legislation and policies as occasionally as parliament is convened. Likewise, the president vetoes or consents to bills only when presented to him/her. Thus, the frequency by which an actor executes their work does not form part of the institutional basis for identifying and classifying veto players. Rather the veto power and the effect of actor intervention makes plausible institutional sense.

Similarly, the speaker of parliament is a direct and critical veto player in legislative decision-making processes because he/she presides over legislative business and is vested with the powers to expel an MP as may be petitioned, thereby influencing the numerical configuration of the legislature. In addition, he/she has the powers to determine who speaks in parliament and declares legislative outcomes after debate and a tie-vote. Likewise, the influence of donors and international agencies such as the IMF and World Bank on policy and constitutional decisions of a highly foreign-aid dependent country like Malawi indicates that donors are not a passive actor in legislative decisions.

About 40 % of Malawi's GDP is donor supported. As one diplomat remarked during the study findings' validation workshop, 'the way we donors sometimes dominate and dictate the legislative decisions of poor countries like Malawi is unacceptably unusual.' One example cited by some respondents was the recent donor actions of suspending development aid and threats that barely stopped short freezing aid to Malawi if the latter did not yield to the pressure to enact legislation that protect and legalise and/or remove laws that incriminate same-sex relationships. It is such donor influence in the socio-economic and political choices and decisions of aid-dependent countries that must be acknowledged, accounted for and accurately classified in veto player literature.

Having identified the most influential actors in legislative decision-making processes, further investigation was made to establish roles played by each legislative actor and source of their power for such functions. This is the focus of the next section.

5.1.1 Roles of actors in legislative decisions

To further qualify how the above role players are critical actors in the legislative-decision making processes, another question sought to identify specific roles and functions performed by four of these actors: parliamentary political parties, state president, judiciary, and CSOs. The veto player literature asserts that institutional veto players are located in statutes or constitutions within which their specific identity and roles are prescribed. This question sought to compare respondents` perceptions on the institutionally prescribed actors and their roles in legislative-decision making. Table 9 depicts aggregate frequency distribution of responses under each actor functions in percent.

Table 9: Specific roles of actors in the legislative process

Actor roles and functions	**Frequency (%)**
Parliamentary political parties	
Law-making: vote for or reject proposed legislation	98
Confirm/reject senior public appointments	98
Oversight-scrutinise government departments	93
Other (specify)	23
State President	
Assent to or withhold assent to bills passed	100
Gazette/promulgate Acts of Parliament	73
Other (specify)	36
Judiciary	
Validate/invalidate legislative decisions/Acts	88
Judicial review-determine the constitutionality of laws	84
Other (specify)	23
Civil Society Organisations (CSOs)	
Lobby legislators to pass or reject some legislations	100
Lobby the president to withhold assent to some legislators	89
Other (specify)	29

Source: Author's empirical findings

The responses confirm that the selected actors have specific roles in the legislative process. The results show that the three major functions of legislative political parties in Malawi are law-making or enacting legislation, indicated by (98%), approval of senior public officers (98%), and exercising executive oversight (93%) of the respondents. On the other hand, the key functions of the state president include the veto power to assent or withhold assent to bills passed by parliament thereby signing them into law as affirmed by 100% of the responses, ensures that the executive through the Ministry of Justice gazettes or publishes the signed bills as Acts of Parliament. Included in the 36% responses of "*Other*" functions of the state president in relation to legislative decisions is the presidential power to prorogate parliament.[49]

However, as this study confirms, Kaiser (1997) and Stoiber (2006) observe that the identification of institutional veto players with explicit voting power is only a necessary starting point but not sufficient, given that other equally influential actors with veto power have their sources of influence located outside the voting or elective domain. As discussed earlier for instance, the judiciary does not have the direct law-making or voting power as do the MPs yet 88% of the respondents indicated that the judiciary possesses quasi-legislative powers. Once they are moved, they uphold or invalidate decisions or Acts of parliament.

In addition, 84 % of the respondents also observed that given the fact that the judiciary can determine the constitutionality of legislative decisions and nullify decisions deemed not constitutional as noted in the above section, they possess a quasi-legislative function, albeit only activated when moved. Similarly, all the respondents (100 %) indicated that CSOs are another non-voting (indirect) influential category of actors in the legislative decision-making process through lobbying the MPs and or the president. In fact, the public bill procedure as laid out in Section 115 of the Parliamentary Standing Orders requires that every public bill due to be presented in parliament must be accompanied by a memorandum stating the originating ministry, objectives of the bill and a list of individuals or organisations consulted in the bill preparation process. It is this procedural caveat for the input of interest groups that is utilised by CSOs as

[49] Interviews with media experts, attorney general, High Court Judge, former speaker of parliament

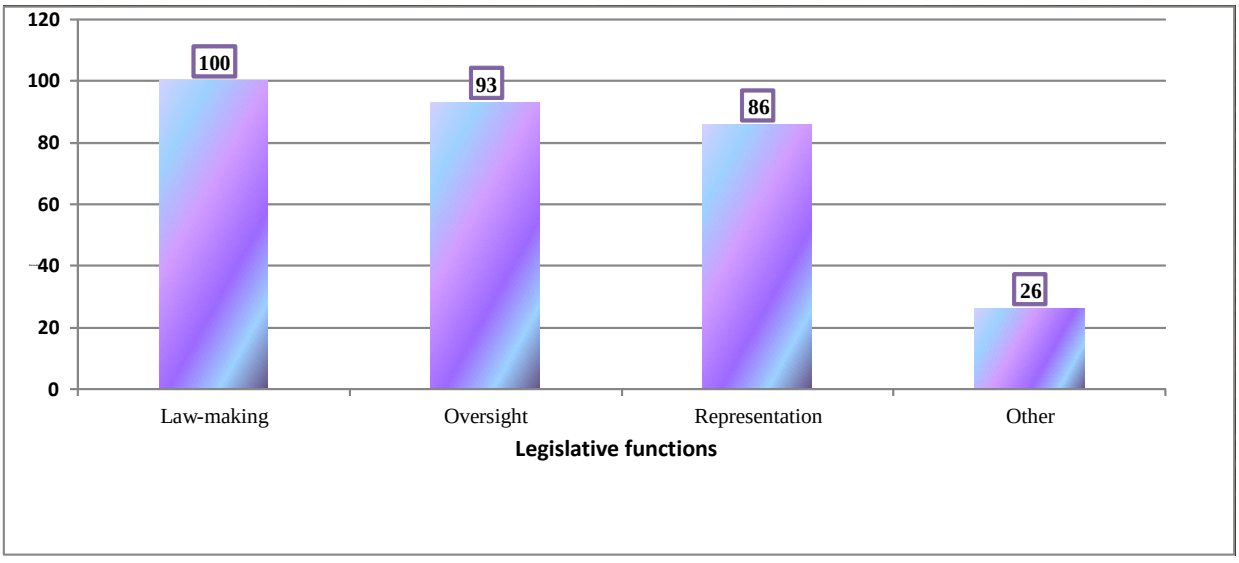
interest groups to make submissions and influence the decision choices of legislators on a specific public bill.

Further, 89% of the respondents also indicated that CSOs influence the legislative decision-making process by lobbying the state president to withhold assent or veto some bills passed by the legislature. The 29 % for *'Other'* includes citizens, traditional leaders, media, donors, constituents and other stakeholders who are courted by CSOs to lobby legislators on specific bills. From the perspective of their roles, these responses confirm that legislative parties, the state president, judiciary, and CSOs, in addition to legislative opposition parties in government coalition, donors and the speaker of parliament, are the critical actors in legislative decision-making processes in Malawi.

5.1.2 Main legislative functions

As the legislature is the main unit of analysis in this thesis, and to relate with what literature indicates as key legislative functions, a specific question asked about the main functions of the legislature. The aggregate responses in figure12 show 100 % of the respondents indicated law-making as one of the functions of the legislature, while 93 % and 86 % indicated oversight and representation, respectively, and 26% indicated *'Other'*.

Figure 11: Main functions of the legislature (aggregate percentages)



Source: Author's empirical findings

These empirical results affirm what is in literature as conventional functions of contemporary democratic parliaments, often prescribed in constitutions or other statutory provisions. The essence of these results is that the three legislative decisions in this study fall under law-making and oversight. Floor crossing including the 2001 Section 65 amendment was part of law-making just as the attempted amendment to presidential tenure of office. Likewise, the law requires that the national budget be passed as financial appropriation bill into law, authorising government to collect taxes and spend public resources.[50] This responsibility of the legislature is an oversight function, which is institutionally vested to it as the budget-authorising agency over the executive as the implementation agency. This also relates to the accountability obligation of the executive through which government expenditure priorities are queried by parliament if not maintained within approved limits.

5.1.3 Sources of influence for actors in legislative decisions

Veto player analysis argues that the veto power, identity and number of veto players can be found in institutions or some enabling statutes of a given country (Roller 2003:6). This implies that all institutional veto players and their powers are expressly provided for and stipulated in state constitutions or specific laws. However, in practice this is only part of, but not complete political practice. To explore this aspect, the study sought to establish the sources of influence for the actors in legislative decision-making processes in Malawi. Thus, a question was asked about the sources of power-where the actors derive their influence for the legislative decisions. Table 10 presents the results of responses regarding sources of influence for each of the actors.

Variedly, the responses in table 10 show that the national constitution and the PSOs are main sources of influence for the key actors in legislative decisions, namely the state president, parliamentary political parties, speaker of parliament, judiciary, CSOs and voters. The responses range from 98% for the highest-*state president*, and 80% for the lowest rating-*voters*. It is evident from the 55% response rating for 'Other' that donors derive their power from elsewhere-outside the national constitution. The 7% and 2% responses that donors get their influence from the constitution and PSOs, respectively, can only be explained in terms of either limited knowledge of or lack of clarity on the question (or both) to the particular respondents.

[50] Malawi Constitution, Sections 176-179

Table 10: Source of influence for actors in legislative decisions (aggregated percentages)

Actors	Source of mandate for actors in legislative decisions (in per cent)			
	Constitution	Parliamentary Standing Orders	Presidential & Parliamentary Elections Act	Other
State President	98	50	41	5
Parliamentary political parties	89	82	48	26
Speaker of Parliament	88	89	14	
Judiciary	84	4		
CSOs	82	20	5	20
Voters	80	13	41	2
Donors	7	2		**55**

Source: Author's empirical findings

Although CSOs as non-state actors are not an integral organ of the state apparatus, their role is constitutionally implied under the protection of social, political and economic rights of citizens. In recognition of the CSOs critical relevance to the legislative decision making process, the legislature has often invited formal submissions of CSOs' input on specific bills and CSOs have extensively exploited this constitutional guarantee with tremendous influence on legislators. Major examples cited by respondents included how CSOs succeeded in campaigning against the passing of the open/third terms bill in 2002/2003, how they successfully compelled the opposition MPs to pass the national budgets in 2007, 2008 and 2009, and how they lobbied both President Mutharika to veto the Marriage Age Bill passed by the DPP majority parliament in 2011 and President Muluzi to veto the bill passed by the UDF dominated parliament in 2001 to remove three High Court Judges.[51]

Although successive governments have expressed negative sentiments against critical governance and democracy CSOs including questioning the latter's legitimacy as unelected representatives of the people, it is discernible that where the opposition is weakened by poor performance in successive legislative elections coupled by incidences of floor crossing, the CSOs become a *defacto* opposition in defending constitutionalism and checking on government excesses in legislative, constitutional and governance matters.[52]

[51] Interviews with CSO leaders, media experts, academicians, MPs and key political leaders
[52] Interviews with academicians, MPs, legal experts, key political leaders and media experts

Parliamentary Standing Orders (PSOs) are the second most important source of mandate for *parliamentary political parties* and the *speaker of parliament* with response ratings of 82 % and 89 % respectively. As discussed earlier, PSOs are operational rules of practice that regulate legislative proceedings.[53] As alluded to above, the third notable source of influence is financial leverage for donors, whose institutional source is located outside national statutes. Bilateral and multilateral donors wield immense policy controlling power from cooperation agreements and international conventions to which aid support is conditioned for donor-dependent countries like Malawi.

5.2 Key formal and informal institutions in Malawi's legislative decisions

At the core of this study is the attempt to establish if institutions matter in legislative decisions in Malawi, and if yes, which ones and how. As discussed in the theoretical review chapter, many scholars are skeptical about the influence of formal institutions on the behavior of political actors especially in Africa. This view is avidly captured by Hyden (2006:98) who states that 'Abstract constitutions and formal institutions exist on paper, but they do not shape the conduct of individual actors, especially those in power,…political leaders in Africa have had a very instrumental view of constitutions and formal institutions, treating them seriously only when it has suited them.' Notably, these conclusions are informed by empirical studies on political accountability of the Ghanaian legislature. The verdict is shared by other scholars such as Chabal and Daloz (1999) and van de Walle (2003) although their conclusions are based on patterns and trends in regime change and governance in Africa and not specific to parliaments, although they may be applicable.

Asymmetrical to this view is the perspective that strongly contest that formal institutions in Africa are gaining in importance and influence of the political actors. This argument is supported by the empirical studies of the Afrobarometer (2012, 2008) and by Bratton (2010) with regard to the sustained support for democratic institutions and practices. Similarly, Posner and Young (2007) and Dulani (2011) provide empirical evidence in contending that formal institutions are gaining prominence in Africa and gradually supplanting or suppressing repugnant informal institutions. Thus, the question on the role and status of formal and informal institutions in

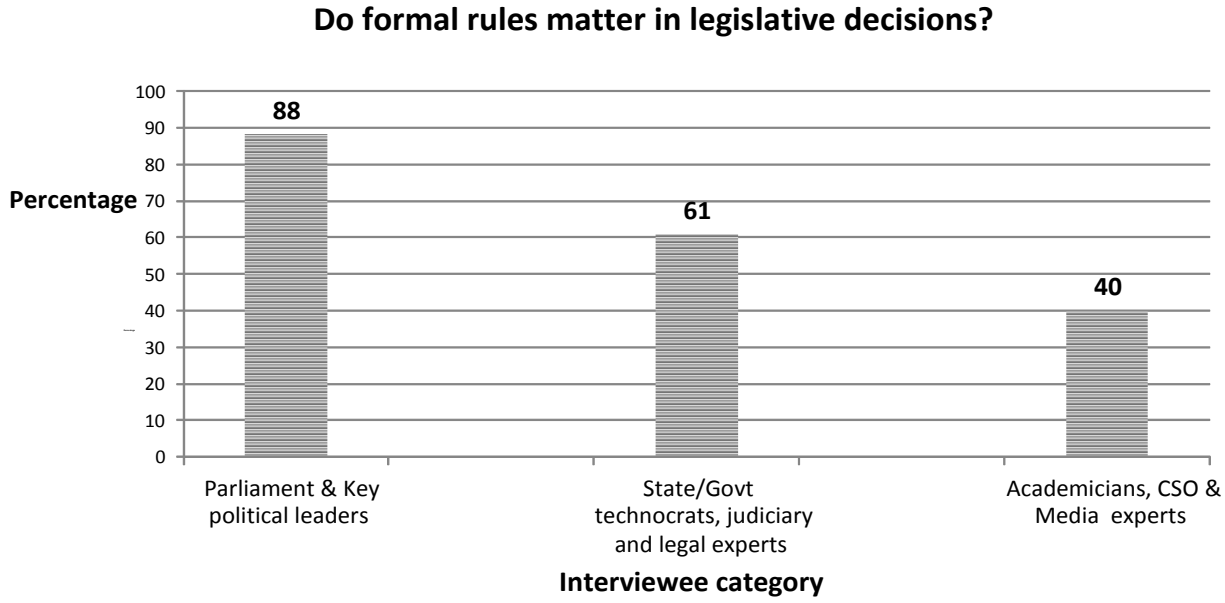
[53] Section 56(1) of the Malawi Constitution allows the National Assembly to create its own procedural rules

legislative decision-making processes in minority governments is vital in making empirical contribution to the two opposed debates.

5.2.1. Formal institutions

In order to assess whether institutions or rules matter in legislative decisions, respondents were asked to indicate if the conduct of legislators is regulated by existing formal decision making rules. The aggregate frequency responses show that 61 % of the respondents indicated that legislative business is influenced by existing formal rules, while 38% of the respondents felt that formal rules do not matter in legislative business. When the perceptions are compared across the three categories, the disaggregated responses as seen in figure 12 are markedly different but not contradicting the aggregated results. The disaggregated results indicate that MPs and key political leaders, as major actors in legislative decisions themselves, consider legislative operations to be substantially regulated by formal rules, hence the 88% positive self-assessment, compared to the modest response scores of 61% by the government/state technocrats, judiciary and private lawyers, and the more conservative score of 40% by the academicians, CSO and media experts.

Figure 12: Disaggregated responses on the influence of formal rules in legislative business



Source: Author's empirical findings

It is discernible that most MPs and political leaders perceive or seek to portray their political conduct as law-compliant, while those who observe them including those that work closely with them (for instance, government or state technocrats, the judiciary and private lawyers) are modest and rather skeptical of this- often exaggerated self-appraisal. The results however show that the conduct of legislative business is, to some extent, regulated by formal rules although further enquiry to explain these perception differences across categories is essential. The disaggregated results reveal the potential for biased self assessment by the MPs and key political leaders. Notwithstanding such possible biased self-assessment, the results show that formal institutions, to a significant extent, influence the legislative decision-making processes.

The assessment in the next section gives clarity with a more precise identification of the specific formal rules that regulate legislative business. The responses presented in table 11 are on the follow-up question that enquired about which formal institutions really matter and to what extent. The aggregate results show lower scores for the influence of Parliamentary Standing Orders (PSOs), compared to that for the national constitution. This is understandable under constitutional supremacy which Malawi is. Constitutional supremacy means that the national constitution is the supreme law of the land and all other laws and statutes are subservient and must be compliant to it.

Table 11: Responses on formal rules which influence legislative decisions

Aggregate frequency responses on formal rules which influence legislative decisions (in percentage)	
Type of formal rules	Frequency percentage (%)
National Constitution	60.7%
Parliamentary Standing Orders	51.8%

Source: Author's empirical findings

However, the disaggregated assessment provides a relatively varied but consistent pattern of scores across the three categories suggesting that the legislative decision making process is mainly influenced by the in-house operating procedures of parliament-PSOs. This seems to be

supported by a Supreme Court ruling which held that parliament should decide on its internal matters guided by PSOs. The case in question was the matter in which three MPs sought judicial direction on the legality of non MP Ministers who were attending and participating in legislative debates (Meinhardt & Patel 2003:43).[54] The Courts held that it was critical for the law-makers not only to create standard operating procedures for their conduct and business, but to ensure that such rules and procedures are relevant, revised to address emerging challenges and guarantee predictable behavior among legislators.

Thus, concerning the regulation of procedural matters, the decision making-processes and indeed the conduct of legislators in parliament, PSOs as formal institutions, are given pre-eminence so long as they remain subservient to and do not contravene fundamental principles of the national constitution. This is done with implicit adherence to Section 5 of the constitution that stipulates that '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.'

From the author's personal experience and observations as a regular visitor to the legislature for many years, it can be confirmed that the legislature, to the fullest extent possible, is regulated by Parliamentary Standing Orders. The strictly enforced PSOs are very specific and elaborate, from daily prayers at start of business, to how ministerial questions are asked and answered, how public petitions to parliament are handled, the debate process and voting rules, powers of the speaker, suspension of standing orders, permissible parliamentary language (non-derogatory), as well as decency dress-code when coming to parliament-very formal. Specific disciplinary measures are also applied against unprocedural conduct, depending on the gravity of the misconduct. In all, although parliamentarians are often perceived with extreme negativity and sometimes harshly ridiculed for lack of seriousness by the public, one can only imagine how this perception would worsen, without the controlling effect of the strictly enforced PSOs.

While the above discussion has provided specific situations and examples in which PSOs regulate the conduct of legislative business, it is still unclear with regard to the extent and

[54] The three MPs argued that based on the earlier High Court ruling on the Fred Nseula case and in keeping with the principle of separation of powers, MPs should not double as Ministers. Of course the Supreme Court ruled against the lower Court's decision effectively allowing MPs to also serve as Ministers.

dimensions by which the national constitution addresses questions about the independence of the legislature, multiple actors in legislative processes, and distribution of institutional veto power. The next section addresses these aspects before turning to informal institutions.

The national constitution in legislative decision-making processes

So far, it has been established that PSOs and the national constitution are the main formal rules that influence legislative business. Further, the above section has attempted to explain how PSOs guide the daily conduct of legislators as the in house standard operating procedures of parliament. Similarly, the national constitution has to be examined in terms of whether and the extent to which it provides for the independence of the legislature, distribution of institutional veto power and the engagement of multiple actors in the legislative decision-making processes.

To do this, informants were asked to rate the following four aspects of *high, medium, low* and *none,* the extent to which formal rules (a) provide for constitutional separation of powers, (b) specify functional roles of actors (c) permit more actors in legislative decision making and (d) ascribe veto powers to specific actors in the legislative decision making processes. The objective was to respond to two critical questions. First, to establish whether formal rules matter to the extent that they are institutionalised to accommodate the four aspects as conventional standards of democratic governance and therefore essential indicators in this institutional-actor analysis of legislative decisions. If the four conditions exist and are satisfied (at least by the sum total of high and medium percentage scores), then their effectiveness can be assessed based on (a) whether such existent formal rules are systematically and consistently enforced, and (b) how incentives of other factors such as informal rules enhance or challenge the formal rules.

To ease interpretation, cumulative frequency percentages are used that combine *high* and *medium* as one positive indicator, while *low* and *none* together denote a generally negative perception. Except for interpretive inferences, it was beyond the scope of this study to establish a comparative assessment on how each of the four aspects is practically operationalised in practice. Responses in tables 12(a-d) show that the four aspects are codified or stipulated in the formal institutional rules in Malawi. Notably table 12(a) gives a cumulative frequency where 75% of

informants indicated that formal rules provide for the separation of powers among state institutional actors of the legislative, executive and judiciary.

Tables 12(a-d): How the constitution influences the legislative decision-making process

Table 12(a): The extent to which formal rules provide for separation of powers

	Percent	Cumulative %
High	32.1	32.1
Medium	42.9	75.0
Low	23.2	98.2
None	1.8	100.0

Source: Author's empirical findings

Major constitutional provisions cited by respondents were Sections 7, 8, and 9 which clearly demarcate the three branches of governmental powers-the legislature, executive and judiciary.[55]

The separation of powers as defined in these constitutional provisions sets parameters for interdependence and horizontal accountability among the three branches of government, thereby making legislative decision-making a multi-actor process and non-exclusive to one single branch of government. As discussed earlier under the legislative decision-making process, the executive guards the entry and end-point of the legislation and policy making process through the constitutional powers to originate legislation,[56] presidential veto powers to sign bills into law,[57] presidential powers to summon extraordinary meetings of parliament,[58] prorogue parliament,[59] proclaim referenda,[60] and implementation of enacted policies and legislation. The legislature is vested with legislative power to receive, scrutinise, amend and vote against or in favour of any proposed legislation,[61] including the passing of the national budget as a financial appropriation bill.[62] The legislature's oversight role enables it to summon any public or private officer to account for their actions. This includes the statutory requirement for the president to make the *State of the Nation* address[63] to the legislature at the beginning of each sitting of parliament.

[55] Interviews with former attorney general, Justices of Supreme Court, High Court Judges, Government technocrats
[56] Malawi Constitution, Section 96 (1)(c)
[57] Malawi Constitution, Section 89 (1)(a)
[58] Malawi Constitution, Section 59 (a)
[59] Malawi Constitution, Section 59 (b)
[60] Malawi Constitution, Section 89(1) (i)
[61] Malawi Constitution, Section 66
[62] Malawi Constitution, Sections 57; 173-176
[63] Malawi Constitution, Section 89 (3-4)

The courts, on the other hand, have absolute constitutional jurisdiction over all judicial matters, including the interpretation and enforcement of the constitution, and judicial review powers over all laws ensuring that Acts and decisions of parliament and the executive are inconformity with the constitution.[64] The constitution expressly states that the courts must execute 'their functions, powers, and duties independent of the influence and direction of any other person or authority.'[65] It is important to note that while the courts have constitutional prerogative to order, influence or reverse any act by the executive and the legislature, the courts themselves are constitutionally insulated from any undue influence from neither the executive nor the legislature. In the words of one Justice of Appeal 'what is assigned to one organ is to the exclusion of others.'

Table 12(b): The extent to which formal rules permit more actors in the legislative process

Regarding the extent to which formal rules permit multiple actors in legislative decision-making processes, a cumulative frequency total of 75 % responded in the affirmative.

	Percent	Cumulative %
High	39.3	39.3
Medium	35.7	75.0
Low	23.2	98.2
None	1.8	100.0

Source: Authors empirical finding

Indeed the results in table 12(b) are an acknowledgement of the existence of a permissive and accommodative formal institutional framework for multiple actors that influence the legislative decision-making processes in Malawi.

Table 12 (c): The extent to which formal rules specify functional roles of actors

	Percent	Cumulative %
High	44.6	45.5
Medium	37.5	83.6
Low	14.3	98.2
None	1.8	100.0

Similarly, table 12(c) shows that 83.6 % of the respondents confirmed that formal rules define roles or functions of institutional actors.

Source: Authors empirical findings

[64] Malawi Constitution, Section 108
[65] Malawi Constitution, Section 103 (1)

Explicitly or implicitly stated, actor roles and functions can be linked to specific provision of parliamentary standing orders and the national constitution, being the two major formal rules that regulate the actions of legislative decision makers.

The affirmative response further implies that the actions of these actors have the formality of institutional legitimacy within which they can be justified, validated or contested. According to the classification of actors or veto players summed in figure 5 and adopted in this study, these actors have either direct or indirect institutional powers to influence the legislative decision making process.

Table 12 (d): The extent to which formal rules give veto powers to specific actors

In addition, table 12(d) shows that slightly more than two thirds (69.6 %) of the informants acknowledged that formal rules grant veto powers to specific actors in the legislative process. This is supported by other empirical results of this study which confirmed that the legislature and the state president have legislative-veto powers.

	Percent	**Cumulative %**
High	48.2	48.2
Medium	21.4	69.6
Low	23.2	92.9
None	7.1	100.0

Source: Author's empirical findings

Similarly, the courts, through judicial review powers and when moved, can overturn or nullify legislative decisions. This is a *defacto* exercise of veto legislative power. Overall, a formal institutional apparatus exists in Malawi for the separation of powers among multiple actors in legislative decisions specifying actor roles, and granting of veto power to specific actors. As the next section reveals, these formal rules are however not exclusive, they coexist with informal rules.

5.2.2 Informal institutions

Many scholars and writers of African politics have accounted for the myriad ways in which informal institutions have survived all transitions on the continent and continue to coexist along formal rules. As discussed under literature review, most of the western-modeled democratic principles, constitutional rules and institutional arrangements that came with the third wave of

democratisation, found the pre-existence of enduring legacies and a rich heritage of informal social structures, unwritten moral codes and traditional norms. Malawi is not an exception. These norms and codes were transferred, adapted and retained across generations to the post independence single party era. In the democratic era, they intricately co-exist and enmesh with recently introduced formal rules thereby creating what others call hybrid regimes (Menocal, Fritz & Rakner 2007:3).

The authors define hybrid regimes as comprising 'ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits.' This extreme logic of informal norms and practices is largely negative and perhaps incomplete as it hardly accounts for informal institutions that compliment or enhance formal rules. To understand the prevalence of informal institutions in the legislative decision-making processes, respondents were asked to indicate with either *Yes* or *No* if in their opinion, there are any informal norms and channels that operate and are enforced outside the official domain of the legislative decision-making process.

Just as the influence of formal institutions in legislative business was essentially affirmed, similarly table 13 illustrates that all respondents (100%) across the three categories confirmed that informal institutions do exist and influence actors in legislative decisions.

Table 13: Responses on the influence of informal institutions in legislative decisions

Interviewee category	**Affirmative frequencies in (%)**
Parliament and key political parties	100 %
Govt./state technocrats, judiciary and private lawyers	100 %
Academicians, CSO & media experts	100 %

Source: Authors empirical findings

It must be clarified that although the affirmative rating is 100% across all the three categories, it cannot be interpreted to mean higher prevalence and influence for informal over formal institutions. By design, the formulation of the question was neither intended to give comparative responses nor explain how the two institutions influence each other. Therefore, the result simply

implies there is an apparent awareness, experience and acknowledgement that formal and informal institutions co-exist in influencing the legislative decision-making process. While it is noteworthy that respondents (including former and present legislators themselves) admit that legislative conduct reveals influential traces of informal practices and norms, it is necessary to identify what these informal institutions are.

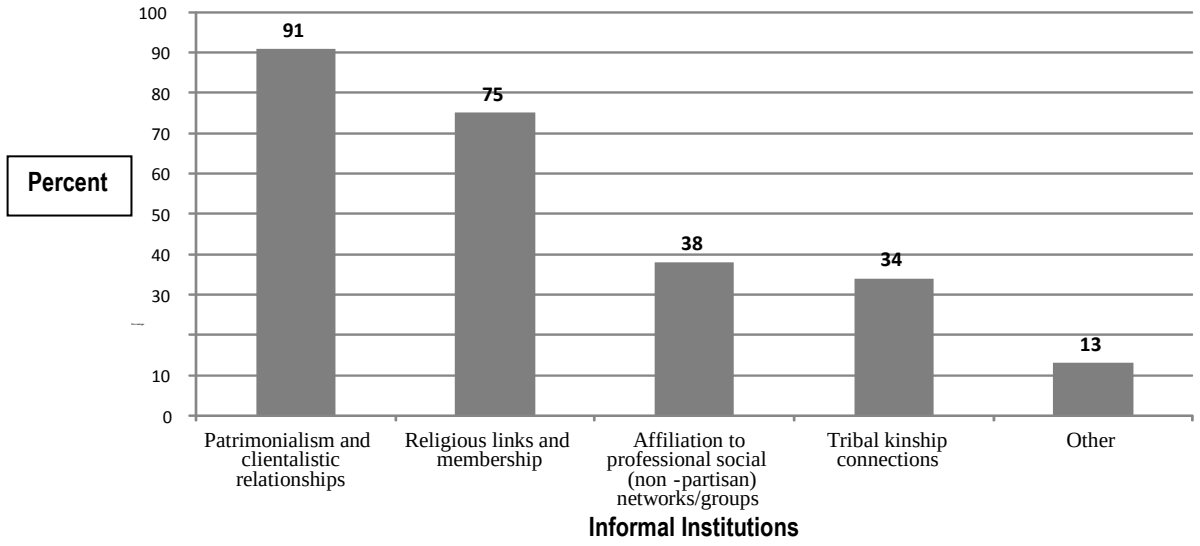
Figure 12 provides aggregate responses on the enquiry regarding the most influential informal institutions on legislative decision makers. The results illustrate that respondents ranked patrimonialism and clientelistic relationships as the top most aspects of informal institutions, with an aggregate score of 91%, followed by religious connections scoring 75%. As discussed under theoretical review, patrimonialism and clientelism tend to minimise incentives to comply with formal rules, undermine official hierarchies, and often encourage corruption and particularistic distribution of public resources and opportunities. Therefore these informal institutions magnify the 'Big Man' to the extent that they effectively render formal rules ineffective. As such, they are negative.

Although religious organisations including churches are both theoretically and in reality not informal entities, these results should be understood within the context and where religious connections exhibit attributes of the economy of affection. Such attributes include interpersonal social bonds, mutual interdependence, expression of charismatic source of authority for its leadership, voluntary membership that offers social and spiritual security and support in which personal gifts and privileges are exchanged, and group norms and normative values that are internally enforced with no recourse to the formal legal system. To this extent, religious connections are therefore treated in this study as a subtype of the economy of affection, which is not necessarily negative but positive when they amplify or enhance compliance with formal institutions. Hyden (2006:78) admits that some aspects of the economy of affection can be beneficial and supportive to formal rules.

For example, many (non-fanatical) religious organisations encourage acts of common good, normative values, compliance to civic obligations and rules, and a life style of moral decency. In Malawi, where about 85 % of its population is made up of Christians (catholics, protestants,

evangelicals, and charismatic pentecostals), many political leader including legislators, past and present presidents are active members of one or another religious group. Some informants indicated that when the post-2009 Mutharika administration was widely being criticised for initiating and enacting undemocratic legislations, some revered catholic priests informally invited all devotee catholic legislators in Mutharika's government and admonished them (in camera) to desist from supporting undemocratic legislations. The influence of religious organisations in legislative decision-making is arguably significant and cannot be ignored.

Figure 13: Forms of informal institutions that influence legislative decisions



Source: Author's empirical findings

In addition, the Catholic priests periodically publish *Pastoral Letters* that document critical social and political challenges including widely regarded as repugnant constitutional amendments, police brutality, divisive political statements and corruption, among others. These pastoral letters are often and informally endorsed by other religious fraternities and noticeable changes in terms of reversals to some political decisions follow within and outside the legislature. Thus, the role of religious links as informal institutions discussed above served to complement, accommodate and even substitute formal institutions.

Other informal institutions that influence the decision choices of legislators are affiliation to professional social and non-partisan networks (38%) and tribal kinship connections (34%). Tribal kinship connections include sub-national identities and networks whose intentions may be to provide a platform for political cohesion and advancing the values of cultural identity along tribal groups. These networks, whose original founding objectives may be noble, tend to encourage divisive regional/tribal politics and nepotism which political elites 'hijack,' [66] and therefore, detrimental to the values and rules of competitive democratic practice.

The importance of these traditional identities and networks is also observed by van de Walle, who draws a strong association between patronage in Africa with 'the strength of clan, ethnicity and other sub-national identities,…and the need for mechanisms of 'social insurance' in the risky and uncertain environment of low-income societies, have all been used in the literature to explain the ubiquitous presence at every level of African life of the exchange of gifts, favours and services, of patronage and courtier practices,' (2003:311). Dulani in direct reference to the pervasive influence of informal institutions states that, 'the relationships, institutions and people most prominently in public view are not necessarily the most powerful…public administration and institutions in Africa are indeed weak…personal relations, and personal networks, whether of an economic, political, religious or regional nature, frequently offer far more effective instruments of public management…,' (2011:35).

Notwithstanding the prevalence of some negative informal institutions, the results discussed above present another dimension: that of complementary informal institutions (religious connections) that do not compete with but enhance and promote formal institutions. Under the latter circumstances and subject to the resilience of its advocates, complementary informal institutions explain how formal institutions are, according to Posner and Young, gradually replacing informal ones in Africa (2007:138). When the results in figure 13 are disaggregated as seen in table 14, the pattern is consistent. The prevalence of patrimonialism and clientelism is acknowledged by all the three categories with as being of negative impact. Likewise, the role of religious connections and membership links are equally significant in influencing legislative decision making processes but in a positive sense, according to the results in this study.

[66] Interviews with CSO leaders, academicians, media experts, historian and political leaders

These results demonstrate that the relationship between formal and informal institutions is circumstantial and none-linear and sometimes mixed, with instances when they are mutually reinforcing or accommodating, complimenting, substitutive and sometimes competing (Helmke & Levitsky 2006).

Table 14: Informal institutions that influence legislative decisions (disaggregated percentages)

	Informal institutions and frequencies in percent (%)			
Interviewee category	Patrimonialism & clientelistic relations	Religious links and membership	Professional/ social networks	Tribal kinship connections
Parliament and key political parties	88	70.6	41	57.1
Govt./state technocrats, judiciary and private lawyers	90.9	63.2	16	31.2
Academicians, CSO & media experts	95	90	58	37.5

Source: Author's empirical findings

Parallel to the optimism of African scholars such as Posner and Young on the emergent importance of formal institutions in African politics, the empirical evidence in this study dovetails with the observations of Michael Bratton that informal institutions remain an integral driver of political choices and actions in Africa. Referring to the cumulative effect of negative informal institutions like patron-clientelism and patrimonialism, Bratton adds that formal institutions such as constitutions and official procedures are often attenuated, placated or bypassed as 'actors align themselves with more familiar relationships and routines,' (2010:104).

To further illuminate on specific informal incentives which motivate MPs in legislative decisions, respondents were asked to indicate from a list of options for chosen elements. Responses captured in table 15 show that the most attractive informal incentives are prospects for personal material gains in forms of monetary rewards and public appointments. Political party caucuses were rated second in their influence, while the influence from social networks (including tribal, religious or tribal connections), and personal convictions of the legislator were

considered third and fourth most influential factors respectively. Table 15 provides these responses as by category of the respondents.

Table 15: Incentives that influence legislators in legislative decisions (disaggregated percentages)

	Motivating incentives and frequencies in percent (%)			
Interviewee category	Material incentives including monetary, appointments or personal/private gain	Political party positions agreed in party caucuses	Social networks (tribal, religious or kinship connections)	Personal convictions of individual decision maker
Parliament and key political parties	94	77	29	47
Govt./state technocrats, judiciary and private lawyers	84	83	47	28
Academicians, CSO & media experts	80	75	35	5

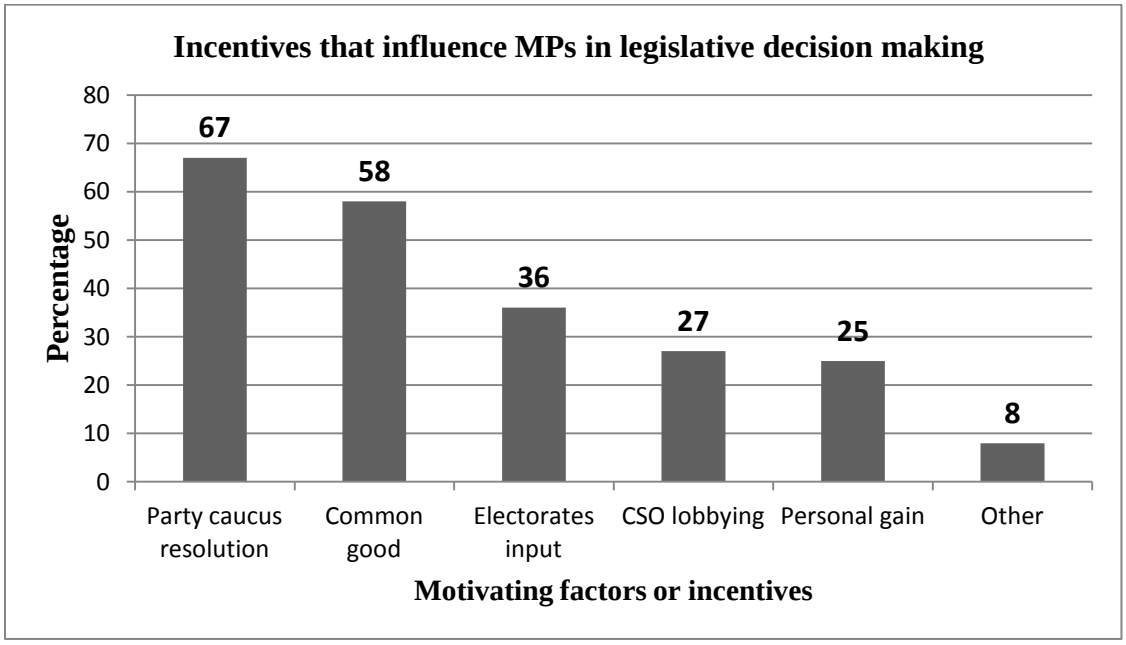
Source: Author's empirical findings

Table 15 illustrates a pattern of perception scores of above 75 % across the three categories of respondents' with regard to the first two elements: material incentives (including monetary inducements, public appointments or personal/private gain) and the influence of political positions agreed in party caucuses. It must be clarified that party caucuses are not an informal institutions, but they are conducted within a political mode of the 'Big Man' neo-patrimonial tradition and patronage that structure conformity and suppress internal dissent in how decisions are dictated. It is these informal aspects of decision making within caucuses that we refer to.

The result suggests that the two neo-patrimonial elements are the fundamental incentives or motivating factors that influence MPs in legislative decisions. The perceptions on the last two factors: 'affiliation to social networks such as tribal, kinship and religious connections,' and 'personal convictions' with below 50 % scores by all the three categories also suggests that they have undisputable influence on the legislators' decision choices. A slightly different pattern of responses but not sharply contrasting from the above results was given when a self-assessment question was asked to MPs alone to indicate which factors were most influential in their legislative decision choices. The self-assessment responses are illustrated in figure 14.

While there is an apparent agreement and acknowledgement (including from legislators) that patrimonial factors such as material and monetary personal gains have a high influence on MP's legislative decision choices as shown in table 15, an evidently modest assessment manifests in figure 14 that shows MPs have an austere caution in projecting a clean self image. Notably, the MP respondents indicated having been driven by personal gains only in the least of circumstances, represented by a score of 85%. Nevertheless, legislators claim that they are mostly influenced by party caucus resolutions, common good and personal convictions. The influence of voter interests on the MP is substantially insignificant.

Figure 14: Percentage of MPs indicating what influences them in legislative decisions



Source: Author's empirical findings

However, Liwimbi's (2009:73) findings in support of the supremacy of informal institutions than formal rules within parties corroborate with the high conformity decision-making processes in party caucuses characterised by patronage and clientelistic relationships. Respondents also indicated that the influence of party caucuses is strongly linked to the endemic and endeared political culture of silence, patrimonialism and patronage in which the directives of the party patron cannot be challenged without risking high political costs of non-re-election, removal from

prestigious portfolio committee or demotion from party position.[67] Informed by this general overview on influential institutions and actors in legislative decisions, the next section provides further empirical evidence on specific actors and institutions in the three legislative decisions in Malawi.

5.3 Key actors and institution in the three legislative decisions

In order to link actors to the three legislative decisions in this study, informants were also asked to indicate critical actors who emerged during the debates on the three legislative decisions. This question also assists to further cross-check the above findings regarding critical actors in legislative decisions in Malawi. Table 16 presents aggregate responses in descending order of ratings. It is notable that all actors are reported to have been involved in all the decisions, but to varying degrees as shown by the percentage of interviewees' responses for each legislative decision. The number of actors varied between five and eight across the three legislative decisions. Four actors: namely parliamentary political parties, state president, opposition political parties and the speaker of parliament were by virtue of their legislative roles, engaged across all the three issues with at least 50% scores.

On the other hand, as many as 86% and 88% of the respondents reported that civil society organisations were involved in open/third term bill and the national budget respectively, while only 45% indicated that civil society organisations were also involved in the legislative debates on floor crossing. There is a pattern of varying perception in the extent of involvement of the same actor across the three legislative decisions. For instance, 88% of the respondents indicate that the judiciary was involved in floor crossing, while 54% indicate this actor was involved in the national budget issues-by ordering parliament to pass the national budget within a specified period. Another 20% said the judiciary was involved in open/third term debates. The cited role played by the judiciary in the open/third term bill was the court's invalidation of a presidential ban on demonstrations against the open/third term proposal.[68]

[67] Interviews with former MPs, political leaders, CSOs and officials from parliament secretariat
[68] Interviews with High Court Judge, historian, CSO leaders and academician

Similarly, 63% of the respondents indicated that donors were involved in the national budget legislative matter, while only 39% and 11% of the respondents indicated that this actor was also engaged in open/third term bill and floor crossing, respectively.

Table 16: Main actors that emerged in selected legislative decisions (aggregate percentages)

Actors / Legislative Decision	Parl. political parties	State president	Civil Society	Opposition parties in govt. coalition	Speaker of Parliament	Judiciary	Voters	Donors	Other
Third/ Open Term	98%	91%	86%	77 %	50 %	20 %	55 %	39%	30%
Floor Crossing	95%	80%	45%	54 %	79%	88 %	21%	11 %	23%
National Budget	91%	80%	88 %	59 %	54 %	54 %	54%	63%	30 %
Aggregate	**95**	**84**	**73**	**63**	**61**	**54**	**43**	**38**	**28**

Source: Author's empirical findings

Further, 55% and 54 % of the respondents indicated that voters were involved in open/third term and national budget debates, respectively. Only 21% reported that voters were also involved in floor crossing issues. The "*Other*" category which includes the media, religious groups and traditional leaders had slightly less than a third of the respondents indicating that these actors were involved in open/third term and national budget decision making processes, while less than a quarter of the respondents indicated that these actors were engaged with floor crossing issues.

In all, it is evident from table 16 that there were multiple actors involved in the three legislative decisions. What the table does not explicitly show are the defining attributes of the actors namely; which ones were ideologically distant? Which ones were institutional or extra institutional? Which ones were collaborators and in what contexts did they exert their influence? This is what the next section attempts to do. Thus, the next section shows how actor perceptions are inconsistent across the three legislative decisions followed by explanations on how each cluster of actors were involved in the three legislative decisions and, where necessary incentives that motivated actor behaviour.

5.3.1 Actors and institutions in Open/ Third term Debate

A key institutional feature in most African emerging democracies of presidential regimes especially those with legacies of post-independence life presidents, was the installation of constitutional term limits for the president. In some cases, those limits were already part of the post-independence constitutions, like the case of Malawi, but they were abolished after independence by the single party regimes, as they opted for limitless tenures and life presidency. On reverting to democracy in the 1990s, the infinite presidential tenures were abolished. In most countries, the new presidential tenures were set to a maximum of two-five-year terms. The aim was to negate indefinite re-election of incumbents and the perpetuity of single-party political economy to instead, facilitate periodic democratic leadership alternation in elective public offices.

Specifically, Section 83(3) of the Malawi Constitution stipulates that 'The President, the First Vice-President and Second Vice-President shall serve in their respective capacities a maximum of two consecutive terms, but when a person is appointed to fill a vacancy in the office of the President or Vice-President the period between that election or appointment and the next election of a President shall not be regarded as a term.'

Towards the end of the first ten years of the democratic experiment- i.e. around the year 2000, transition democracies in Africa were faced with the test of affirming their democratic resolve to retaining constitutional presidential limits, or waive them or revert to limitless terms to satisfy specific expediencies. In what was popularly termed *open term* debate, political vanguards of President Bakili Muluzi who in 1994 succeeded Life President Kamuzu Banda, began to agitate for the abolition of constitution term limits, allowing Muluzi to contest for infinite presidential re-election.

This campaign, which initially started in low key even before Muluzi finished his first five-year term in 1999, was dismissed as 'media speculation' by UDF elites. It gradually gathered momentum until it turned divisive within and outside the UDF, as the 'rumour' was attracting growing support and resistance from its stakeholders. It reached its peak in 2002 with a

constitutional amendment legislation presented to parliament by the opposition AFORD legislator. But what roles did the specific actors play in this legislative matter?

Actors in Open term Debate

Although under the aegis of influential and flamboyant UDF personalities like Dumbo Lemani and Davis Kapito, the constitutional amendment to Section 83 (3) was conveniently introduced as Open Term Bill through a private member's motion by an AFORD MP-Khwauli Msiska, on 24th May 2002 (Dulani & van Donge 2005:212; EISA 2005:22; Lwanda 2004:56; Chinsinga 2009:122). Its objective was to make the presidential tenure limitless. The tact of having an AFORD MP introduce the bill was aimed at showing that the urge for the amendment was widespread and emerging from below. It is beyond speculation that the traditional leaders, UDF MPs, AFORD leader Chakufwa Chihana, and MCP faction leader John Tembo were lucratively and covertly induced to lobby MPs to pass the bill.[69]

Table 16 shows that there were six actors who were dominant in the open/third term debates. Four were direct (constitutional) while two were indirect actors. According to the respondents' ratings in descending order, these were parliamentary political parties, the state president, opposition parties in government coalition (whether formal, as in AFORD or informal as in MCP- Tembo faction) and the speaker of parliament. Less than 50% of respondents indicated that the judiciary and donors as having been involved in the open/third term bid. The two indirect actors were CSOs and voters.

Intensely opposed to the proposed amendment within parliament were the Chakuamba faction of MCP MPs, expelled UDF and AFORD MPs who aligned in an informal legislative alliance led by Brown Mpinganjira. Non legislative actors who also opposed the bill included CSOs and religious groups and the Malawi Law Society. After contentious and fracturing parliamentary debate, the bill was put to a roll call vote on 4th July 2002. It narrowly failed by three votes short of securing the required 128 votes. The distribution of parliamentary votes on the open terms bill appears in table 17. The 125 votes in favour were secured from UDF, MCP and AFORD MPs.

[69] Interviews with various respondents.

Opposed to it were the 59 MPs from MCP and AFORD who voted against it. Five MPs were absent and three abstained (EISA 2005:22; Morrow 2006:157). The Speaker of Parliament at the time who was himself a UDF member, declared the vote results as a defeated bill.

Table 17: Parliamentary vote on a bill to remove presidential term limits

Assembly Membership	Affirmative threshold	Affirmative Votes	Negative Votes	Abstain	Absent	Vacant seats
193	**128**	**125**	**59**	**3**	**5**	**0**

Source: Malawi National Assembly Hansard, 4th July 2002

Subsequent to this defeat, UDF sought to present a modified version to parliament- this time as a government bill seeking a third term allowing a maximum of three 5-year constitutional terms to Malawi presidents.[70] The new bill created further splits among UDF cabinet members, MPs and UDF's former opposition allies.[71] The Tembo MCP faction changed course due to the open outrage and pressure from its rank and file in its central region enclave (Kadima & Lembani 2006:125). Coupled with renewed resistance from civic groups and higher prospect of another legislative defeat, the bill was formerly withdrawn in the second half of 2003 (Chinsinga 2009:122) after Muluzi had handpicked Mutharika as his successor.[72]

The four indirect actors on the open/third term debate were (a) CSOs, religious leaders, lobbyists from professional groups, and pressure groups-who gallantly opposed the bill, (b) voters who were mobilised by CSOs to protest against the bill and influence their MPs, (c) donors who threatened withholding aid support if the bill was passed, and (d) the media[73] who publicised the impending bill long before it was neither discussed in cabinet nor brought to parliament (Morrow 2006:155). But which institutions influenced the open/third term debate?

[70] Interviews with parliament secretariat staff and former attorney general
[71] Interviews with academicians, former speaker of parliament, media experts and Historian
[72] Interviews with CSO leaders, historian and former speaker of parliament
[73] Interview with media expert

Formal institutions in Open/Third term Bid

The most prominent formal institution that was linked to the open/third term debate was the constitution. To avoid prejudicial and unreasonable constitutional changes and removal of certain public officer, the constitution requires that for aspects such as removal of the speaker of parliament[74] the impeachment of the president, and amendment to the section on presidential tenure of office be possible only with a supermajority (qualified two thirds) affirmative vote of all eligible legislative members.[75]

In relation to the decision outcome of the open/third term bill, I share the view taken by Chingaipe (2012:8) who observes that the correct interpretation and application of the two-thirds majority requirement for constitutional amendment should have led the speaker to declare that the house was undecided, hence the bill was 'neither adopted nor defeated,' since the votes were inconclusive under the circumstances where neither the two-thirds affirmative (128 votes) nor the one-third (65 votes) opposing the bill were attainable.

However, notwithstanding this observation, the decision on the blocked open/third term bill was premised on a constitutional provision that requires the attainment of a supermajority threshold in affirmative for such an amendment to the presidential tenure provision. This provision is implicit on the 1/3 requirement for a defeated bill. Primarily on this account, institutions do matter -to the extent that president Muluzi was constitutionally barred from running for a third term following this failed bill.

The open/third term bid is also a classic example that explains the limits to the influence of patronage and patrimonialism in Africa. As the results illustrate, a lot of inducements in different forms were exchanged between and among actors in order to weaken dissent and expand support to the proposed constitutional change so as to secure an outcome in favour of extended presidential tenure. It is also evident that within AFORD and the Tembo faction of the MCP who supported the bill, a mixture of inducements and coercive strategies were used to ensure conformity to what the party caucuses had agreed- to vote for the bill.

[74] Malawi Constitution, Section 53(3)(d)
[75] Malawi Constitution, Section 196 and 197.

To the open/third term strategist, those bewildered at the highest prospect of the bill's success, and indeed the analysts with a leaning on the supremacy of informal institutions; all conditions were satisfied to have the bill passed. One such perspective is that shared by Diana Cammack (2011:2) who, calling it *transition without transformation*, observes that the institutional design of the post 1994 Malawi preserved and patterned after a 'neo-patrimonial logic' which 'transcended the change in government and has continued to drive the behaviour of the ruling elite...,' and '...patronage politics with ties ('dyads') reaching through party-political clients all the way into villages and urban areas sees the exchange of rents for votes.' Yet, the cumulative influence of contrary opinion to the open/third term bid and the resolve of legislators, those who believed in retaining the status quo, prevailed over patron-clientelism. It can therefore be concluded that indeed, institutions are beginning to matter in Africa.

In addition, a failed attempt to modify institutions for expanded support in lieu of UDF's minority predicament was the early 2001 move by the UDF to introduce a constitutional amendment that would allow president Muluzi to appoint 20 MPs (Dulani & van Donge 2005:212). Fearing its prospective defeat, the proposal was abandoned before it was even tabled in parliament.[76] However, this UDF overture was an attempt to revert to the status quo of Kamuzu Banda's single party era under which he was constitutionally allowed to appoint unlimited number of MPs to the legislature. Likewise, the logic of the open terms bill was a synonymous to the life-presidency that Malawi lived under for 30 years until 1994.

Another formal institution linked to the open/third term bid, was the amended floor crossing (Section 65) clause as an expanded constitutional device that was successfully enacted to punish dissent within UDF and reduce the number of direct or indirect veto players resistant to the open/third term agenda for Muluzi. These included political organisations such as pressure groups and democracy promotion CSOs. As this is discussed in detail under floor-crossing, it suffices to note that given the plurality electoral system that allowed Muluzi to run a minority government, the UDF had hoped to instrumentally expel from the legislature those 'deviant' MPs deemed unsupportive of the agenda to remove constitutional term limits.

[76] Interviews with former opposition MPs.

Informal institutions in the Open/Third term Bid

The empirical results in this study confirm that informal institutions of political patronage and clientelism are preserved by and embedded in formal rules- presidential system, which invest vast powers in the president to dominate and control all spheres of political and economic life including parliament, judiciary, parastatals, central bank, national security apparatus and chiefs.[77] When respondents were asked in this study to indicate whether informal institutions influence the conduct and behaviour of legislators in legislative decisions, all respondents (100%) answered in unequivocal affirmative. Indeed patrimonialism, patron-clientelism, and religious links were mentioned as dominant informal avenues through which legislative decision choices are influenced.

Respondents observed that prior to and during the open/third term debate, exchanges involving money handouts, material incentives and personal favours were dispensed by president Muluzi and his UDF agents to buy off or mute opposition across all critical sectors including trade unions, religious leaders, media, legislative opposition parties and some civil society leaders. In fact, it was also observed that the appointment of Chakufwa Chihana as Second Vice President of the Republic in 2001 was a gesture of appeasement to maximise AFORD's support for the UDF open/third term bid in parliament-at the expense of state resources.

Three groups who gallantly opposed the open term bill were (a) interest groups- Forum for the Defence of the Constitution (FDC) and the National Democratic Alliance (NDA) pressure group, who publicly demonstrated against the bill, (b) CSOs including the Malawi Law Society, and (c) the media, who campaigned against the bill.[78] In this study respondents often mentioned about these non-state actor groups under '*Other.'*

On the other hand, positive informal institutional arrangements included that of informal legislative coalition against the open/third-term bill among anti-third term MPs. According to the four-fold typology of informal institutions by Helmke and Levitsky (2004), this was

[77] Interviews with MPs and key political leaders, academia, former attorney general and some judicial officers
[78] Interviews with MPs and key political leaders, academia, media and judicial experts

complementary to formal institutions as it enhanced the retention of and compliance to constitutional rules.

Further, the fact that the open-term bill was overturned by a legislative vote illustrates that the parliament's plenary is the most critical *veto-point*, under minority government. According to Ellen Immergut (1992:27) a veto point is a strategic arena or context of highest uncertainty at which a legislative proposal is likely to be negotiated, reversed, overturned, or withdrawn. Empirical evidence in this study confirmed by an aggregate response of 96 % shows that the plenary is indeed parliament's critical veto-point where 'the numbers count.'[79]

5.3.2 Actors and institutions in Floor- Crossing and National Budget Debate

As observed under literature review, floor crossing has been a dominant feature with infinite controversies across all regimes in democratic Malawi. This has been attributed to the FPTP electoral system, as opposed to PR system, and the presidential regime type as opposed to parliamentary system. The two systems encourage the formation of minority governments.

Asked about the most remembered legislative decisions between 1994 and 2011, 93% of the respondents in this study confirmed that floor crossing was one of those debates that preoccupied the political and public domain. Legislative conduct deemed contravening Section 65 has caused austere legislative tensions, paralysis and constant calls upon the courts for legal intervention. Strikingly, the floor crossing clause has been instrumentally exploited by opposition legislative parties to salvage and retain their legislative strength on one hand, and minority governments to survive their tenure and advance the government's legislative agenda, on the other. [80] Rachel Ellet (2008:278) notes regarding floor crossing in Malawi that 'there seems to be no sanctions for individuals who defect and then later rejoin the party, because they are bringing more votes back into the party.' This context has provided recipe for weaker party cohesion and the most 'volatile political years in Malawi since 1994,' (Ibid).

[79] Interviews with MPs, former speakers of parliament, former attorney general and media experts
[80] Interviews with former speakers of parliament, former attorney general, historian, CSO experts and academicians

While more legislators crossed the floor between 1999 and 2004 over the open/third term debate, the most registered defections approximated at exceeding 80 MPs were after 2005 occasioned by Mutharika's resignation from his sponsoring UDF party in February 2005 to form his own party-DPP (Gloppen & Kanyongolo 2011:6; Patel 2008:24; Chirwa 2009:93). In reaction to the 2005 pro-DPP massive defections, opposition political parties preconditioned the passing of the national budget on the removal of the defecting MPs from parliament as required by Section 65 of the constitution. As public outrage raved against opposition MPs' insistence on prioritising Section 65, they finally relented and passed the budget. The resultant legislative instability, court injunctions and delayed passing of national budgets inevitably drew the attention of other interested actors including media, civic leaders, CSOs, development partners, and university students.

Due to the intricate link between floor-crossing and the passing of the national budget, this subsection inevitably and constantly discusses the two issues simultaneously. An attempt is however made to logically keep the issues separate in order to illustrate their separate institutional origins and objectives and that they attracted different interest groups. To begin with, the next section discusses the actors that were engaged with Section 65 issues?

Table 16 shows that there were five key actors that emerged during the floor crossing debates. Prior to 2001 and before 2004, the five direct actors were the legislative political parties, judiciary, state president and the speaker of parliament. It is apparent that CSOs' involvement in floor crossing was limited as shown by the percentage of respondents of below 50% who indicated that CSOs were involved in this debate. First, was the legislature as a collective veto player which on 17th June 2001 passed the Section 65 amendment bill. Second was the state president who signed the bill into law. Third was the speaker of parliament- Davies Katsonga, who invoked his constitutional power and declared the seats of 8 MPs vacant.[81] Fourth, was the judiciary, which nullified the extended part of the amended Section 65 legislation and ordered the reinstatement of the expelled legislators.

[81] The initial seven victims of the amended Section 65 were Brown Mpinganjira, his wife Lizzie Mpinganjira, James Makhumula, Peter Tchupa, Gresham Naura, Gwanda Chakuamba and Hetherwick Ntaba.

Between 2001 and 2009, major actors in Section 65 issues slightly changed-with parliament split into those for and against Section 65. While opposition legislative parties- mainly the UDF and MCP petitioned the speaker of parliament to expel the affected MPs before passing the national budget, MPs for the minority DPP government, which benefited from the legislative support of floor-crossers swiftly rushed to court to obtain an injunction restraining the speaker from expelling the concerned legislators.

Second, president Mutharika attempted to legitimise DPP minority government's survival on pliable opposition MPs by invoking his constitutional powers in Section 89(h) by issuing a presidential referral seeking the courts' opinion on the legality of Section 65. He also publicly mobilised traditional leaders to force MPs to pass the budget.[82] This act on the part of president Mutharika, undermined the authority of rule of law-Section 65 to constrain his actions. His disrespect for the rule of law was amplified by his public fierce outbursts at the Supreme Court in July 2007 when a landmark court upheld the constitutionality of the floor-crossing provision.

Third was the speaker of parliament, who was served with both the opposition's petition and court injunction orders.[83] Fourth were the courts, who issued an injunction and also ruled that parliament must prioritise the passage of the budget over Section 65 implementation.[84] Indeed, the courts remained the battle ground as the government and its supportive MPs instantly obtained court injunctions restraining the speaker from declaring their seats vacant,[85] (Chinsinga 2009:130; Ellet 2008:266). Unlike their vigilant engagement in the open/third-term bid, CSOs and donors opted to align less closely with the highly partisan floor-crossing issue, giving an impression that the matter was serving partisan political interests than governance and democracy in a broad sense. Instead, empirical results in this study show that CSOs and donors were both more engaged with the national budget issues as non-partisan actors aversive to being labeled of taking partisan sides.

[82] Interview with Blessings Chinsinga on 03.08.11 also revealed that the president extracted support from traditional leaders via Chiefs' Council and direct promotions of chiefs, with new attractive monthly perks for chiefs.

[83] Interview with Marshal Chilenga on 18.08.11, adding that despite the recurrent controversy and exploitation of Section 65, only one MP-late Fred Nseula lost his seat since 1995 for crossing the floor. Also see article *Hands off Section 65!,* 19 August 2012. http://www.malawitoday.com/news/126346-hands-section-65

[84] Interviews with judicial officers, private lawyers, academicians and CSO experts

[85] Also see *Section 65 Saga,* Nation Newspaper, 9 April 2009.

Formal institutions at play in floor-crossing

The recourse to court injunctions seeking re-dress through judicial review on Section 65 became the optimal way out for an institutional solution. The 2007 Supreme Court ruling put to rest president Mutharika's contestations of the legality of Section 65. His disregard of this law was in fact an abrogation of his own Oath of Office and primary constitutional duty to protect and uphold the Constitution as the supreme law of the Republic.[86] Obviously, he did this to serve political expediencies of his minority government which survived on the 'floor-crossers,' and the only formal limitation that confronted him was Section 65. The Supreme Court outcome demonstrates that institutions matter to the extent the constitutional provision was upheld and will never be legally contested. In addition, institutions matter in as far as the Speaker was liable to and bound by the court injunctions obtained by the pro- DPP legislators until the 2009 general elections, even after the 2007 Supreme court ruling.

Other institutions that influenced the floor-crossing/national budget debate were Section 59(1b) which provides for presidential powers to prorogue parliament indefinitely, and Section 59(1) which subjects the convening of parliament to the president's prior approval were constantly exploited by Mutharika and his administration to counteract opposition aggression against his minority government. On their part, the opposition legislative parties counted on the constitutional requirement for parliament's approval of the national budget to block government in revenge against floor-crossers. It was assumed by the opposition parties that sustained pressure to implement Section 65 would go hand-in-hand with the constitutional requirement for the government never to appropriate or spend public funds without the prior approval of parliament, which was hitherto, dominated by the opposition.

Informal institutions at play in floor- crossing

Neo-patrimonial clientelism and patronage were the most instrumental informal institutions that were exploited by both the Muluzi and Mutharika administrations to deal with challenges of legislative volatility in minority governments. A formal institution that gives the president the prerogative to appoint ministers and deputy ministers[87] from within or outside parliament enables

[86] Malawi Constitution, Section 88 (1)
[87] Malawi Constitution, Sections 94-97.

the president to lure and recruit opposition MPs as ministers or deputy ministers, in exchange for their legislative support.[88] At its disposal, the executive uses particularistic privileges, exemptions, and material rewards, direct or indirect from the presidency or cabinet to reward unflinching support and sanction dissent.

The patronage incentives and network range from appointments to lucrative legislative committees, targeted constituency development projects for an MP's re-election, regular remunerating international travels, down to the promotion of traditional leaders for covert political logic and predictable support.[89] The economy of affection exchanges induce supportive reciprocity from beneficiaries in the mutual interest of the *patron* and *client,* even if at the peril of merit and allocative efficiency of scarce public resources.[90] This scenario and constellation of actors was quite similar to that which unfolded during the debates on the national budget.

5.3.3 Actors and institutions in the National Budget-Section 65 Debate

Faced with successive minority governments in which the opposition dominated the legislature where the ruling party had minority seats, Malawi experienced recurrent legislative instability and fierce opposition-government confrontations, with government legislative business being repeatedly sabotaged, blocked or delayed. A peculiar occurrence was the scenario in which controversies over floor-crossing MPs resulted in the opposition parties' withholding the passing of the national budget (Chinsinga 2009:127).

The national budget is a constitutional matter given that Sections 173 to 176 of the Malawi Constitution requires that the national budget be tabled in parliament as an appropriation bill and passed into law at the beginning of each financial year, to authorise and set the limits for public spending and revenue collection by the executive. In addition, Sections 206 to 218 of the Parliamentary Standing Orders (PSOs) make procedural requirements and steps for the presentation and approval of annual revenue and expenditure estimates by parliament in the form of the national budget. This notwithstanding and as long as the floor crossing controversies

[88] Interviews with legal experts, CSOs, judicial officers, former MPs and former attorney general
[89] Interviews with MPs, former speaker of parliament, senior political leaders and academicians
[90] Interviews with academicians, historian and CSO experts

remained unresolved, so did the opposition predicate the passage of the national budget on the prior and conclusive discharge of Section 65.

Actors in the national budget-Section 65 debate

Coincidental to the late 2004 resignation of president Mutharika from his electoral party-UDF, and the subsequent founding of his new ruling party- DPP in early 2005, the Section 65 versus national budget stalemate deepened, reaching its worst during the financial years of 2005/2006; 2007/2008 and 2008/2009 (Chinsinga 2009:130). The opposition bitterness with the minority DPP government was aggravated as the presidential referral court case on the constitutionality of Section 65 took longer to be concluded by the courts, while pro-DPP MPs who were petitioned to have crossed the floor also obtained court injunctions restraining the speaker of parliament from declaring their legislative seats vacant.

On their part, development partners insisted they would only disburse their budget support to Malawi if the budget was passed without further delays. Extended holdup in passing the national budget also implied delayed procurement of essential goods and services for social services including medical supplies and drugs for public hospitals, thereby putting many lives of would-be-voters at risk. Turmoil grew as CSOs held vigils, university students marched while traditional leaders were marshaled from across the country, all to pressure opposition parties into prioritising the passage of the national budget over the discharge of Section 65.

A constellation of actors with diverse mandates and influence advanced their opposed interests on the Section 65/national budget tensions. Table 16 illustrates that eight actors were mentioned by more than 50% of the respondents each to have emerged in the national budget/floor crossing debates. These were pro-government legislative political parties, the state president, speaker of parliament, anti-government legislative political parties, and the judiciary. Cited under the 30% as '*Others,'* include the media, traditional leaders and university students.[91] Notably, parliament was sharply divided between those in support of and those opposed to the government.

[91] Interview with media and academic experts, CSO leaders, judicial officers and officials from parliament.

On the other hand, there were four indirect actors namely (a) donors who threatened to withhold budget support until the budget was passed, (b) CSOs who held vigils for two weeks in support of prioritising the budget over implementation of Section 65, (c) university students who charged at the gate of parliament and harassed vocal opposition MPs to force them into passing the budget, and (d) voters who utilised all possible means including newspapers and the radio to advance the cause of prioritising the budget.

Formal institutions in the national budget /Section 65 debate

From the foregoing discussion, it is clear that the delayed passage of national budget was influenced by the delayed discharge of the floor-crossing constitutional provision (Section 65). However, there is no any other rationale or statutory link between the two except being coincidental legislative political issues that became instrumental. Second, the constitutional provision for the national budget to be passed as an appropriation bill is a direct institutional requirement upon which, the legislative tabling of the national budget is dependent. Third, the PSOs which stipulate procedural steps and requirements including voting thresholds that the appropriation bill is subjected to.

Fourth, the judicial review and injunction constitutional powers of the courts, which remained in force until parliament was automatically dissolved in March 2009 before a new parliament was elected two months later. Fifth were the design of electoral laws which permit the formation of a minority government that result in such systemic paralysis and inaction. Sixth, international financial agreements on budget and development support from donor partners to Malawi, which set conditionalities of transparency through parliamentary oversight on national budget and permit for the influential voice of donors on Malawi's policy choices.

Informal institutions in the national budget-Section 65 debates

The mobilisation of traditional and religious leaders by Mutharika to pressure opposition MPs to prioritise the passing of the national budget over the implementation of Section 65 predominantly exploited the neo-patrimonial apparatus. This includes the personal social connection to traditional leaders who are appointed and promoted by the president. In return, these chiefs were promoted and paid monetary sums for their engagement in this matter. One MP

informant disclosed that all MPs who were Catholics were summoned by their Bishops to coax them into passing the national budget.

The public demonstrations by university students that culminated in the confrontation and physical harassment of opposition vocal MPs followed the tactics of mob justice regulated by group norms of collective action to force opposition legislators to relent on their insistence on Section 65. In the student demonstrations and physical harassment, rule of law did not prevail as no student was arrested for causing distress, bodily harm and car damages on the targeted MPs. On their part, the opposition MPs who insisted on prioritising Section 65 even at the risk of their own lives and re-election prospect were understandably complying with an unwritten code and norms of collective action and respect for the patron-the party leaders, who would sabotage re-election prospects for any MP playing deviance against the opposition party positions.

However, in addition to the influence of formal and informal institutions discussed hitherto, legislative decisions are subject to specific arenas or contexts of strategic uncertainty where they are reversed, revised or overturned along the legislative decision process. These contexts are a characteristic feature of the institutional design of regime type and electoral system confirmed in the discussions below.

5.4 Veto-points, power dispersal and credibility of legislative outcomes

As illustrated in the literature and depicted in the conceptual model, the legislative configuration and relationship between the executive and the legislature are themselves broadly structured by the institutional design of regime type and the electoral system. This section presents empirical evidence on the extent to which Malawi's regime type and electoral system partly explain legislative-executive relations, hence legislative outcomes, from the perspective of institutional power dispersion discussed earlier. A critical question that needs to be answered is whether the plenary can be the only veto-point given a context of multiple veto players?

5.4.1 Critical contexts in legislative decision-making processes: veto points

The conjecture of establishing the distribution of veto power in this study is the four-fold typology of veto points introduced by Kaiser (1997:436). Kaiser and Stoiber (2006) illustrate

that veto points are institutional devices (not fixed positions) which may or may not be used by political actors located both within as well as outside constitutional mandates. As discussed, Kaiser's four types of veto points are concessional, delegatory, expert and legislatory. Unlike delegatory and legislative veto powers, expert veto powers can be derived from non-political, non-elective and non-voting authority by actors who enter and influence the political game at expertise and delegatory veto-points of the decision-making processes (Stoiber 2006:7). It follows that the more the veto players are, the more fragmented the veto power is distributed for decision-making.

From the power dispersion view point, this study sought to establish under what conditions is a legislative decision likely to be formally withdrawn or reversed. Specifically, respondents were asked to identify points of high uncertainty at which a legislative decision is most likely to be overturned in a minority government. The question had multiple responses. Table 18 presents aggregate frequencies showing that 96% of the respondents felt that the legislative plenary is the most critical veto point where a legislative proposal is likely to be overturned during voting.

Table 18: Veto points in legislative decisions (aggregate responses in percentage)

Veto point(s)	Frequency in percent (%)
Plenary	96
Business Committee of Parliament	41
Cabinet	32
Presidential Assent stage	30
Portfolio Committee stage	27

Source: Author's empirical findings

The second veto-point with 41% of respondents is the Business Committee of Parliament (BCP).[92] The third and fourth veto-points are the cabinet and presidential assent stage with a 32% and 30 % of all the respondents, respectively indicating that. While the portfolio committee stage was stated by 27% of the respondents. Since the executive which creates the legislative agenda is chaired by the state president and all cabinet ministers are hired by and answerable to the president, the absorption rule applies where the executive is a homogenous veto player.

[92] Malawi Constitution, Section 56(6) permits the National Assembly to establish any committees of its members

In practice, cabinet members can hardly overturn proposed legislative bills individually. However, cabinet can only be considered to comprise two independent veto players where there is an official coalition or power-sharing cabinet, with distinct ideological identities, in which prior consensus is required to balance policy and political interests within the governing coalition. The scenario is common in parliamentary systems.

The presidential assent stage is a stage where a bill passed by the legislature is required to be approved by the president before it is enforceable as law. The president has the prerogative to exercise this veto power by withholding assent or not. When disaggregated among the three categories as seen in figure 16 below, all (100%) of *MPs and key political party leaders,* all (100 %) of the *government/state technocrats, judiciary and private lawyers* and 90% of the *academicians, CSOs and media experts,* affirm that parliament's plenary is the strategic arena of highest uncertainty. It is where legislative decisions are likely to be overturned under minority government given that voting is a game of numbers.

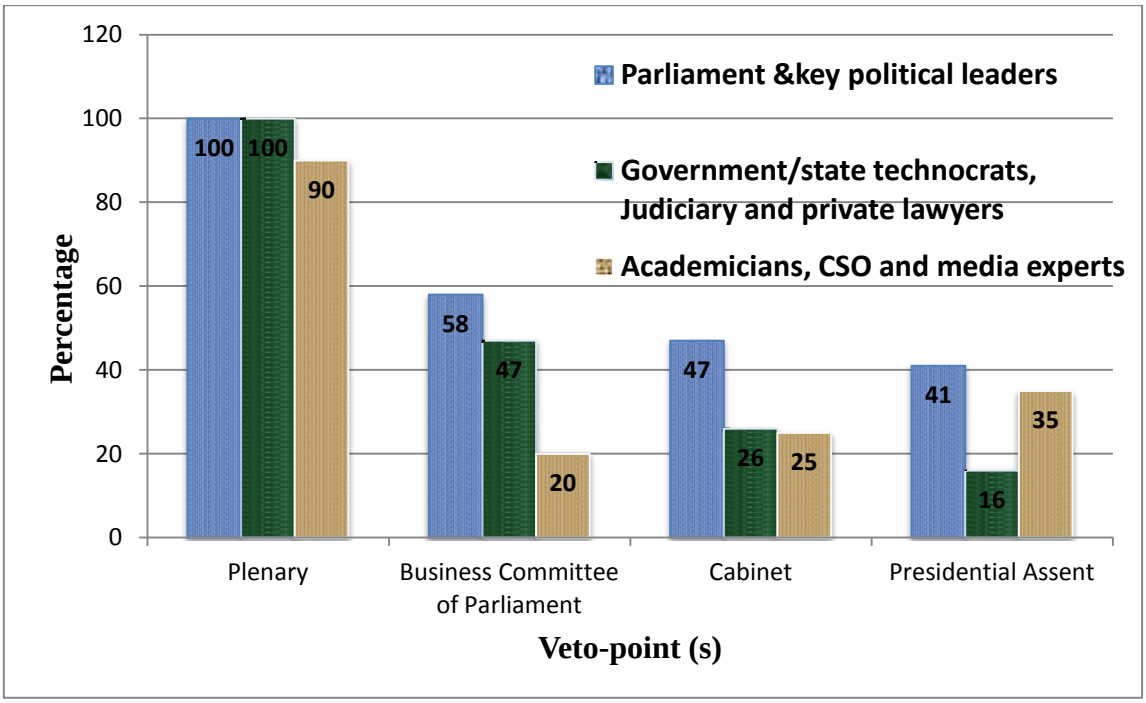
While the results confirm that the plenary is the most critical veto-point, some respondents observed that even under simple majority scenarios, the presidential assent stage can be a critical veto-point due to pressure from indirect but powerful veto-players including donors, international actors/organizations, religious and traditional leaders. One such example cited was President Muluzi's unprecedented refusal to approve a motion moved by his UDF government in 2001 and passed by parliament to impeach three High Court judges. The other example was Mutharika's refusal to assent to a bill presented by his own brother (Peter Mutharika, then as Minister of Justice) and passed by the DPP majority parliament in 2010, which proposed revision to the Marriage Age constitutional law. These examples are elaborated in the next section.

The BCP comprises leaders and whips of legislative political parties. Under the PSOs, it is endowed with the power of preliminary scrutiny- to receive and consider all government proposed bills for agreement, prioritisation and placement on the daily business agenda of the legislature called *The Order Paper.* Initial meetings of BCP members precede the first meeting of the legislature, with subsequent meetings held as the legislature is in session and as often as necessary to resolve procedural issues and create consensus on emerging legislative tensions.

Securing this prior consensus is critical in opposition-dominated legislatures; hence the government bargains with opposition party leaders behind the scenes for support to bills or else risk being embarrassed by an opposition veto in plenary.

Respondents indicated that some proposed government bills that were resisted in Business Committee by the opposition were either revised or entirely withdrawn.[93] The disaggregated results in figure 15 show the harmony in the perceptions of respondents across the three subcategories. However, they are consistently showing the same descending order from the most to the least critical veto-point in legislative decisions in Malawi according to these perceptions.

Figure 15: Veto-points in legislative decisions (disaggregated percentages)



Source: Author's empirical findings

An interesting question however arises about how and why would the president veto a bill which was proposed and agreed in cabinet and passed by a government-dominated parliament as was the case with the Marriage Age Bill? Respondents indicated that where relentless public and international opinion prevails against a specific legislative decision, it has tended to influence the

[93] Interviews with official from parliament secretariat, former Speaker of Parliament and former attorney general

president's veto decision on the passed bill based the latter's rational assessment of perceived strategic and higher pay-offs of vetoing it over the political costs of assenting to it.[94]

In the case of president Muluzi's withheld assent and opting to go against his own party on a successfully passed motion to impeach three High Court judges in 2001 on allegations of professional incompetence, respondents noted that some influential dynamics had emerged in the period between parliament's decision and Muluzi's expected assent. There were numerous local and international appeals against the decision including those from diplomats of powerful nations, donors and the International Commission of Jurists.[95] This account is further corroborated by other studies by Gloppen & Kanyongolo (2011:5) and Meinhardt & Patel (2003:44).

In order to protect his image as a champion of democracy and his respect for rule of law, Muluzi pardoned the three judges,[96] by refusing assent to the dully passed bill. Incidentally, this was despite a turbulent judiciary-executive relationship. Gloppen and Kanyongolo note that 'between 1994 and 2003, the High Court decided against the government in 54 percent of the cases in which the government was a party,' (2011:2). Nevertheless, how do the empirical results in this study relate with the theoretical proposition that suggests that the more the number of veto players, the higher the likelihood for more credible legislative decision?

5.4.2 Credibility of legislative decisions versus number of actors

Veto player theory supports the 'commitment' assertion advanced by scholars like Andrew Macintyre (2003) that the higher the number of process actors (veto players), the higher the likelihood that the ultimate decision is of undoubted credibility, greater public trust and with lowest prospects for unilateral reversals due to the inherent high transaction costs for change. This study sought the opinion of respondents and figure 17 presents responses to the question how the perceived quality or credibility of a legislative decision relates to the variation in the number of actors.

[94] Dominant opinion from workshop participants.
[95] Interviews with historian, Government technocrats, officials from parliament secretariat, former speakers of parliament
[96] Interview with HE. Dr. Bakili Muluzi.

Credibility of a legislative decision is used here in reference to quality and content of an Act of Parliament that is widely appraised by its stakeholders to be constitutionalism and welfare enhancing, passed for the common good and not purely driven by narrow partisan interests. In relation to the three categories of study respondents, figure 16 shows that 82% of the *parliamentary political parties and key political leaders* indicated that greater credibility of legislative decisions is achieved with more actors in the legislative decision-making process. However, the perception of *academicians, CSOs and media experts* is rather pessimistic- less than 50% were in favour of more actors. Between the two extremes are the *Government/state technocrats, judiciary and private lawyers* with 61% of the respondents stating that there is more credibility with the presence of more actors in legislative decisions. Further explanations from skeptics emerge from two perspectives.

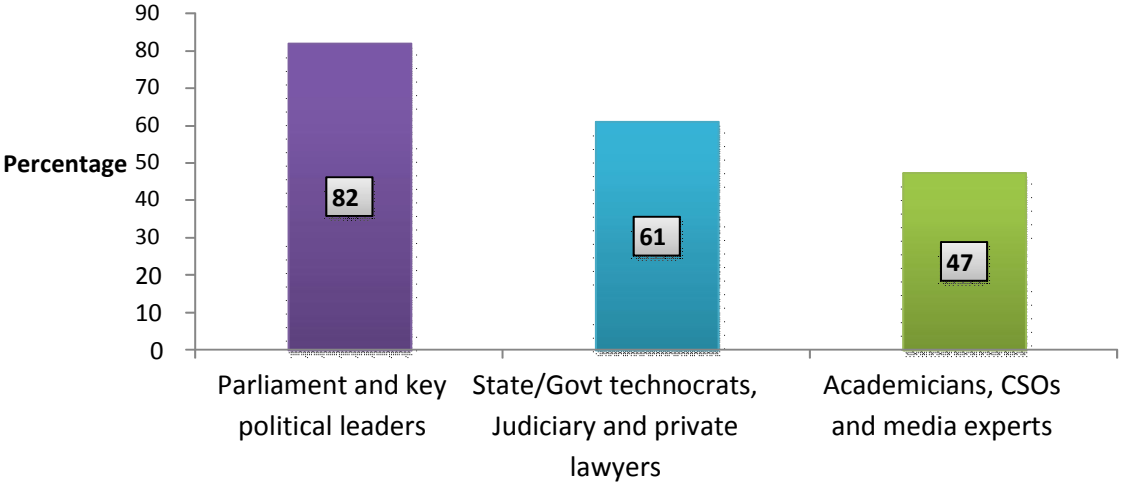
First, under the constitutional order of the one party state with a centralised, conformist, coercive and strictly enforced party cohesion, the legislature was absorbed in the presidency as a single veto player. The legislature, comprising substantial numbers of presidential appointee MPs acted as an appendage to the latter by simply endorsing the directives and decisions of the president uncritically. This was the case under the MCP era where all dissenting and critical voices over government policies were muted and opposition to the regime's decisions was suppressed and risked treasonous reprisals. Consequently, most of the regime's policy and legal decisions and actions were by 1992 discredited and condemned by both local and international observers.[97]

The empirical evidence in this study establishes that the credibility of legislative decisions is most likely to increase with increased number of heterogeneous actors with veto power that boost the prospects for multiple check-points and increased scrutiny, hence more likely to be credible. It is this context where minority governments are challenged by the dominance of combined opposition majority in parliament that seems most ideal for multiple actor intervention and consensus than carter-blanche decision making. Holding other conditions constant, minority governments should ideally be more accommodating of alternative views and receptive to public opinion and therefore be rewarded with more seats in successive elections. By contrast, the fewer

[97] Interviews with historian, CSO leaders and academicians

and homogenous the veto players, the higher propensity for discretionary policy or legislative decisions of often, doubted credibility.

Figure 16: Proportion of respondents indicating more actors increase credibility of legislative decisions (aggregate percentages)



Source: Author's empirical findings

The case of Malawi, which has had minority governments, does not seem to fit in this hypothesis concerning the making of credible decisions that are favorable to voters. The high parliamentary turnover of about 75% in three successive parliamentary elections may partly be indicative of growing voter disaffection with their legislators for various reasons, including undesirable decisions.[98] Respondents however indicated that the number of actors involved in any decision does not necessarily lead to credible decisions, rather it is also the quality, independence and knowledge of the additional actors, and 'the personality and leadership style' that matters.[99] Mutharika's leadership was considered confrontational and dismissive of alternative views irrespective of whether he had a parliamentary majority (2009-2011) or minority government (2004-2009).[100] This is expounded in the next section.

[98] Joel Barkan (2010:38) makes a similar observation for Kenya where more than two thirds of the MPs elected in 2007 were new comers, attributing this turnover to growing voter disaffection with their elected representatives.
[99] Interview with academicians, former Dep. Speaker of Parliament, H.E. Dr. Muluzi and CSO leaders
[100] Interview with CSO leaders and academicians and D.D. Phiri

5.4.3 Power concentration and power fragmentation versus executive-legislative relations

Mathew Shugart introduces two forms of executive-legislative relations which are fundamentally structured by the institutional design of the democratic regime type: whether it is parliamentary or presidential system discussed earlier. To recap, a parliamentary regime facilitates a *hierarchical* executive-legislative relationship through its two constitutive elements: (a) the two or more elected agents derive their institutional mandates such as legislative and executive power from the electorate through a popular vote, and (b) the executive in parliamentary regimes is subordinate to, and its tenure can be terminated by the legislature (Shugart2008:344-347). It is this dependence of the executive on the legislature which facilitates a cooperative hierarchical relationship between the two. Unlike presidential systems, parliamentary systems do not only promote power-sharing and coalitions, but they also tend to reduce the fragmentation of party system and systemic polarisation thereby enhancing governance stability (Kaiser 1997:442).

In presidential systems, the executive and the legislature derive their respective electoral authority independently from direct individual voters. The horizontal relationship entails the tendency for *transactional* strategic cooperation and exploitation of each other, using patronage incentives whenever necessary in the political game to achieve each entity's strategic interests.

Linz points to a paradoxical feature of presidential systems when he observes that on one hand, the expansive executive powers under presidential systems tend to encourage the personalised and centralised power and reinforce political clientelism. On the other hand, the inclusion of constitutional re-election term limits on the president is ideally meant to curtail legacies of life-time presidency or absolute monarchy, with its infinite personalised power and extensive network of patrimonial infrastructure (1985:5).

From this stand point, this study sought to examine how the degree of power concentration in one actor relates with executive-legislative power relations, based on the assumption that institutional power distribution as an independent variable, influences the nature of executive-legislative relations as a dependent variable, which may assist in explaining the dynamics in legislative politics. Respondents were asked to indicate how they perceived the nature of executive-legislative power relations under the four successive multiparty parliaments in

Malawi. The responses for the inter-temporal executive-legislative power relations are captured in table 19.

Table 19: Power concentration/fragmentation vs. executive-legislative relations

Power concentration	Period	Executive-Legislative relations	Frequency percentages (%) to responses for executive-legislative relations
Opposition-dominated	1994-1999	Coalitional compromises	95
Opposition-dominated	1999-2004	Coalitional compromises but relatively confrontational	59
Opposition-dominated	2004-2009	Adversarial/ Confrontational	89
Government-dominated	2009-2011	Adversarial/confrontational	86

source: Author's empirical findings

The near power balance created by 48%-52% government-opposition legislative control in the 177-seat parliament of 1994-1999, partly influenced the nature of coalitional compromises illustrated by responses in the table below. Thus, during this first term for the UDF (1994-1999), the opposition MCP-AFORD block had formed an informal alliance which exhibited competitive behavioral tendencies and unconstructively impeded regular government business between May and September 1994.[101] These dynamics are also observed by Kadima and Lembani (2006:123). Further, the opposition dominance was reinforced by the fact that the speaker of parliament was elected from AFORD[102] while the two deputy speakers were from the MCP (SAIIA 2004:35).

Table 20 presents speakers of the Malawi National Assembly since 1994. The scenario where even the leadership of parliament is opposition dominated put the government in a compromised position, inclining it to act transactional and made concessions. This led to the AFORD political re-alignment in late 1994 in which they ditched MCP, and entered into a government coalition with UDF, tilting the power balance under the influential 'guidance' of donors.[103] This was however, short-lived as the government coalition collapsed in 1996 (SAIIA 2004:35).

[101] Interviews with historian, former state president, former clerk of parliament, former attorney and general
[102] The speaker of parliament was Rodwell Munyenyembe during the period June 1994 to July 1999 and was re-elected in June 2004. He collapsed and died while still in office in June 2005.
[103] Interviews with CSO leaders, key political leaders and MPs, various dates, 2011

AFORD returned to the opposition side except its six legislators: Matembo Mzunda, Mapopa Chipeta, Rev. Pat Banda, Chamaere Phiri, Mayinga Mkandawire and Melvin Moyo, who retained their cabinet positions in UDF government (Kadima & Lembani 2006:123).

Table 20: Party affiliations of speakers of the Malawi National Assembly (1994-2011)

Name	Period	Legislative party of affiliation	President's party
Chimunthu Banda	June 2009-December 2011	DPP	DPP
Louis Chimango	July 2005-June 2009	MCP	DPP
Rodwell Munyenyembe	June 2004-June 2005	Independent	UDF/DPP
Davies Katsonga	May 2003-June 2004	UDF	UDF
Sam Mpasu	July 1999-April 2003	UDF	UDF
Rodwell Munyenyembe	June 1994-July 1999	AFORD	UDF

Source: Malawi Parliament public gallery, compiled by author

Faced with the protracted parliamentary opposition boycott lasting 7 months in 1997 (SAIIA 2004:35; Brown 2008:190), president Muluzi decided to privately engage, reconcile with and accommodate concerns of the then AFORD and MCP leaders: Chihana and Chakuamba, respectively, to save his troubled minority government. This informal charisma-centered bargaining initiative succeeded and resolved the parliamentary paralysis. The modesty to admit that his minority government depended on the support of the two leaders' legislative opposition parties, coupled with his commitment to stop public attacks on the two leaders, helped Muluzi unlock the stalemate. [104]

Against this unstable political context, table 19 shows that Muluzi's first term is rated with a 95% score as a flexible leadership characterised by informal coalition compromises and transactions, uncommon to the transaction/hierarchical thesis predicted by Shugart discussed above. The dependence of Muluzi's minority government on the good will of and a co-operative legislature was identical to that of the executive which exists under a parliamentary system. Although the 1999-2004 legislature had a near 50%-50% government-opposition legislative control, the executive-legislative relations were sharply contrasted from president Muluzi's first term.

[104] Interview with H.E. Dr. Bakili Muluzi

Respondents observed that the period 1999-2004 was marked by confrontational episodes occasioned by the executive and UDF elites. This was closely linked to crucial stakes in the narrowly failed UDF agenda to extend constitutional term limits for the president ahead of the expiry of president Muluzi's second five-year and final term in 2004. The Muluzi government's arrogance and confrontational attitude in his second term was also partly bolstered by the legislative support he informally secured from opposition MPs. [105]

These were lured into pacts of patronage and personalised incentives, in exchange for support to government legislative business. Coincidentally, legislative opposition parties were themselves deeply internally divided over unresolved leadership wrangles, which undermined their cohesion and by extension, fundamentally compromised their legislative oversight roles. Although table 19 illustrates an interesting pattern of contrasts in terms of power relations, it falls short of explaining the quality of some decisions made by minority governments irrespective of their legislative challenges.

The Muluzi administration, for example, passed a number of unpopular bills including the removal of section 64 (the MP's recall provision) in 1995, the controversial NGO Bill in 2001, abolition of Section 68 (the Senate provision) in 2001, the motion to impeach High Court judges, and the failed attempt to amend the presidential tenure clause-Section 83(3) in 2002 and 2003. These decisions were advanced by the UDF minority governments in apparent defiance to the formidable public criticism and petitions opposing such decisions. This resistance was mounted by several actors including religious groups, some legislative opposition parties and governance NGOs.[106]

Table 19 also shows that the executive-legislative relationship under the Mutharika administration was confrontational in the 2004-2009 DPP minority government even though the legislative power control was concentrated in the opposition majority. This turned 'more aggressive' in the 2009-2011 when the DPP had an absolute majority in the legislature. The power dynamics of the 2004-2009 opposition-dominated legislatures were similar to those of the

[105] Interviews with key political party leaders, academicians, CSO and media experts
[106] Interviews with CSO leaders, academicians and historian

1994-1999 scenarios in that the opposition-controlled parliament in both cases paralysed government legislative business.

However, while the Muluzi administration responded to the opposition sabotage and their parliamentary boycott of the 1994-1999 with an accommodative and co-optational attitude, the Mutharika leadership reacted aggressively to the 2004-2009 legislative instability.[107] It must be noted that the post-2004 leaderships of opposition legislative parties did not only block legislative government business but also 'increasingly turned to the courts to contest executive appointments, including presidential appointments to bodies that are central to the electoral process.

Indeed, Gloppen and Kanyongolo (2011:4) confirm that 'the courts (temporarily) blocked appointments to the Malawi Electoral Commission (MEC) and the Malawi Communications Regulatory Authority (MACRA), for breach of procedure,' but later ruled against the opposition parties after judicial review. The parliamentary paralysis reached its worst during the period 2006/2007 and 2008/2009 when parliament met only once each financial year, although the constitution stipulates that parliament must meet at least two times in a year.[108] Chinsinga observes that over a period of 5 years (2004-2009), the Malawi Parliament met for less than half the duration (i.e. 31-41 weeks) that the neighbouring Zambian Parliament meets in a year (2009:135).

Frustrated by the legislative challenges including the blocked passing of successive national budgets and the opposition-sponsored motion to impeach him, Mutharika's first administration resorted to invoking executive constitutional powers to prorogue parliament and made a presidential referral on Section 65, seeking for court interpretation on the constitutionality of the floor-crossing. At the time, Mutharika's government survived on the estimated 80 MPs, who had crossed from opposition legislative parties to support the DPP, which had no official MP of its own after Mutharika resigned from his electoral party, the UDF in 2005.

[107] Interview with historian, officials from parliament secretariat, key political leaders and CSO leaders
[108] Malawi Constitution, Section 59(2)

The delayed court judgment on the presidential referral and delayed lifting of injunctions on the floor-crossing cases combined with the lengthy presidential prorogations of parliament led to combative executive-legislative relations (as depicted in table 19) until the May 2009 general elections. This precarious scenario served to the unfair advantage of the Mutharika minority government than the opposition legislative parties. Intriguingly, during the 2009-2011 period when the DPP commanded a legislative majority, they unilaterally passed some of the most unpopular bills including the arbitrary change of the national flag, removal of judicial powers to grant ex-parte injunctions, enactment of anti-media freedom laws (amended Section 46 of the Penal Code) and granting powers to the police to conduct public search without warrant.[109]

Similar to the UDF administration, the DPP government's decisions irked outrage from a broad spectrum of stakeholders including civic, NGO and religious groups, donors, law society and university students. The concerns formed part of the petition published before and after the July 2011 nationwide anti-government demonstrations, which signaled a steep decline in public trust for the Mutharika administration. This ran asymmetrical to the unflinching local and international popularity that Mutharika enjoyed leading to his 2009 historic electoral triumph.

The DPP and Mutharika's dissolving public trust was not regained until the latter died of cardiac arrest in early April 2012. Consequently, the DPP was unprecedentedly relegated to the opposition by the People's Party (PP) through the constitutional ascendancy to the presidency by the hitherto Mutharika's Vice State President and PP leader, Mrs. Joyce Banda. Just like the DPP when it became a ruling party in early 2005, the PP formed a new minority party, with no MPs of its own since it was only founded in 2011 when Mrs. Joyce Banda (who was both the DPP and State Vice President) was undemocratically expelled from the DPP in December 2010 over party leadership succession issues.

In relation to the role of informal institutions, other informants noted that the DPP arrogance was emanating from the government's fatally close links to Mutharika's tribal group- *Mulakho wa Alhomwe*, for which Mutharika himself was its founding patron.[110] Some informants observed

[109] Interviews with academicians, media experts, CSO leaders, and private lawyers
[110] Interviews with CSO leaders, academics, and media experts

that all critical cabinet or government decisions were vetted by an inner circle of this tribal group (which dominated the DPP and government) to ensure that legislative and government decisions best served its members' interests and control of state power and government tenders by its Southern region tribesmen.[111] Overtime, other tribal groups mainly from the centre and north felt systematically marginalised and disadvantaged, seeing it as a departure from the electoral contract given to Mutharika in the 2009 general elections.[112] This is partly what discredited the decisions of the DPP dominated parliament. The tribal concerns were also part of the 20-point petition addressed to Mutharika in the aftermath of the 20 July 2011 demonstrations.

5.4.4 Institutional sources of power concentration and fragmentation

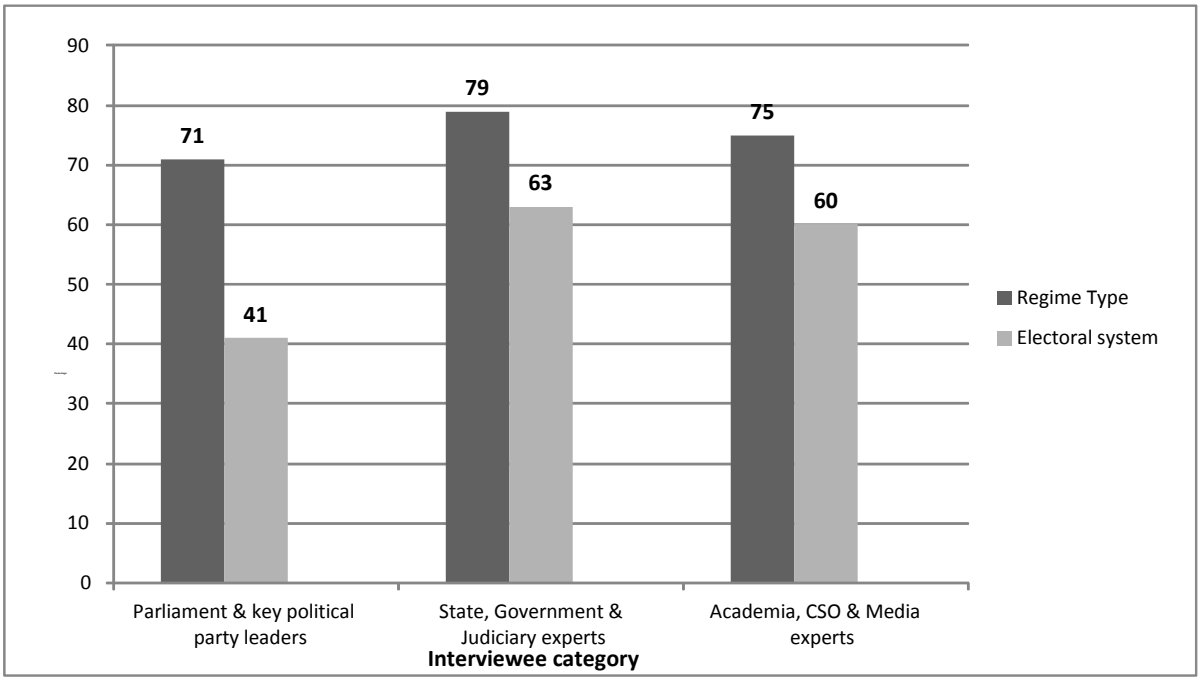
In order to attribute power concentration and/or fragmentation to specific institutional sources, informants were asked to indicate what they considered to be the main source of power concentration or fragmentation in Malawi. The disaggregated results presented in figure 17 show harmony of opinion across the three categories of respondents in ascribing power concentration and or power fragmentation to regime type. This denotes that the institutional design of the executive president in Malawi is inherently responsible for the power distribution (whether equally or unequally, explicitly or implicitly) between and among branches of government.

The president wields extensive constitutional powers including 'powers to prorogue or suspend parliament, appoint unlimited number of cabinet ministers from within and outside the legislature, and the powers to control the budget of the legislature.'[113] Thus, the formal expansive executive powers enhance neo-patrimonialism and patron-client relationship to the extent that even among civil servants, loyalty is ascribed to the personality of the president than (even at the expense of) formal rules. [114] The second source of institutional power concentration or fragmentation is the electoral system. Informants indicated that the plurality electoral system used in Malawi permits the formation of minority and unstable governments that encourage floor

[111] Interviews with some MPs, some state/government technocrats and media experts; various dates
[112] Interviews with CSO leaders, media experts and academicians; various dates
[113] Interviews with legal experts, state/government technocrats, CSO leaders, MPs and former attorney general;
[114] Interviews with state technocrats, CSO leaders and former MPs

crossing than creating compelling incentives for stable formal coalitions. [115] Stephen Brown (2008:198) attests to this finding.

Figure 17: Institutional sources of power concentration and fragmentation



Source: Author's empirical findings

The results in figure 17 on formal institutional sources of power must be seen in light of the electoral system and regime type being constitutive features of the constitution. In addition to these constitutional devices, respondents also indicated that actors in legislative decision making are also influenced by Parliamentary Standing Orders while international agencies, donor nations and other international actors derive their veto power from the control of aid resources through aid agreements and conditionalities.

To sum up this chapter, it is notable that in functioning representative democracies, legislators are elected decision-makers on behalf of those they represent. Oversight, legislation, confirmation of senior public officers, and representation are legislative roles that result in decisions that parliaments make such as policies, laws and constitutional reforms.

[115] Interviews with CSO leaders, academicians state/government technocrats and MPs

While the single party legislature was an appendage to executive directives and the guaranteed loyalty of the numerous non-elected executive appointee MPs, the multiparty parliament in Malawi, through the 1995 constitution, permits multiple endogenous and exogenous actors who variedly shape the legislative decision-making process.

This chapter shows that in Malawi's parliament with minority governments, the most influential actors in legislative decisions are the parliamentary political parties, state president, CSOs, speaker of parliament, donors, opposition parties in government coalition, and the judiciary. It is also evident that under divided-governments, government MPs and opposition MPs can act as separate veto-players. In such circumstances and as illustrated above, the legislative decision-making process faces unprecedented stagnation, rigid progress of legislative business until inter-party concessions are exchanged or courts and other actors intervene. It is also clear that some actors were more involved in certain issues than in others.

The foregoing results and analysis also show that PSOs and the national constitution are the most critical formal rules with significant influence on the behavior and conduct of both direct and indirect actors in legislative decision-making processes. The two institutions are also the main source of influence as exercised by the legislative actors. The inherent sanctions and incentives in the two institutions are evidently important but insufficient to explain all that motivates decision choices of the legislators.

The study has also established that the behavior, actions and decision choices of legislators respond to the immense influence of informal institutions of patrimonialism, patronage, religious and tribal kinship connections. Unsurprisingly, legislators themselves claimed that they were mostly influenced by resolutions made in party caucuses, common good and personal convictions. It is apparent that the influence of voter interests on the MP is substantially low. The empirical evidence shows that there were three legislative decisions namely: open/third term, floor crossing and national budget that significantly preoccupied Malawi's multiparty parliament between 1994 and 2011.

The outcome on the open/third term debate was a triumph for democracy as Ellett (2008:277) fittingly puts it, 'the third-term event can be seen as the partial assertion of the legislature over the executive.' President Muluzi's gracious acceptance of the legislative outcome of the open/third term and his eventual stepping down on expiry of his two constitutional terms in 2004 is a significant indicator that formal institutions matter. On the other hand, floor crossing has daunted each parliament most repetitively due to the minority governments that emerged from each election until 2004. This was inevitable under the plurality electoral system and the need for a working legislative majority. While this scenario exacerbated legislative volatility, it seemed to favour democracy as it checked on carte blanche conduct of both Muluzi and Mutharika minority governments.

The results further show that floor crossing is in practice anathema to each successive minority government as a beneficiary, and only constitutionally expedient to opposition political parties, as losers. Thus, although Section 65 remains as a formal political institution to inhibit floor crossing for legislators, the degree to which this formal institution practically restrains political actors is discernibly debatable. Its implementation is either selective or delayed depending on political expediencies. Nevertheless, the respect for court injunctions granted to MPs facing expulsion on account of Section 65 entails that formal institutions matter.

There is no contradiction among respondents that executive-legislative relationships are conditioned by the power distribution in the legislature. The trend across the years signifies a declining tendency for political compromise and a corresponding rise in adversarial and confrontational relationships, irrespective of whether the legislative numbers favoured the opposition or party of the state president. Thus, notwithstanding who controls the legislative majority-whether it is the opposition or the government, power concentration has tended to result in adversarial relationships and systemic immobilism, mainly because of vengeance politics pre-given by the institutional incentives of the presidential regime and the plurality electoral system.

Except for the brief episode of 2009-2011, when DPP had majority MPs, all other successive regimes had opposition-dominated parliaments. This tended to result in various forms of abuse of legislative majority and systemic paralysis of the legislature, unprecedented executive

prorogation of parliament, party fragmentation due to sustained defections and reinforced patrimonialism. These factors have had the cumulative effect of undermining democratic consolidation.

Respondents also gave a conditional positive relationship between credibility of legislative decisions and varying the number of actors, suggesting that increased credibility of legislative decisions corresponds with increased number of heterogeneous, independent multiple actors, as opposed to the one-actor dominance noted from both the short-lived (2009-2011) DPP majority regime and the 2005-2009 opposition dominated legislature. This outcome supports the commitment type of institutional analysis by Andrew Macintyre presented earlier, which posits that in a scenario with a single or few dominant veto players, policy or legislative decisions are bound to be discretionally changed and often of doubted credibility, due to the uncritical scrutiny of the process. Corollary, in a context with multiple and heterogeneous actors, policy or legislative decisions are made through multiple check points and increased scrutiny, hence more likely to be credible.

The foregoing results also show that under a minority government in Malawi, the plenary-through voting, is the most strategic arena of highest uncertainty at which legislative decisions are likely to be overturned, withdrawn or reversed. This falls under the legislatory veto points of Kaiser's typology. Other legislatory veto points with exemplified but rare instances identified in this study are the Business Committee stage and presidential assent stage. It is also notable from respondents' observations that once moved, the judiciary in Malawi has, through judicial review powers, tended to create an expert veto-point of substantial uncertainty over two major decisions: floor crossing and the national budget. This study also shows that as policy driven actors endowed with resource control, donors enter the political game at strategic veto points (directly or indirectly) to influence or block legislative decisions.

Responding to the question whether rules matter, the foregoing account shows to a very large extent, formal institutions do matter in the legislative decision-making processes. These results do not entirely agree with the conclusions reached by Ellet (2008: 279) that "While it is evident that the basic political institutions are in place to secure democracy in Malawi, the degree to

which these formal institutions act as restraints on political actors is questionable. What differentiates the post-1994 era from the post independence era is that (for the most part) political actors are no longer by-passing the rules. Instead they are manipulating the rules to try and achieve their own goals." Precisely for the reason that rules matter in the case of Malawi, do political actors make every effort to circumvent or amend them to legitimise their actions. Indeed the behaviour of president Mutharika with his court referral and the DPP MP's injunctions exemplify rational and strategic behavior to obtain purposeful and legitimate political objectives in order to retain power: rule *by the law* and not respect the *rule of* law (2008:280). This is further prominent in the selective compliance to judicial pronouncements and systematic neglect of and indifference to court decisions that were deemed undesirable, even though such may be the ultimate interpretation of the law.

The narrative, analysis and empirical findings presented hitherto have broadly generated an account of how institutions and actors interact in shaping legislative decision in Africa using the Malawi case study. These accounts are aimed at contributing towards emerging empirical studies and re-orientation of theoretical approaches on the role of institutions in contemporary African politics and parliaments. Parliament as the unit of analysis is an ideal arena and context where its composition, dynamics of power distribution, degree to which it is controlled by formal and informal rules and how non-legislative actors influence its decisions, can substantially assist in reconstructing empirically based arguments on the state and prospects for representative democracy in Africa. This has been done with due and constant reference to other comparative studies and scholarly works on the continent related to the theoretical and empirical arguments about institutions and actors in African politics.

5.5 Merging empirical findings with research hypotheses

To enhance our understanding on the critical aspects that influence change for democratic consolidation and development in minority governments, the empirical knowledge on the functioning of parliament offers vital insights into the constellation of actors, institutional arrangements and decision-making processes. This study has attempted to respond to these issues and can be essential for researchers, diverse practitioners, governments, political parties and development cooperation partners. In response to the overall research question for this study:

how veto players and institutions shape legislative decision-making processes under divided governments, two hypotheses were developed based on the consulted literature and in line with research objectives. How do the empirical findings relate with the study hypotheses?

First, the empirical evidence in this study supports the first hypothesis that *the more fragmented the decision-making power among veto players; the greater risk for paralysis in legislative decisions.* The study results demonstrate that the Malawi constitution permits for multiple (both direct and indirect) actors in the legislative decision-making process. In minority governments, even legislative opposition and government political parties operate as two separate veto players advancing contrary interests, although their ideological distance may be non-existent.

Moreover, the fragmented party system encourages the emergence of numerous electoral and legislative parties, while the plurality electoral system provides no incentives for power-sharing or coalition governments, thereby encouraging more opposed partisan actors. In addition, the study has also established that non-voting, non-elected but influential veto players (i.e. CSOs, donors and the courts) enter the political game at strategic veto-points and influence reversals on otherwise politically concluded legislative-decision.

To this effect, the fairly results illustrate that the president used his veto power to repeatedly prorogue parliament as opposition parties reverted to blocking the passing of the national budget, while courts granted injunctions to pro-DPP legislators against the invocation of Section 65 on the concerned MPs. Consequently, parliament experienced recurrent volatility and paralysis. In terms of decision reversals, a combination of sustained pressure from local interest groups and threats from development partners significantly influenced the presidential pardon of the three High Court Judges against whom parliament had passed an impeachment motion.

Similarly, the opposition's turn-around and subsequent passing of the national budgets was partly influenced by threats by donors to withhold budget support, compounded by the vigils by CSOs, echoed by traditional leaders and university students. The number and influence of these multiple actors must be understood from the perspective of the institutional power dispersal in Malawi's constitution, electoral law, party system and international cooperation agreements.

Second, the empirical evidence in this study also illustrates that the expansive and concentrated institutional powers of the president under Malawi's constitutional order have the cumulative effect of not encouraging co-operative relations between the executive and legislature, irrespective of whether it is a minority or majority government. This is compounded by the plurality electoral system, which allows the formation of a minority government. Thus, this study confirms the hypothesis that *the higher the concentration of decision-making power in one or fewer veto players, the higher risk of arbitrary legislative decisions.*

In the scenarios experienced by Malawi and examined by this study, both the Muluzi and Mutharika regimes passed some arbitrary legislative decisions primarily under the aegis of these extensive institutional executive powers. During the second term for Muluzi (1999-2004) when he secured a narrow working majority, his government passed a number of retrogressive decisions discussed earlier including the narrowly failed open term bill. The pattern was similar for Mutharika when he secured a comfortable legislative majority during his second term (2009-2012). His government advanced numerous unpopular legislations that earned him local and international criticism and discontent.

Likewise, when the opposition was in legislative majority, they frustrated or blocked some legislative government business. This included the disapproval of some competent presidential nominees to senior public offices and blocking of the passage of the national budget. Such conduct was due the fact that the opposition had power in their combined legislative numbers. Thus, by analysing the legislative behavior of MPs in these decisions in relation to institutional power concentration, it can be concluded that power concentration in one or few veto players has the risk of arbitrary legislative decisions.

Third, the defining characteristic of *institutionalised formal rules* of a particular society comprises the existence in codified and written form of procedural rules, statutes and laws that regulate socio-economic and political human interaction. In addition, there must be the existence of semi autonomous organs that make, enforce and implement these formal rules. Finally, the rules must have effective mechanisms and agencies that enforce and sanction compliance.

These three aspects must operate in a mutually and self-enforcing manner to safeguard the supremacy of what is called rule of law-where the law is 'the only business in town,' that prevail over informal constraints and norms.

This empirical evidence shows that Malawi has the basic laws available in written forms. State organs also exist that are meant to legislate, implement and enforce these rules. Although there are a host of factors comprising inherent loopholes within the rules, selective or irregular compliance and enforcement, and indeed the fact that informal norms may undermine formal ones, these do not offer sufficient grounds to conclude that formal rules do not matter. In fact, this study has established that some informal norms, values and practices (for example religious membership connections) tend to enhance and compliment compliance to formal rules. In the case of the failed third-term bid, the empirical results illustrate that the influence of informal connections and patronage exchanges have limits in Malawi politics, beyond which the existing formal rules have a chance to prevail.

The above conclusions partly contradict those reached by other scholars such as Ellet (2008), Liwimbi (2009), Cammack (2011), Maganga (2011) and Dulani (2011). While consensus exists around the common admission of the prevalence of patrimonialism and pervasive patronage, divergence arises with respect to the scope of this study which has also attempted to account for positive informal institutions, and the level of analytical approach. Hence, they conclude that formal institutions do not matter and that informal institutions (almost always) lower incentives to comply with formal rules. Different from their approaches, the design of this study is informed by the perspective of an in-depth contextual analysis of institutionalism theory (formal and informal) and the veto player analytical framework in the specific legislative decisions.

Finally, the study has also established that increasing the number of actors who have non-voting veto-power does not necessarily result in credible legislative outcomes. It is rather the expert knowledge, heterogeneity and independence of each additional actor with veto power that may increase the likelihood for more merit (credibility) in the legislative outcome. In terms of who matters in Malawi's political decisions, there are direct, indirect and international veto players who (in their different combinations, utilising different resources, leverages and strategies) exert

inordinate influence on the legislative decision-making processes in Malawi. The next chapter draws conclusions from this study and makes tentative recommendations for future research and institutional reform.

Chapter 6: Summary of main empirical findings, conclusions and recommendations

6.0 Chapter overview, aim and scope

This section reviews and synthesises the major empirical findings of this study. This is aimed at highlighting what essentially makes these results peculiar to this study and how that relates to both theory and empirical contribution of this study. As it is both futile and nearly impossible to logically and exclusively catalogue each of the two independent variables in the three legislative decisions, an attempt is made to discuss them extant to each other. They are linked through examples to show their connectedness, while ensuring that none of them is overstated at the expense of the other. The first part presents a summary of major empirical findings, including their implications on theoretical propositions and empirical contribution. The second part is devoted to overall conclusions of the study and tentative policy and institutional recommendations. The presentation under each subsection is not necessarily in any sequential order of importance.

6.1 Actors (veto players), institutions and legislative decisions revisited

6.1.1 Direct veto players

Legislative political parties

While assertions by veto player analysis and scholars of institutions suggest treating the legislature as a homogenous unitary actor in legislative decisions, this study has established that under a divided government, where the opposition dominates the legislature and maintain some degree of internal cohesion, they tend to act as a separate veto player from government legislators. The political party caucus becomes a critical domain within which collective party positions are agreed and actors weigh the most probable gains and costs of playing along or against party positions. The legislative political parties are the key institutional actors in the legislative decision-making process particularly through their voting power to make or block legislation. Through plenary debates and voting, legislative political parties under minority governments occupy the most strategic arena '*veto point'* where legislative propositions (in the form of bills and motions) can be accepted, rejected, reversed, modified or withdrawn.

The importance of parliament as a critical veto player is not necessarily because enabling rules and procedures make it independent, but mainly because the electoral system permits for minority government which allows the opposition to dominate parliament and use their veto power. In addition, the weak party system promotes fragmentation thereby encouraging MPs to vote against party positions either as individuals or as an informal coalition of like-minded legislators.

Despite the global trends in the decline of trust for political parties, marked by the high legislative turnover and their marginal performance in successive elections, increasing number of independent candidates and MPs (NIMD 2004:8; Hopkin 2001:344), the results in this study confirm the theoretical position that it is impossible to think of and sustain democracy without political parties (Schattschneider 1942). Thus, beyond cataloguing challenges faced by political parties globally and in Malawi in particular, efforts to enhance and support democracy should prioritise investing in political parties to overcome their capacity and organisational limitations.

The state president

Under a presidential system like Malawi, the state president wields expansive institutional and positional power that manifest in a number of spheres of influence in legislative decision making-processes. These include powers of agenda control through originating public bills, convening of parliament, prorogation of parliament, appointment of ministers, who may also be MPs, presidential referral powers and veto powers on legislation.

As head of state and government who also presides over cabinet meetings,[116] the president has exceeding privileges of legislative agenda control through the government's mandate to originate public bills and the requirement for the president to present the State of the Nation Address to parliament each year before consideration of the national budget by the national assembly.[117] This affords the president extra leverage to assert his government agenda on parliament. The opening address is traditionally followed by lengthy legislative discussion responding to the issues raised in the president's address.

[116] Malawi Constitution, Section 89(b)
[117] Malawi Constitution, Sections 89(3-4)

Further, the requirement for the speaker to convene parliament only after consulting with the president[118] has had implications in Malawi where the latter delayed legislative meetings depending on the status of executive-legislative relationship. This adds to government's resource control position over the legislature's budget, which was instrumentally used to frustrate an already antagonistic opposition-dominated parliament to act against government's interests. The presidential powers to appoint ministers,[119] even those that may not be MPs but are allowed to actively participate in legislative debates gives the executive greater voice and influence in parliament.

In addition, the president's constitutional powers to prorogue parliament, was used by president Mutharika to indefinitely suspend parliament as he feared hideous agenda against his government by the opposition-dominated legislature. Further, the veto power on all legislations passed by parliament[120] enables the president to approve or refuse assent albeit in the latter, the law requires a written explanation for withholding assent to a bill.[121] Lastly, the president has constitutional powers to make presidential referrals- the prerogative to refer any legal disputes (as was done by president Mutharika on Section 65) to the constitutional court.[122] The foregoing executive powers afford the president extensive latitude of influence and control over legislative decision outcomes, even under a minority government.

The Judiciary- Courts

Existing literature including veto player analysis classifies constitutional courts under *occasional* or *conditional* veto players (Tsebelis 2000:465, Stoiber 2006:5). As argued earlier, this conceptualisation is problematic and presents an explanatory weakness especially that the courts in Malawi have exclusive constitutional powers over all legal matters and exercise original jurisdiction over 'any action or decision of Government,' as stipulated in Sections 103(2) and 108(2) of the Constitution.

[118] Malawi Constitution, Sections 59(1)
[119] Malawi Constitution, Sections 94-97
[120] Malawi Constitution, Sections 49,2(iii); 89(a)
[121] Malawi Constitution, Section 73(1-4)
[122] Malawi Constitution, Sections 89(h)

Under the principle of constitutional supremacy, this study establishes that Courts in Malawi are a direct veto player by virtue of their explicit judicial review powers and as the exclusive arbiter in all legal matters, including legislative decisions as stipulated in Section 103 of the Constitution. The empirical evidence demonstrates how the executive, the opposition or civil society organisations repeatedly sought court determinations on legislative issues including the legality of the floor crossing clause, passing of the national budget, dismissal and reinstatement of some legislators, and presidential referral case on Section 65.

In some of the court determinations such as reversing the arbitrary expulsion of Gwanda Chakuamba and seven other legislators in 2000 (EISA 2007:44), the legislature was ordered to reinstate them, just as the same court ordered the legislature to pass the national budget in 2008. Yet, in the case of the 2001 constitutional amendment of Section 65-which extended the applicability of the floor to joining any other association or organization whose objectives or activities are deemed as political in nature, the courts declared this extension to be unconstitutional. Consistent with the conceptualisation model with regard to the classification of veto players, the results confirm that courts are an institutional veto player with the veto-power to block, nullify or reverse legislative and/or executive actions and decisions.

Accordingly, these empirical results justify a modification to the theoretical conceptualisation of veto players and must regard constitutional courts that have review powers over all legal and constitutional matters as a direct veto player in legislative decision-making processes. The period covered by this study was marked by regular court determinations over unresolved decisions in the legislature, where the courts became the arena where legislative decisions and legal disputes were contested and conclusively resolved. Courts in Malawi have demonstrated that rules matter.

Respondents admitted that while court judges do not directly vote in the legislature, recent trends put them in a peculiar position of *defacto* law-making, seen as tantamount to ‘judges usurping legislative powers by the backdoor’ as ‘unelected lawmakers’ to the extent that president Mutharika was cited as having publicly expressed his misgivings with the courts following a series of unfavorable court decisions, including the upholding of the constitutionality of Section

65, by saying '…you judiciary, you are frustrating me...' [123] Besides, some decisions of the Supreme Court have the same effect as a law by the precedence principle. Just as the legislature will only act when convened and presented with the legislative agenda, courts will also act when moved. In both cases, their statutory or constitutional veto powers are the most significant determining factor to their classification as a direct institutional veto player.

The Speaker of the National Assembly

One of the unexpected outcomes of this study is the empirical result that established the Speaker of National Assembly as a direct veto player in legislative decisions. This result is cogently linked to the speaker's role as presiding officer in legislative business[124] and particularly in executing matters related to Section 65 of the Constitution as read with Section 46(1) of the PSOs. Empirical results presented in table 16 of this study show 79% of the respondents indicating that the speaker was a critical veto player in floor crossing issues.

As stipulated in Section 46(1) of the Parliamentary Standing Orders, the speaker receives an official petition from an aggrieved political party to declare vacant, the seat of an MP alleged to have contravened Section 65 by their action or association and thereby eligible for expulsion from parliament. The speaker's role is to serve the alleged MP with a copy of the petition, for the latter to respond to the speaker on the allegations within 7 days. Once this period expires, the speaker is required to make a determination on the matter on a date known to the alleged MP and petitioner. It is during the period between receiving the petition and making the determination that often the speaker receives court orders to postpone his actions pending judicial review or political parties decide to withdraw the petition, as the case may be. In the case of the court order, the speaker becomes first respondent when served with a court injunction, constraining his actions as granted by the court to the concerned MP.

Given that floor crossing incidences have preoccupied the full time span of this study in the Malawi legislature under both minority and the short period of DPP majority government 2009-2011), the speaker's veto powers have been apparently prominent in either the selective

[123] Interviews with former attorney general, government technocrats, judicial officers and CSO leaders
[124] Malawi Constitution, Section 53(4)

application of the rule or inaction within the latitude of permissible discretion by the speaker as observed earlier. This is addition to speaker's controlling powers over legislative business as discussed earlier.

6.1.2 Indirect veto players

Civil Society Organisations

Civil society organisations, when they are undivided, coordinated and professional in their intervention in legislative matters are an effective indirect veto player particularly in influencing socio-economic, constitutional and good governance related legislative decisions in Malawi. Empirical results presented in this study suggest that CSOs play a *defacto* role of opposition in countervailing and constraining executive excesses in both legislative minority and dominant majority governments. This is was prominent during the period 2005-2009 and 2009-2011 of president Mutharika's administration.

By mobilising citizens, other pressure groups, media, religious leaders and even donors to lobby legislators on particular legislative decisions including the passing of the national budget and blocking the open/third term bid, CSOs in Malawi have become a non-voting but integral actor, with considerable influence on legislative outcomes. Their influence remains indirect because they are voluntary and non-state actors and there are no formalised regular arrangements for engaging with legislators.

CSOs influenced legislative outcomes via specific formal or informal arenas and strategies to secure desired legislative decision outcomes. These critical arenas included obtaining court injunctions to constrain the legislature from making specific decisions until after a judicial review, making public submissions to specific legislative committee public hearings, direct lobbying of individual legislators on specific legislations, originating specific legislation for submission to parliament as a government bill through the ministry of justice or any relevant government ministry or department, as illustrated in figure 8. The empirical results also show that CSOs desist from perceptions of partisan alignment by muting their activism in highly partisan legislative matters (as seen in table 16 under floor crossing) to maintain their desired

public perception of sustained political impartiality. The 'marked decline in trust' between the CSOs and MPs suggests that the two have neither been constant allies nor permanent foes across issues and successive regimes.

The result showing CSOs as one of the most influential indirect VP was also unanticipated in this study. It is however implied in the notion of *situational* veto players conveyed by Michael Stoiber (2006:8) by virtue of being unelected actors who enter the political game through strategic points to influence legislative outcomes. However, Stoiber's typology of *situational* and *restricted* veto players renders itself ambiguous in as far as locating CSOs under either as established by this study. Hence, the proposition by this study to classify them as *indirect* veto players, with implied institutional powers but with profound influence on legislative decision outcomes in Malawi as established in this study.

International agencies and powerful donor nations

For a foreign-aid dependent country like Malawi, the influence of donors on government decisions and policy choices is phenomenal. The support provided by donors for democratisation, for example towards financing national elections, economic and political governance, civic education and democracy projects implemented by non-state actors, gives the donors the inevitable leverage to control the policy agenda and political direction for Malawi. Further the provision of capacity development support to institutions involved in oversight, accountability and rule of law including parliament (for example funding for parliamentary committee meetings), judiciary, Anti-Corruption Bureau, Accountant General and MLC, creates multiple opportunities for donors to influence the content, scope and choices of policy and supportive legislation.

Most importantly, provision of budget and development support by nearly 40 % of Malawi's annual budget has more compelling incentives and sanctions implied or explicit in the pre-conditions of such support. Recipient nations like Malawi are duty-bound to comply and act according to the set agreements entered into, or risk aid suspension, freeze of project support or international alarm by the IMF and WB that give alert cues to other international agencies and diplomats to deal cautiously with Malawi.

Thus, after more than four decades of colonial independence, it remains debatable on the extent to which an emerging democracy like Malawi is politically independent and insulated from donor interference as long as it remains economically donor-dependent.

To conclude, the empirical results in this study suggest modifying the original conceptualisation of veto player analysis and incorporate 'external' veto players, including donors, the IMF, World Bank and powerful governments that enter the process via strategic points, and exercise inordinate non-voting influence on legislative decision outcomes.

The media, traditional leaders and religious groups

The roles of the media, traditional leaders and religious groups in influencing legislative outcomes were repeatedly exemplified in this study. Not to repeat their positive roles played alongside CSOs, the 'trio' are acknowledged for the peculiar roles played by each in engaging with both the government and opposition over the three legislative decisions discussed in this study. The media provided public alerts and reviews on such critical issues through coverage and analysis (including possible distortion) of parliamentary proceedings and decisions.

The traditional and religious leaders played both counterproductive and constructive roles. Muluzi regimes strategically exploited the patronage avenues to lure support of traditional leaders (and through them-their rural and semi-literate subjects) and some religious leaders (including their faithful) towards supporting the third term bid. Likewise, Mutharika used the same networks and individuals to secure support and coerce opposition MPs to pass the national budget and abandon the prioritisation of Section 65, support the change to the national flag, and the failed zero deficit budget.[125]

[125] Interviews with CSO leaders, officials from parliament, media experts, historian and key political party leaders

6.2 Formal and informal institutions in legislative decisions

6.2.1 Formal institutions

Parliamentary Standing Orders and the Constitution

This study has established that institutions influence legislative decision-making processes in Malawi mainly in two ways. First as the source of legislative power or mandate from which the authority to participate in the legislative process is derived for both direct and indirect veto players. Except for donors; the state president, legislative political parties, the speaker of parliament, the judiciary, CSOs and voters derive their legitimacy from the national constitution. In addition the speaker of parliament and the state president derive their veto power from the PSOs. On the other hand, international or development partners draw their power to influence the legislative decision-making process from their aid money as prescribed in specific agreements and international convention.

Secondly, formal institutions: the constitution and PSOs as rules of procedure regulate how individuals and collective actors endowed with institutional veto power exercise such delegated authority and veto powers within the limits set therein. Since these rules are officially documented, violation or acting outside the prescribed domain finds remedy within the formal enforcement mechanisms of the courts. The study also established that the dispersal of institutional power that structures legislative-executive relations is itself an outcome of the regime system- presidential regime and the electoral law- the plurality system. In addition the electoral law that permits minority governments and the party system influence legislative configurations and ultimately, decision outcomes. However, informal institutions in Malawi are equally of substantial significance.

6.2.2 Informal institutions

Diana Cammack observes that informal institutions of political patronage, clientelism and nepotism are preserved by and embedded in formal rules which centralise power ‘in the hands of the President…in Malawi,’ (2011:2). The empirical evidence in this study confirms this delicate co-existence between informal and formal institutions that prevail in Malawi. Potentially, actor preference for the former tends to undermine adherence to the latter.

The results show an admission among all the informant categories that patrimonialism, reciprocities of patron-client relationships and nepotism partly influence the actions and choices of legislative decision makers. However, the picture is somewhat mixed due to the aspect of the same results that shows two interesting realities. First, that informal institutions are not omnipotent; they have limits including agency problems such as moral hazards (Shepsle 2008:28) discussed earlier. The open/third-term bid is a typical example where the bill's marginal failure was a triumph for formal rules, even where it appeared most predictable that MPs who benefited from patronage exchanges and rents would be influenced to vote for the bill. As it turned out, legislators whose ulterior convictions were to retain the status quo opted to vote against it or abstain, or be absent. Hence, the bill flopped.

Second, positive informal norms and values facilitated by religious membership links enhanced the resolve among some legislators to comply with and support the retention democratic rules. These informal institutions complemented formal ones. Nevertheless, the selective or partial implementation of court decisions by both the executive and the legislature may suggest that formal rules have a low pedigree of incentives and negligible sanctions to induce compliance. Likewise, the ambivalence to exploit and outlaw the floor crossing clause by successive minority governments since 1994 and retain it when in opposition as demonstrated by both the UDF and DPP regimes, is simply rational behavior of political actors in their quest to maximize political interests of incumbency.

The comparative study findings of Dulani (2011:236) on contextual and cultural conditions that informal institutions influenced third term bids in four countries also established patronage, as one key factor to the success of third term attempt, it was also found out that patronage was a necessary but not sufficient condition for the success of the campaign. In the case of Malawi and Zambia where the campaign failed, a strong and organised civil society coupled by memories from the legacy of long-tenured previous presidents contributed to the hard-line resistance against third term bids. This implies that although patron-client relationships are endemic to and forceful in influencing actions and decisions of political actors, they are not ostensibly infinite. Their influence is contingent upon contextual and historic factors two.

Dulani adds that some of the supporting factors were prior changes that were made to ancillary rules of the legislative decision making process in order to ease planned removal of constitutional limits to presidential tenure.

For example, while Namibia had roll-call voting rules, Malawi, Zambia and Uganda practiced secret voting system which did not only guarantee 'anonymity' on legislators' voting choices but also insulated beneficiaries of patronage largesse disbursement especially if they voted against their patron. Given that roll-call voting doesn't provide confidentiality, those who benefited but reneged would be tracked and accordingly sanctioned (2011: 224). To ensure that patronage control was compatible with existing formal rules of the game, secret voting rules were changed to roll-call voting in Malawi (2001) and Uganda (2004), way ahead of the vote third term. Meanwhile, overtures to do the same in Zambia were prematurely aborted in 2001 sensing felt opposition from within the ruling party-MMD legislators, and likely defeat of the motion to amend voting rules (Ibid:225).

6.3 Study conclusions

The foregoing analysis and empirical findings lead to some significant broad conclusions regarding whether parliaments matter in Africa, the importance of political parties in parliaments of emerging democracies and indeed the extent to which institutions matter in African politics. This is the essence of this subsection.

First, the study reveals that democratically elected parliaments are expanding their influence and increasing their importance in Africa as the main law-making organ of government. Notwithstanding their institutional weaknesses, deficiencies and obtrusive executive controls over legislative agenda and finances, parliaments of minority governments provide the arena which illustrates the institutional power distribution that structure executive-legislative relations. The various debates and legislative outcomes on presidential term limits in Africa demonstrate that parliaments under divided (minority) governments are not an appendage to the executive and that they have successfully blocked attempted constitutional amendments for extended

presidential tenures. This renders more significance cognizant of the role of patronage politics in Africa, yet parliaments are progressively asserting their independence over strong executives.

Secondly, legislative political parties are the integral and most critical veto players in shaping legislative decisions as law makers. In a representative democracy, the enactment of proposed government legislations, policies, and national budgets are the exclusive and indispensable mandate of legislative political parties as the primary veto players. Their actions and choices determine legislative outcomes, which often hold key to the decisions of most development partners, who insist on the legislative oversight and scrutiny of public finances to ensure transparency and accountability of the elected authority to the sovereign. Of course the effectiveness of legislative political parties is itself predicated on several institutional and political factors including degree of party cohesion-party system, the electoral system and influence of other actors. It is however evident that the higher the party discipline of opposition parties with majority control of parliamentary seats, the higher likelihood that arbitrary constitutional amendments will be blocked as was the case with the presidential third term bids. It is therefore vital to nurture and promote political parties to ensure that they secure legislative seats to directly influence legislation and policy making decisions.

Thirdly and finally, the influence of formal institutions is increasingly becoming significant in African politics. Using the metaphor of Goran Hyden (2006) regarding the state of institutions, the ‘glass’ is better described as half full, not half empty, as formal institutions are supplanting the culture of political informality. Institutional formalities and democratic constitutions are not serving symbolic interests but constraining the arbitrary extension of presidential tenures who are compelled to step down at expiry of their constitutional terms, even if they would prefer to remain in power. Classic examples in this regard are the failed constitutional tenure amendments by Chiluba in Zambia, Muluzi in Malawi and Obasanjo in Nigeria. In these cases, constitutional term limits served as unassailable institutional fortresses, which blocked the continuity of these regimes thereby dictating terms of regime alternation. Indeed even those that overstay in power either circumvent or amend their constitutions and electoral laws to legitimise their actions.

Further, deliberations in African parliaments are guided standing orders and constitutional provisions as rules of legislative procedure and parliamentary practice that regulate the process of legislative debates and define voting thresholds for legislations. Violations against such procedures (including floor crossing rules) have clearly defined sanctions such as expulsion from the legislature. This study also establishes that formal constitutional powers that concentrate appointment powers in the executive enhance the persistence of patronage and clientelistic politics. Similarly, growing empirical evidence exists consulted by this study that the management of legislative and presidential elections are increasingly improving in Africa and based on international standards and practices. To this end, formal institutions are substantially and positively influencing electoral and legislative politics in Africa.

6.4 Policy and research recommendations

From the foregoing analyses and discussion, the study proposes the following recommendations.

First, an institutional audit that leads to the identification and amendment of institutional factors in the legislative process and procedures towards balancing executive-legislative power relations. Specifically, there is a need to change the rules in favour of greater financial and political autonomy of the legislature. Initial steps may include reducing or removing presidential powers to prorogue parliament and removing the requirement for the president's prior consent for parliamentary sittings, just as the judiciary operates independently in determining its working calendar and agenda. Increasing the financial and legislative agenda control for the legislature have the potential to positively influence the quality and quantity of the legislative decisions while limiting the undue influence of the executive. This may result in tilting the power balance and incentives in favour of formal and transparent bargaining and negotiation processes than absolute executive controls through the prorogation powers and financial control for the legislature.

Second, the study recommends the adjustment of institutional incentives that encourage personal gains by increasing the provision of public goods and services. The personal goods acquired by legislators (as part-time or full time clients of either the executive or party leaders-or both) through the control over the Constituency Development Fund (CDF) are in turn disbursed more

as personal and private goods and services than public goods in various forms by the legislators to their own clients, agents and networks at local level. These personal disbursements become branded as constituency services including personal donations to religious projects especially during campaign, coffins and personal cash and material hand-outs to individuals that habitually live off their legislators in exchange for their political support and votes. The Constituency Development Fund must be rationalised and made independent from the MPs undue influence.

Third, there is need to strengthening the institutional capacity of democratic, governance and state agencies (including parliament, MLC, ACB, parastatals, judiciary and the MEC) to operate autonomously without covert state interference through patronage and public finance control. Often when state institutions such as the courts consistently act impartially and the executive loses its political grip and manipulation over them, there must be institutional safety-valves that insulate the job security of concerned officers, safeguard against delayed, ad hoc or suspended funding by the executive, just to frustrate or intercept the smooth and proficient functioning of state agencies.

Fourth, the ambiguities in procedural rules of voting must be considered and cleared. Specifically, the majoritarian two-thirds threshold requirement for affirmative vote in constitutional amendments should also include that a legislative vote should be declared passed or defeated if it satisfies both the two-thirds in affirmative and one-third voting against it. Otherwise, the presiding chair in the voting stage should declare that parliament is indifferent or inconclusive on the matter. Under such, a case, the bill would require to be re-tabled afresh and voted on in a subsequent session of parliament.

Fifth, the institutional framework of registration and regulation of political parties must promote political ethics, enhance internal democracy in political parties to undercut patronage controls and safeguard constructive dissent in party caucuses on legislative matters. Similarly, an audit into the weaknesses and merits of the floor-crossing clause must be re-examined and revised to curtail exploitative tendencies against the provision by political actors on either side, deter the selective application and compliance to this legislation, and enhance political alignment based on distinct ideological identity. This institutional alteration must also aim at discouraging political

party fragmentation through arbitrary and selfish defections and make it costly to have multiple and simultaneous party membership by legislators. This process may be incomplete without a simultaneous initiative to reinstate Section 64 that provided for the recall of a legislator by voters in between elections, if the legislator's actions were satisfactorily deemed to have contravened the principal-agent contract entered into through the electoral vote.

Sixth, there is need to formalise and regularise the engagement between legislators and the executive on one hand, and the CSOs on the other, to remove suspicions and mistrust, maximise the exchange of expertise, synergy, knowledge transfer and promote mutual acknowledgement of each other as co-workers in democracy and development.

Seventh, future research should be cross-country comparative studies that extend to focusing on how specific informal institutions including patronage are reproduced and enhanced by formal institutions. This should include investigating root causes of patronage in African politics and establish whether historical institutionalism can explain under what social and political conditions informal institutions survive or diminish while they co-exist with formal institutions. This research agenda should logically extend to the identification of positive informal institutions and how they promote and enhance formal institutions. Such a study will provide insights into prospects for democratic consolidation in Africa given its indelible heritage of mixed informalism comprising positive and negative informal norms, values and practices. Further research should include the analysis of cross national trends in legislative turnover and attempt to link their occurrences to political defections or floor crossing in Africa.

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List of Appendices

Appendix 1: Political Map of Malawi

http://www.ezilon.com/maps/images/africa/political-map-of-Malawi.gif Accessed 12.05.2013

Appendix 2: Research Questionnaire

Institutions and Actors in Legislative Decisions: *Analysing the institutional contexts and veto players in legislative decisions in Malawi*

Introduction

My name is Samson Lembani, a PhD Candidate in International Development Studies-IDS (2009-2012) at the Ruhr Bochum University in Germany. I am currently conducting my field research on the topic "**Institutions and Actors in Legislative Decisions: *Analysing the institutional contexts and veto players in legislative decisions in Malawi."*** The research seeks to answer the general question- How different actors and rules shape the legislative decision making processes in an emerging democracy like Malawi?

To do this, the research specifically examines three key legislative decision areas: (a) floor crossing, (b) national budget, and (c) presidential tenure of office. The research will analyse the interplay of actors and rules that influenced legislative decisions spanning a period of 17 years (1994-2011). With the overall aim of contributing towards understanding how parliaments work in Africa by determining critical actors and institutional contexts that shape and influence legislative decision making, the project seeks to focus on the following aspects:

- locate key decision makers and arenas within which legislative decisions are influenced
- determine the nature of relationship between rules and actors, on one hand, and how they will impact on legislative decisions, on the other
- examine incentives and preferences which structure consensus in decision-making
- identify formal and/or informal institutional factors that affect behaviour of actors in legislative decisions.

This research will be informed by the opinions and experiences of carefully selected key actors and practitioners linked to the legislative process. These include senior judicial officers, MPs (present and former), parliament secretariat officials, political party whips and senior officials from the Ministry of justice, among others.

I wish to thank you for accepting to assist share your experiences and knowledge in this respect. The information so provided will be treated with utmost confidentiality and used exclusively in this academic analysis. No personal details will be disclosed to any party.

Samson Lembani, PhD Candidate/Researcher.
Email: slembani@yahoo.com, **Mobile:** 0888 842 830/0999 842 830

Research Questions for MPs, parliament officials, senior party leaders, judicial officers

CSO leaders and and academicians

Political Institutions, Veto Players and *Legislative Decisions*

Samson Lembani, PhD_IDS 2009, Ruhr University Bochum-Germany

Date:…….. Questionnaire #..... Interviewee Code/Name…….. Start time…….

A: Veto Players

1. In your own understanding, who are the main actors that directly influence Malawi's legislative decision-making process **(Tick whichever box is applicable)**

(a) Political parties represented in parliament ☐

(b) The State President ☐

(c) Opposition parties that are part of a government coalition ☐

(d) The judiciary ☐

(e) Civil society organisations ☐

(f) The Speaker of parliament ☐

(g) Donors ☐

(i) Any other (please specify)……

……..

2. The Malawi Constitution gives various legislative powers and roles to different actors. How do you assess/confirm the roles of the following players in legislative decision making in general?

a. Political parties represented in parliament

(i) Vote for/reject proposed legislations including constitutional or statutory amendments ☐

(ii) Introduce private member bills ☐

(iii) Scrutinise performance of government departments ☐

(iv) Approve/reject appointments of senior public officers ☐

(v) Any other (please specify)……

b. The State President

(i) Assent to and or veto legislative bills passed by parliament ☐

(ii) Promulgate (publish) bills passed through relevant government agency ☐

(iii) Any other (please specify)……

c. The judiciary

(i) Uphold/invalidate Acts and laws enacted by legislature ☐

(ii) Determine the constitutionality of constitutional provisions and amendments, Parliamentary Standing Orders and other Statutes ☐

(iii) Any other (please specify)……

d. Local International Civil Society groups

(i) Lobby/petition legislators to vote for/reject certain legislative propositions ☐

(ii) Lobby/petition the president to veto/approve certain bills ☐

iii) Any other (please specify)……

3. In your view, where do the actor(s) mentioned in (1) get their mandate? In the table below, please tick whichever applicable.

Actor / **Mandate**	The Republican constitution	Parliamentary Standing Orders	Presidential and Parliamentary Elections Act	Other (specify)
Political parties represented in parliament				
The State President				
Opposition parties in government coalition				
The judiciary				
Civil society organisations				
Voters				
The Speaker of parliament				
Donors				
Other (specify)				

4. In your opinion, how does the quality (credibility) of legislative decisions vary with changing number of actors?

(a) Credibility increases with increased number of actors ☐

(b) Credibility decreases with increased number of actors ☐

(c) Credibility remains constant ☐

(d) Any other (please specify)…… ……..

……

5. Let us consider the legislative process in a minority government (opposition majority). At which stage or veto point(s) is legislative decision likely to be overturned?

(a) Cabinet-agenda setting stage ☐

(b) Parliament's Business Committee stage ☐

(c) Portfolio committee stage ☐

(d) Plenary voting stage ☐

(e) Presidential assent stage ☐

(f) Any other (please specify)……

……

B: Legislative Decisions

6. What are the major functions of parliament?

(a) Legislative ☐

(b) Oversight ☐

(c) Representational ☐

(d) Any other (please specify)……

……

7. Which decisions do you most remember that parliament made since 1994?

(a) Floor crossing (Section 65) ☐

(b) Open /Third Term Bill ☐

(c) National Budget ☐

(d) Any other, (please specify)……..

……

8. Which were the major actors that emerged and influenced the outcomes of the following legislative debates? Tick whichever is applicable from the table below.

Legislative Decision / Actor	Political parties in parliament	The State President	Opposition parties in government coalition	judiciary	Civil society organisations	Voters	Speaker of parliament	Donors	Other
Floor Crossing									
Open/Third Term Bill									
National Budget									
Other (please specify									

9. What factors (incentives) do you think influence you/legislators in making legislative decision?

(a) Personal convictions of individual decision makers ☐

(b) Political party position agreed by consensus in party caucus ☐

(c) Material incentives including monetary, appointments or personal/private gain ☐

(d) Informal social networks including tribal, religious or kinship connections ☐

(e) Any other (please specify) ……

……

10. If you were involved in any legislative decisions in (9) above, indicate which factors influenced your decision making process (for former and current MPs only)

(a) Personal convictions of individual decision maker ☐

(b) Political party position agreed by consensus in party caucus ☐

(d) Personal considerations i.e. monetary/material incentives, appointments or other private gain ☐

(e) Social networks including tribal, religious or kinship connections ☐

(f) Electorates/constituents opinion ☐
(g) Lobbying by civil society organisations ☐
(h) Any other (please specify)……..

C: Political Institutions

11. (a) In your view, do you think the conduct of parliamentary business (adoption or rejection of legislative proposals i.e. constitutional amendments and bills) are influenced by generally agreed formal *decision making rules? Yes* ☐ *No* ☐

(b) If *No,* why (explain)……
……

(c) If *Yes*, tick the applicable below
(i) Specific provisions in the national constitution ☐
(ii) Parliamentary Standing Orders ☐
(iii) Electoral law ☐
(iv) Any other (please specify)……
……

12. Based on the concept of power concentration/fragmentation and its impact on executive-legislative relations, what was the nature of executive-legislative relations in the following legislative periods? Please tick whichever applicable in the table below.

Period / **Executive-Legislative Relations**	**Coalition compromises**	**Adversarial/Confrontational**
1994-1999		
1999-2004		
2004-2009		
2009-2011		

13. Do you think the following factors influence the nature of Executive-legislative relationship in (10) above?
(a) Regime type Yes ☐ No ☐
(b) Electoral system Yes ☐ No ☐
(c) Other (please specify)……
……

14. In relation to key legislative actors, do you think the legislative veto power in Malawi was too concentrated or evenly distributed during these years? Tick the applicable box.
(a) 1994-1999: Concentrated ☐ evenly distributed ☐
(b) 1999-2004: Concentrated ☐ evenly distributed ☐
(c) 2004-2009: Concentrated ☐ evenly distributed ☐
(d) 2009-date: Concentrated ☐ evenly distributed ☐

15. In your opinion, are there any informal social norms and channels that are communicated and enforced outside official channels which influence legislative decision choices in Malawi? Yes ☐ No ☐

If No, why (Explain)……

If Yes, which are these?

(a) Affiliation to professional or social (non-partisan) groups on networks Yes ☐ No ☐

(c) Religious links and membership Yes ☐ No ☐

(d) Patrimonialism and clientelistic relationships Yes ☐ No ☐

(e) Any other (specify)……

……

16. In your view, to what extent do formal rules, procedures or regulations in Malawi influence the distribution of legislative decision power?

(a) Provide for constitutional separation of powers among executive, legislature and judiciary

High ☐ Medium ☐ Low ☐ None ☐

(b) Specify functional roles of various actors in the legislative decision making process

High ☐ Medium ☐ Low ☐ None ☐

(c) Create/enable more actors that scrutinise legislative decisions (legislative parties, the president, courts, etc) High ☐ Medium ☐ Low ☐ None ☐

(d) Give veto powers to state organs to constrain execution of certain laws (i.e. granting of injunctions)

High ☐ Medium ☐ Low ☐ None ☐

17. (a) Are there specific laws in Malawi that allow non constitutional actors/stakeholders to influence the outcome of legislative decisions? Yes ☐ No ☐

(b) If yes, please tick whichever applicable

(i) Republican constitution ☐

(ii) Parliamentary Standing Orders ☐

(ii) Presidential and Parliamentary Elections Act ☐

(iii) Any other (please specify)……

……

18. What recommendations would you make to ensure a desirable interface of institutions, veto players and legislative decisions?

(a) Strengthening the institutional capacity of democratic, governance and state agencies (including Parliament, Law Commissions, Anti Corruption Bureau, parastatals, courts,

Electoral Commission, etc) to operate autonomously without undue executive interference through patronage ☐

(b) Enhance the capacity/competence of portfolio committees to make professional input to legislative matters before them ☐

(c) Enhance the internal democracy within political parties that safeguards constructive dissent in their caucuses on legislative matters ☐

(d) Other (please specify)……
……

Once more, Thank You!

Appendix 3: List of Research Interviewees

Name of Interviewee	Venue	Remarks
Parliament		
Louis Chimango	Lilongwe	Former Speaker (2008-2009)
Hon. Khwauli Msiska	Lilongwe	AFORD Secretary General, MP,
Hon. Henry Phoya, SC.	Lilongwe	Former Min of Justice/Attorney General, Former Chair-Legal Affairs Committee, DPP, MP
Hon. Atupele Muluzi	Blantyre	Former Chair-Legal Affairs Committee, MP
Hon R Joomah	Lilongwe	Former Chair- Budget & Finance. Committee, MP
Esther Chilenje Nkhoma	Lilongwe	Former Deputy Speaker (2004-2009)
Hon. L. Belekanyama	Lilongwe	MCP, 1999-2011, MP
Hon. Njobvuyalema	Lilongwe	MCP, (1994-todate), Party Chief Whip, MP
Brown Mpinganjira	Blantyre	Former MP (1994-2004), PP
Hon. Jones Chingola	Lilongwe	DPP, 1st Deputy Speaker, (2004-date)
Sam Mpasu	Blantyre	UDF, Former Speaker (1999- 2003)
Mark-Katsonga	Lilongwe	PPM President, (2004-2009), ex MP
State/Government		
Geophrey Mwenyeheli	Lilongwe	Principal Clerk Assistant , Parliamentary Procedures
Roosevelt Gondwe	Lilongwe	Former Clerk of Parliament (1987-2005)
H.H. Njolomole	Lilongwe	Deputy Clerk of Parliament
John Kapito	Lilongwe	Chairperson- Malawi Human Rights Commission
Rt. Hon. Justin Malewezi	Lilongwe	Vice President (1994-2004), ex-MP
Chiza Nyirongo	Lilongwe	Assistant Chief Law Reform Officer, Malawi Law Commission
Hon. Justice M.Mbendera, SC	Lilongwe	Attorney General, High Court Judge
Dr. Nkowani	Lilongwe	Attorney General's Chambers, Lawyer
Peter Chisi	Blantyre	Regional Human Rights Officer
Jimion Nyanda	Lilongwe	State Advocate, LegalAid, Lawyer

Name of Interviewee	Venue	Remarks
Judiciary		
Hon. Justice C. J. Kachale	Lilongwe	High Court Judge
Hon. Justice R. Mzikamanda	Lilongwe	High Court Judge
Hon. Justice E. Singini, SC	Blantyre	Justice of Appeal, Supreme Court, Former Law Commissioner
Hon. Justice A. Msosa	Blantyre	Justice of Appeal, Supreme Court Chairperson- Malawi Electoral Commission
Hon. Justice Dr. J. Ansah, SC	Lilongwe	Justice of Appeal, Supreme Court, Former Attorney General
Agness Nyrenda-Patemba	Blantyre	Chief Resident Magistrate
Micheal Tembo	Blantyre	Deputy Registrar, High Court & Supreme Court
Law Experts		
Marshal Chilenga	Lilongwe	Lawyer
Mavuto Hara	Blantyre	Former Law Society President
CSO Experts		
Andrew Kumbatira	Blantyre	Former Executive Director- MEJN
Dr Thomas Munthali	Lilongwe	Former President-ECAMA
Mavuto Bamusi	Lilongwe	NICE Board Chair, former NGO Activist
Undule Mwakasungula	Lilongwe	Chair- Human Rights Consultative Committee (HRCC)
Rodgers Newa	Lilongwe	Executive. Director, CYCA
Robert Phiri	Lilongwe	Executive Director- PAC
Aloucious Nthenda	Blantyre	CCJP, Blantyre Diocese
Peter Chinoko	Lilongwe	CCJP, Lilongwe Diocese
Media/ Experts		
Bright Sonani	Lilongwe	Acting Bureau Chief, Nation Publication
Felix Mponda	Blantyre	Editor Editor, Daily Times
Mavuto Banda	Lilongwe	Bureau Chief, Malawi Nation Newspaper
Patrick Semphere	Lilongwe	Chairperson- Media Council of Malawi / Media Consultant
Victor Kaonga	Lilongwe	Executive Director, Trans World Radio
Gospel Kazako	Blantyre	Managing Director, Zodiac Broadcasting Station
Denis Mzembe	Blantyre	Head of New and Current Affairs, Capital FM

Name of Interviewee	Venue	Remarks
Academic Experts		
Dr. Blessings Chinsinga	Zomba	Chancellor College, Associate Professor
Dr. Nandini Patel	Blantyre	Catholic University, Associate Professor
Dr. Henry Chingaipe	Lilongwe	Political Science Lecturer
Prof. Wiseman Chirwa	Zomba	Chancellor College, Professor of History
Prof. Edge Kanyongolo	Zomba	Chancellor College, Law Professor
Key Political Leaders		
AFORD- Dan Msowoya	Lilongwe	Former Secretary General
PP- Henry Chibwana	Blantyre	Secretary General
UDF- Humphrey Mvula	Blantyre	Vice President
UDF- Hophmally Makande	Lilongwe	Deputy Secretary General
PETRA-Kamuzu Chibambo	Blantyre	President

Appendix 4: List of Workshop Participants

	Name	Institution/Designation	Location
1	Dr. Peter Woeste	German Ambassador	Lilongwe
2	Macdonald Thom	Daily Times	Lilongwe
3	Clement Makuwa	Young Politicians Union	Lilongwe
4	Boniface Chibwana	Centre for Multiparty Democracy	Lilongwe
5	Chiza Nyirongo	Malawi Law Commission	Lilongwe
6	Roosevelt Gondwe	Former Clerk of Parliament	Lilongwe
7	Gabriel Kamlomo	Daily Times	Lilongwe
8	Billy Mayaya	Nkhoma Synod	Lilongwe
9	Dr Henry Chingaipe	Governance Consultant	Lilongwe
10	Dr. Augustine T. Magolowondo	Institute for Multiparty Democracy	Lilongwe
11	Dan Kobayashi	Political Officer, USA Embassy	Lilongwe
12	Hon J. Njobvuyalema,	Parliament, MP	Lilongwe
13	LJ Chimango	Ex. MCP MP/ former Speaker of Parliament Speaker	Lilongwe
14	Mr. Marshal Chilenga	Private Lawyer	Lilongwe
15	Mr. Victor Kaonga	Trans World Radio	Lilongwe
16	Mrs. Patricia Khomani	Development Consultant	Lilongwe
17	Dr Blessings Chinsinga	Chancellor College	Lilongwe
18	Ms. Sophia Nthenda	Public Affairs Committee	Lilongwe
19	Peter Kumwenda	Media	Lilongwe
20	O Alfazoma	UNDP	Lilongwe
21	Tionge Kamzuzeni	Malmo University	Lilongwe
22	Mike Kaiyatsa	CHRR	Lilongwe
23	Pius Mtike	Montfort Media	Lilongwe
24	Kimberly Smiddy	Institute for Parliamentary Support in Africa	Lilongwe
25	K. Chikadza	IPRSE	Lilongwe
26	Suzgo Chitela	Malawi Broadcasting Corporation	Lilongwe
27	Chrissie Makwakwa	Chancellor College	Lilongwe
28	Kenasi Kasinje	KAS Malawi	Lilongwe
29	Mphatso Sunduza	Chancellor College	Blantyre
30	Ephraim Nyondo	The Nation Newspaper	Blantyre
31	Vincent Khonyongwa	Malawi Broadcasting Corporation	Blantyre
32	Clara Bandawe	Orange Partners	Blantyre

	Name	Institution/Designation	Location
33	Chisomo Phiri	College of Medicine	Blantyre
34	Chimwemwe Waya	College of Medicine	Blantyre
35	Asante Mazulu	Orange Partners, People's Party	Blantyre
36	G. Mmina	GO BRIGHT MEDIA	Blantyre
37	Nelson Mkandawire	Economics Association of Malawi	Blantyre
38	Gift Numeri	Network Forum Youth Development	Blantyre
39	Moses Gwaza		Blantyre
40	Thokozani Chimenya	Save the Children	Blantyre
41	Felix Mponda	Blantyre Newspapers	Blantyre
42	Steven Mkweteza	Journalist	Blantyre
43	Dais Captain	Big Issue	Blantyre
44	Peter Chisi	Malawi Human Rights Commission	Blantyre
45	Stanley Phiri	FES	Blantyre
46	Davies. C Katsonga	Ex-UDF/DPP MP, former Speaker of Parliament	Blantyre
47	Joe Mlenga	Malawi Institute of Journalism	Blantyre
48	Pilirani Tambala	ZODIAK Radio	Blantyre
49	Rafik Hajat	Institute for Policy Interaction, Director	Blantyre
50	A. Nkhoma	NICE-SOUTH	Blantyre
51	Wongani Kumwenda	College of Medicine	Blantyre
52	Doreen Msowoya	College of Medicine	Blantyre
53	Davie Kavala	Real insurance	Blantyre
54	Chindika Mulambia		Blantyre
55	C. Mlaviwa	Freelance	Blantyre
56	F. Joe	Malawi Postal Corporation	Blantyre
57	Ella Kabambe	Orange Partners, People's Party	Blantyre
58	Rafiq Katandika	Catholic University	Blantyre
59	Moses Chavula	Catholic University	Blantyre
60	Rodney Tembenu	FBO	Blantyre
61	Ephrina Yohane	Malawi Institute of Journalism	Blantyre
62	Jess Banda	BCC	Blantyre
63	Joseph Chikwemba	Deputy. Admin. Secretary, People's Party	Blantyre
64	Judith Phiri	Chancellor College	Blantyre
65	Sam Mpasu	Ex- UDF MP, former Speaker of Parliament	Blantyre