

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where legislative propositions (in the form of bills and motions) can be accepted, rejected, reversed, modified or withdrawn.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 president¹¹⁸ 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 parliament¹²⁰ 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 business¹²⁴ 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.