

**AN INVESTIGATION OF THE POLITICAL FACTORS CONTRIBUTING TO FLOOR  
CROSSING IN THE MALAWI NATIONAL ASSEMBLY: 2003 – 2009**

**by**

**ANNE GRACE MAGANGA**

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## **DECLARATION**

I declare that: An Investigation of the Political Factors Contributing to Floor Crossing in the Malawi National Assembly: 2003 – 2009, is my own work and that all the sources that I have used have been indicated and acknowledged by means of complete references.

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**SIGNATURE**

(Mrs. A G Maganga)

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**DATE**



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## **ABBREVIATIONS**

ACDP	African Christian Democratic Party
AFORD	Alliance for Democracy
ANC	African National Congress
CONU	Congress of National Unity
CSO	Civil Society Organizations
DA	Democratic Alliance
DPP	Democratic Progressive Party
EC	Electoral Commission
ECM	Episcopal Conference of Malawi
ERTC	Electoral Reform Technical Committee
ESARP	East and Southern Africa Regional Programme
FC	Floor Crossing
FF	Freedom Front Plus
FPTP	First Past The Post
IFP	Inkatha Freedom Party
Independents	Independent Candidates
KANU	Kenya African National Union
KAS	Konrad Adenauer Stiftung
LGE	Local Government Elections
LEGCO	Legislative Council
MAFUNDE	Malawi Forum for Unity and Development
MCP	Malawi Congress Party

MGODE	Movement for Genuine Democracy
MMD	Movement for Multiparty Democracy
MNA	Malawi National Assembly
MP	Member of Parliament
MPP	Malawi Peoples' Party
NDA	National Democratic Alliance
NGOs	Non Governmental organizations
NIMD	Netherlands Institute for Multiparty Democracy
NNP	New National Party
PAC	Pan Africanist Congress of Azania
PPM	Peoples Progressive Movement
RP	Republican Party
UCDP	United Christian Democratic Party
UDF	United Democratic Front
UNIP	United National Independence Party
UPND	United Party for National Development

## **DEDICATION**

I wish to dedicate this to my husband Dick for his love and support, my children, Trisa, Stewart and Richard and my dear sister Alice for their inspiration. May God bless you all.



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## **ABSTRACT**

Floor crossing was an unknown phenomenon in Malawi until the re-emergence of multiparty politics in 1994. Since then the number of MPs crossing the floor in the Malawi National Assembly has steadily increased from around twelve in 1994 to more than sixty in 2005. This practice has continued even today. However, the biggest incident of floor crossing took place in 2005 when the State President, Dr Bingu wa Mutharika, under the United Democratic Front (UDF) decided to abandon the party that sponsored him into office to form his own, the Democratic Progressive Party in February, 2005. Following him were several opposition MPs, a move which sparked a lot of tension in the National Assembly.

The purpose of this study was to investigate political factors contributing to this phenomenon, and it was established that, among other factors, institutional weaknesses of political parties and gaps in the Constitution contributed significantly to floor crossing.

## **KEY TERMS**

**An investigation of the Political Factors Contributing to Floor Crossing in the Malawi National Assembly: 2003 – 2009**

### **Key Terms:**

Floor Crossing; Political Parties; Malawi National Assembly; Political factors; Investigating political factors; Members of Parliament; Contributory factors; Malawi politics; Politics; Crossing the floor

## CHAPTER ONE

### 1. GENERAL OVERVIEW

#### 1.1 Introduction

This study was intended to investigate political factors that contributed to floor crossing in the Malawi National Assembly (MNA) between 2003 and 2009 by Members of Parliament (MPs) who were initially voted into the National Assembly either as independent candidates or by registered political parties. Malawi has an estimated population of just over 15 million people, with a growth rate of 2.7 percent per annum. The population is spread across three regions, with the Tumbuka speaking people in the north, Chewa in the centre and Yao and Lomwe in the south. Malawi has a total of twenty eight districts, six in the north, nine in the centre and thirteen in the south respectively. 80 percent of Malawians are Christians, while 13 percent are Muslims, with the remainder being divided among, atheists, other small religions such as Hindus, Bahai's and traditional African religions. Life expectancy at birth is 50.03 years while infant mortality is high. Adult HIV/AIDS prevalence is estimated at 11.9 percent of the population.<sup>[1]</sup> The 2008 World Bank Report describes Malawi as one of the least developed and most densely populated countries in the world. Its economy is dependent on agriculture, and is therefore, prone to effects of drought and famine (World Bank Report, 2008).<sup>[2]</sup> Malawi depends heavily on donor aid for balance of payments support. However, this need and the aid offered, has decreased since 2000.

[3]

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#### Reference

<sup>[1]</sup> Central Intelligence Agency Publications – the World Factbook, Nov 3, 2010.

<http://www.cia.gov/library/publications/The-world-factback/geos/mi/html>

<sup>[2]</sup> The World Factbook-Malawi?. October, 2010. <http://en.wikipedia.org/wiki/Malawi>

<sup>[3]</sup> ibid

## **1.2 The Malawi Electoral System**

Malawi has a unicameral type of parliament with 193 seats which are contested every five years through the First-Past-The-Post (FPTP) electoral system for both parliamentary and presidential elections. This system was inherited from the British colonial administration at independence in 1964. The people, therefore, directly elect the president and members of the National Assembly concurrently on the basis of direct, universal and equal suffrage. This is in accordance with Section 80(1) of the Malawi 1994 Constitution (Meinhardt, 2003: 28). Dr Bingu wa Mutharika, is the incumbent President whose first tenure of office started in May, 2004 when he won presidential elections with only 35 percent of the total presidential votes while a member of the United Democratic Front (UDF). After being in office for only nine months, he decided to abandon the UDF, the party that sponsored him into office and formed his own, the Democratic Progressive Party (DPP) in February, 2005 (Chinsinga, 2008:14). Dr Mutharika's move triggered an exodus of nearly seventy MPs from the main opposition, UDF and Malawi Congress Party who joined him in the new party (DPP). This sparked a huge political controversy and brought tensions and instability to the fore in the Malawi National Assembly (MNA), which impacted negatively on the political landscape. The DPP was voted back into power with a landslide victory of 113 parliamentary seats out of a total of 193 during the 2009 General Elections. However, the DPP now has over 137 parliamentarians following an exodus of independent MPs joining the ruling party (DPP) soon after being sworn in. Some of these independent MPs have already been appointed to ministerial positions.<sup>1</sup>

Unlike South Africa which has the local, provincial and national levels, Malawi has only two levels, the national and local. Local elections in Malawi also follow the FPTP electoral system. Local Councillors are voted into the Local Assembly, either as independents or from political parties. The constituency system, therefore, is operational both at the local and the parliamentary levels.

Section 147(1) and (5) of the Republican 1994 Constitution stipulates that:

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<sup>1</sup> Independent MPs, Hon. Nicholas Dausi and Hon Billy Kaunda were appointed Deputy Minister in the President's Office and Deputy Minister of Tourism, Wildlife and Culture in the DPP government accordingly

147(1) Local government authorities shall consist of local government officers who shall be elected by free, secret and equal suffrage by the registered voters in the area over which that local government authority is to have jurisdiction and the election shall be organized, conducted and supervised by the Electoral Commission.

147(5) Local Government election shall take place in the third week of May, in the year following the year of the National Assembly, and local government authorities shall stand dissolved on the 20<sup>th</sup> day of March in the fifth year following their election: Provided that where it is not practicable for the polling to be held in the third week of May, the polling shall be held on a day, within seven days from the expiration of the third week of May appointed by the Electoral Commission (Malawi Constitution).<sup>2</sup>

Following government's approval to decentralize political and administrative authority to the district level in 1998, a Local Government Election (LGE) was held in 2000. A second one was scheduled to take place in 2005, however, to-date, this has not taken place. The incumbent government has advanced several reasons for not holding these elections. They range from a lack of resources, to being preoccupied with important priorities such as fighting famine that engulfed the country in 2005. It must be mentioned that even during the UDF era, Local Government Elections were not a priority. The government always cited lack of resources as the main reason for not holding one.

While these reasons appear genuine, one should not lose sight of the fact that during this period there were also other political events taking place which were a priority to the DPP-led government. Firstly, the government was preoccupied with its survival after facing mounting pressures from the opposition who demanded the Speaker of the National Assembly to declare vacant, seats of all MPs considered to have defected to the government. If the Speaker had succumbed to calls from the opposition, and had successfully invoked Section 65 of the Malawi Constitution which deals with floor crossing, the DPP-led government would have probably collapsed because it would have been left with only six MPs in the National Assembly who were elected on a DPP ticket, following a by-election that took place in December 2005. Seventy MPs who defected from the opposition parties and had joined the government benches would have been forced out of the National Assembly.

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<sup>2</sup> Although government has set a new date of 20<sup>th</sup> April, 2011 for Local Government Elections, some people are skeptical that this will ever take place

Secondly, during this period, the legitimacy of the government was also being challenged by the opposition which filed a notice of motion in the court to approve the impeachment procedures against the State President, Dr Bingu wa Mutharika for having abandoned the party (UDF) that ushered him into power, and forming his own (DPP). However, the impeachment procedures did not materialize because a court injunction by government in 2005 stopped the application. In 2007, the Constitutional Court ruled the presidential impeachment procedures “null and void and inconsistent with rule of natural justice” (Lembani, 2007:54). These could be some of the reasons why Local Government Elections have not been held since 2000.

### **1.3 Background to the Study**

Malawi became independent from British colonial rule in 1964. Prior to independence in July 1960, and in preparation to hand-over power, the British government held constitutional talks with the Nyasaland national liberation leaders at Lancaster House in London. During these talks, a new Constitution was agreed upon and introduced. This Constitution provided for direct election of Africans to the Legislative Council (LEGCO), and introduced Lower and Higher Rolls for Africans and Whites respectively. The first General Elections which were held in August, 1961, gave the Malawi Congress Party (MCP), led by Dr Hastings Kamuzu Banda, an overwhelming victory over the others. The MCP won sixteen seats against five from the United Federal Party and one from an independent.<sup>3</sup> This meant that at independence in 1964, Malawi inherited a multiparty Constitution, also known as the Monarchical Constitution, as well as a parliamentary system of government, following the British Westminster model (Meinhardt, 2003:3).

When Malawi became a Republican state in 1966, it introduced another Constitution which superseded the 1964 multi-party Constitution. The Republican Constitution abolished multiparty system of government, and introduced the one-party system under the leadership of Dr Hastings Kamuzu Banda. Through this Constitution, all powers were vested in Dr Banda as executive State President, and in the process, abandoned the British parliamentary system of government. Dr Banda became life president in 1971. In June 1993, a referendum was held to decide

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<sup>3</sup> The Nyasaland Legislative Council comprised twenty-eight members of whom twenty were to be elected in the lower roll for Africans and eight on the higher roll for Whites, with three ex-officio and two to be nominated to bring the complement in the Council to thirty-three. When the Legislature was sworn in on 20<sup>th</sup> September,

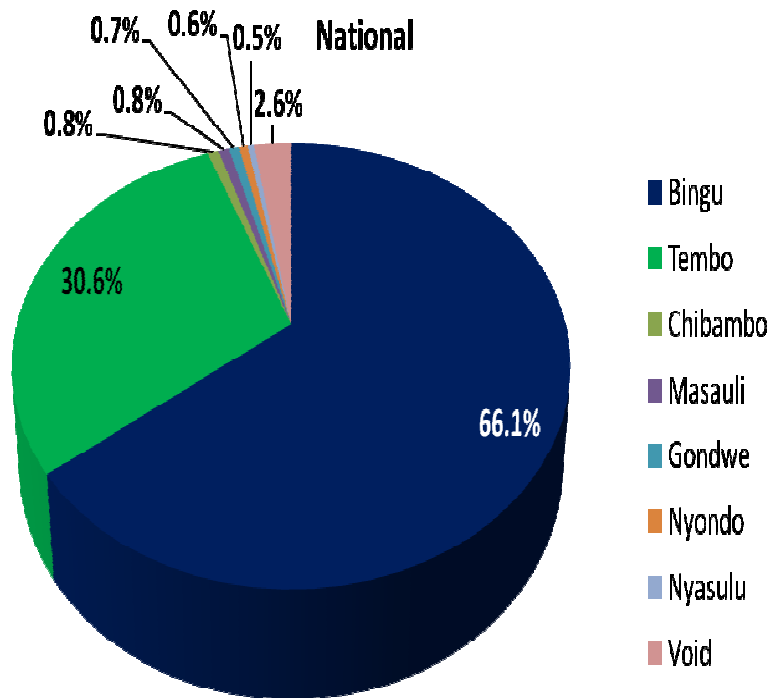
whether or not to reintroduce the multiparty system of government, and Malawians voted overwhelmingly to return to a multiparty system of government. Dr Banda lost in the multiparty elections which were held on May 17<sup>th</sup> 1994 following the referendum. At the time of his loss, Dr Banda had ruled Malawi, first as Prime Minister in 1963, and later as president for just over thirty years. Dr Bakili Muluzi of the United Democratic Front (UDF) took over the reins of power from him under a new political dispensation and a new multi-party Constitution of 1994. Dr Muluzi was President of Malawi from 1994 to May 2004 when he handed over the reins of power to his hand-picked successor, Dr Bingu wa Mutharika who has been in power from May 2004 until now, and his term of office ends in 2014. Dr Mutharika has made it clear that he will not seek a third term of office, unlike his predecessor, Dr Bakili Muluzi (Malawi Digest, 25 November 2009).<sup>4</sup>

Since the re-introduction of multiparty politics in Malawi in 1994, the country has had four Parliamentary and Presidential Elections which have been held every five years; in 1994, 1999, 2004 and 2009. The first three elections were all won by the UDF, where Dr Bakili Muluzi got 47 percent and 51 percent of presidential votes in 1994 and 1999 respectively. In 2004, Dr Bingu wa Mutharika who contested under the UDF got 35 percent of the total presidential votes. It is worth mentioning though, that between February when Dr Mutharika left the UDF to form his party (DPP), and December, 2005 when the DPP won the first six seats in a by-election that was held in December of 2005, there was a constitutional anomaly because the country was run by a party (the newly established DPP) that had not contested or won in the 2004 general elections. There was (is) no provision in the Malawi Constitution on the defection of a President. However, in 2009 the Democratic Progressive Party (DPP) won the elections convincingly, and Dr Bingu wa Mutharika received 66.1 percent of the total presidential votes. The others did not fare so well. The diagram below illustrates the outcome of the 2009 Malawi presidential elections.

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<sup>4</sup> Mutharika says no 7 years, no Third Term' (Malawi Digest November 25, 2009)

**Diagram 1: Malawi's Presidential Results for 2009**



Source: Tenthani: 2009 – adapted from the 2009 Electoral Commission results

## 1.4 Floor Crossing and the Different Malawi Constitutions

### 1.4.1 Floor Crossing and the 1964 Constitution

As already discussed above, at independence in 1964, Malawi inherited a multiparty Constitution from the British, and the 1961 General Elections were contested by several political parties including the Malawi Congress Party and the United Federal Party. The United Federal Party later became the Nyasaland Constitutional Party after the dissolution of the Federation of Rhodesia and Nyasaland on 31<sup>st</sup> December, 1963 (Chigawa:2008). The movement of members in the National Assembly under the 1964 Constitution was encapsulated in Section 39 as follows:

39 (1) every member of the National Assembly shall vacate his seat in the Assembly upon dissolution of Parliament.

(2) A member of the National Assembly shall vacate his seat in the Assembly –



- (e) If, having been elected as a candidate representing a political party established in Malawi, he subsequently ceases to represent or to be a member of that party or claims to represent another political party.

(5) For the purposes of paragraph (e) of subsection (2) of this section a member shall be deemed to have ceased to represent a political party if the Speaker certifies that he is satisfied that the Executive Committee of the party concerned have by resolution declared that the member no longer represents the interests of the party in the constituency concerned.

According to the conditions raised above, therefore, a member would vacate his or her seat in the National Assembly under the following conditions:

- (a) Upon dissolution of parliament;
- (b) If having been elected as a candidate representing a political party established in Malawi, he or she ceases to represent or to be a member of that party or claims to represent another party;
- (c) If the speaker certified that he was satisfied with the party's Executive Committee's resolution that a member no longer represented the interests of the party in the constituency concerned (Chigawa: 2008).

When Malawi attained a republican status in July 1966, a new Constitution which took cognizance of the prevailing situation was introduced. Discussed below are the implications of the new Constitution and how it impacted on members' movements in the National Assembly.

#### **1.4.2 Floor Crossing and the 1966 Republican Constitution**

The 1966 Republican Constitution which came into effect on 6<sup>th</sup> July had several implications. It set the political tone and shaped the Malawian political landscape for the next thirty years. Under the new Constitution, Dr. Hastings Kamuzu Banda became both head of state and government, and Malawi became a one-party state, with the Malawi Congress Party being the only party allowed to operate in the country. This move effectively abolished multiparty elections and politics. After attaining independence from the British in 1964, the government argued that its priority was to provide unity for the different tribes, districts and regions so that the government could concentrate on developing the nation. It was, therefore, argued that

formation of several other political parties would divert government's attention in its efforts to unite the people in the country.

Indeed, as already indicated above, Malawi is divided along three administrative regions. Because Malawi was a newly independent country, the government felt that it was necessary to concentrate on development, and argued that multiparty politics would divide the nation as people would begin to identify themselves along regional lines. This would bring chaos to a newly liberated nation. The abolition of multiparty politics was not challenged at that time by the people because they felt that the leadership of the Malawi Congress Party (MCP) had championed the liberation struggle. Further, almost all Malawians at the time belonged to the one party – the MCP. In retrospect, the government did not seem to realize at that time that each region had (has) its own distinct values and norms that needed to be recognized and appreciated. A perceived 'melting pot' model where all cultural values and norms could be lumped together in the name of unity may not have been the best way forward. For instance, in broad terms, the people in the northern region value education, while in the centre, agriculture is important and the people grow a lot of tobacco for export. For the southern region, business is valued most. Above all, the people from these three regions have their own mutually exclusive beliefs, customs and traditions. It was therefore important for the government to take all these differences and similarities into account when formulating policies.

These regional differences are still visible and even more pronounced today than ever before, and become obvious during General Elections. For example, the Alliance for Democracy (AFORD) has its base in the north, the MCP in the Centre, while the UDF and the DPP have their bases in the south. These regional bases can be observed through the voting patterns. The two tables below illustrate this point clearly. For the sake of this study only three main parties will be showcased for the two General Elections that took place in 1994 and 1999, respectively.

**Table 1: Voting Pattern - Distribution of seats following the 1994 Parliamentary Election**

<b>Region</b>	<b>MCP</b>	<b>UDF</b>	<b>AFORD</b>
<b>North</b>	0	0	<b>33</b>
<b>Centre</b>	<b>51</b>	14	3
<b>South</b>	5	<b>71</b>	0
<b>Totals</b>	56	85	36

Source: Compiled by researcher based on the Electoral Commission Report of 1994

**Table 2: Voting Pattern - Distribution of seats following the 1999 Parliamentary Elections**

<b>Region</b>	<b>MCP</b>	<b>UDF</b>	<b>AFORD</b>
<b>North</b>	4	1	<b>28</b>
<b>Centre</b>	<b>54</b>	16	1
<b>South</b>	8	77	0
<b>Totals</b>	66	<b>94</b>	29

Source: Compiled by researcher based on the Electoral Commission Report of 1999 <sup>[4]</sup>

Tables 1 and 2 illustrate that AFORD is entrenched in the north, the MCP in the centre and the UDF in the south. Although some in-roads and a change in party configurations were made in both the 2004 and 2009 General Elections, these regional trends are very much alive and still visible in the country.

However, Malawi was not the only African country, after independence, which opted for a single party system of government. Most post-independence African national liberation leaders espoused the same value believing that the one party system would promote unity in their respective nations, and that this was a necessary ingredient for development. They believed that the multiparty system of government was associated with class divisions of capitalism which would undermine national unity on a continent that was already riddled with ethnic and tribal strife. African leaders also regarded multi-party democracy as a luxury that poor people could not afford, and argued that political debates and competition would divert energies intended for the urgent task of mounting a united assault on underdevelopment. On the other hand, it could also be argued that for most national liberation leaders who were in the forefront of the struggle against colonialism were not keen to allow other parties whose contribution towards the struggle

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<sup>[4]</sup> See Meinhardt and Patel in Malawi's process of democratic transition: 2003:30

was perceived to be negligible, to challenge their authority after independence. They felt that they had a right to rule the countries they had liberated without any challenge from anyone because they had been responsible for bringing independence. In other words, they had earned the right to rule (Hugo, 2002: 32 – 33).<sup>[5]</sup>

Regarding movement of members in the National Assembly, Section 4 of the 1966 Constitution stipulated the following:

(1) There shall be in the Republic after the appointed day only one National Party;

(2) The National Party shall be the Malawi Congress Party.

This Constitutional declaration sealed the fate on multiparty politics in the country. Because of this, the composition of the National Assembly became homogeneous, and only those that belonged to the Malawi Congress Party (MCP) and were loyal to the President were elected to the National Assembly. Section 20 of the 1966 Republican Constitution granted the President express powers to nominate as many persons as he thought necessary to the National Assembly. A vacancy in the National Assembly existed only when a member lost his or her membership of the party. The introduction of a one-party system of government in Malawi in 1966, therefore, rendered party divisions in the National Assembly unattainable, since there were no other parties to cross over to, either within or outside of the National Assembly. All members of parliament belonged to the one and only, the Malawi Congress Party under the dictatorial leadership of Dr Hastings Kamuzu Banda who managed to hold the party, government and the country together through fear, intimidation and patronage.

In essence, therefore, there were no incidences of floor crossing under the 1966 Republican Constitution because there was no other party in the National Assembly, apart from the Malawi Congress Party, where one could cross to. Nobody dared voice any dissent to Dr Hastings Kamuzu Banda's regime for fear of backlash and unhealthy reprisals. According to Chirwa

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<sup>[5]</sup> Hugo P, 2002: Political parties and Single party rule in Africa, politics, the politics of contemporary Africa

(1983, in Chigawa: 2008),<sup>5</sup> formation of political parties was considered a treasonable offence. There was only one political party to which all had to belong to.

However, the winds of democratic change that were sweeping across the African continent in the early 1990's did not spare Malawi. These were caused by several factors such as the fall of the Berlin wall which had been a symbol of the cold war between the East and West. When the East Berlin war collapsed, the West led by the United States of America, could not look the other way and continue to support authoritarian regimes in Africa with appalling human rights records such as Malawi, as the envisaged communism dangers were minimized, if not eliminated. Malawi which had benefited from western aid without being questioned about its human rights record was now in the spotlight. Regarding movement of MPs in the National Assembly, a member lost his or her seat in the National Assembly when he lost his membership to the Malawi Congress Party. He also lost his or her seat when the majority of the people in their constituencies lost confidence in them.

Secondly, the western world attached conditionality to their aid package and demanded a record of good governance before releasing the much needed aid, and on which most countries in Africa depended heavily upon, including Malawi. Thirdly, there was mounting pressure both from within and outside the country by individuals and donors alike for the country to change to a multiparty system of government. Because of all these aid conditionalities biting into the economy of the country, the authoritarian regime of Dr Hastings Banda begun to crack, and Dr Banda had no choice but to reluctantly allow the people to vote in a referendum on June 14, 1993 whether or not they wanted to continue with the one-party system of government. To his surprise, 67 percent of Malawians in the country voted for a change from the one-party to multiparty system of government (Khembo: 2005).<sup>[6]</sup> Following the results of this referendum, it became necessary to amend the oppressive 1966 Constitution and usher in a new Constitution that would incorporate the new political changes and the political mood prevailing at the time.

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<sup>5</sup> 'Where Silence rules – the suppression of dissent in Malawi' (see New York: Human Rights Watch, 1990. 37 – 40) <http://hrw.org/en/reports/1990/10/01/where-silence-rules-suppression-dissent-in-malawi>

<sup>[6]</sup> Khembo N, 2005: Elections and Democratization in Malawi an uncertain process

### **1.4.3 Floor Crossing and the 1994 Constitution**

The amended Constitution which took cognizance of the new political dispensation was adopted on 18<sup>th</sup> May, 1994. This new Constitution, therefore, meant a change in the political party representation and configuration in the National Assembly. It also meant that the door was open for party competition. Recognizing the power that MCP had wielded before, and the fact that the party had the Press Corporation Limited as its economic wing with over US\$400 million in assets, other political parties were concerned that the MCP would embark on ‘buying’ members from other political parties in order to bolster its weakening grip on the country (Chigawa: 2008). In order to prevent this from taking place, the framers of the 1994 Constitution ensured that they included a clause on floor crossing under Section 65 of the 1994 Malawi Constitution. It is important to mention that there was the ‘original’ 1994 version and the amendment in 2001 in order to highlight the implications the amendment had on the political culture of the nation.

The original clause on floor crossing which was encapsulated in Section 65 of the 1994 Malawi Constitution stated the following:

(1) The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly.

(2) Notwithstanding subsection (1), all members of all parties have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction of the recommendations of a political party, represented in the National Assembly, of which he or she is a member (Malawi Constitution, in Chigawa: 2008).

In its original form, therefore, this clause meant that before an elected MP from a political party contemplated changing party affiliations in the National Assembly, he or she should resign his or her parliamentary seat first, and seek a fresh mandate from the electorate, failing which, the Speaker of the National Assembly was required to declare their seats vacant. By implication, Members of Parliament were allowed to be affiliated to any other organisations outside of the National Assembly even if these had political connotations without them fearing suspension from their parties or speculations that they may have changed their party affiliations. Further, in

order to safeguard members' fundamental rights as enshrined in Section 34 of the republic's Constitution, they could vote on any issue in the National Assembly according to their conscience, without fear of losing their seats.

It is normal practice for political party members in the National Assembly to have party caucuses and agree on a position that a party wishes to take on a particular issue that needs to be deliberated upon in the National Assembly. These parties also have party whips who help reinforce party discipline and guide their members accordingly. If a member does not seem to hold the same opinion with the party leadership or other members on a specific issue, these are resolved within the party, or he or she can opt to follow his or her conscience. However, Section 65 of the Constitution on floor crossing is silent on MPs elected to the National Assembly on an 'independent' ticket. It also does not apply or extend to local councillors elected through Local Government Elections. Similarly, the Local Government Act of 1998 does not contain any clause(s) pertaining to movement of councillors in the Local Assemblies.<sup>6</sup> This oversight on the part of the framers of the 1994 Constitution, whether deliberate or not, has had serious implications on political parties and inter and intra party relationships.

### **1.5 The 2001 Amendment to Section 65**

Under the UDF-led government in 2001, Parliament amended Section 65(1) to read as follows:

The Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his or her election, a member of one political party represented in the National Assembly, other than by that member alone but who has voluntarily ceased to be a member of that party and has joined another political party represented in the National Assembly, *or has joined any other political party, or association or organization whose objectives or activities are political in nature.*

The portion which has been illustrated in italics above was the amendment made to the original Section 65 clause which was intended to prevent senior and very prominent UDF members such as the Vice President Cassim Chilumpha, Party Executive Member, Brown Mpinganjira and others, from leaving the party and joining other parties when the State President, Dr Bakili Muluzi, was seeking a third term of office in 2001. Section 83(3) of the Malawi 1994 Constitution stipulates that the President, the first and second vice presidents can only serve in

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<sup>6</sup> See Local Government Act of 1998

their respective capacities for a maximum of two consecutive terms. President Muluzi was already in his second term of office and was due to step down in May 2004. However, the party supporters from the grassroots who were benefiting from his patronage encouraged him to seek a third term of office. This situation, however, brought some tension and disenchantment to some senior and prominent members of the UDF who were awaiting their turn to ascend to the leadership position. When these members left, they aligned themselves to other parties, became independents or formed their own parties. Mr. Brown Mpinganjira formed the National Democratic Alliance (NDA), first as a pressure group, and later as a political party in order to challenge the ruling UDF government in the 2004 General Elections.

The attempt to amend section 83(3) of the Malawi Constitution on Tenure of Office (for President), was narrowly defeated in Parliament by a mere three votes, short of the requisite two thirds majority for it to be legislated into law.<sup>7</sup> Although government failed to amend the clause, this did not deter the UDF-led government from re-introducing the bill later in the year (2002). However, their efforts were again thwarted due to fierce opposition from civil society organizations, the public and politicians, some from within the UDF. One Cabinet Minister, Mr. Peter Kaleso who was Minister for Commerce and Industry then, lost his job for opposing the third term bill.

### **1.5.1 Section 65 used as a Political Tool**

Section 65 was amended in 2001 by the UDF government so that it could be employed as a political tool against all those who had decided to abandon it. The use of Section 65 was not unique to the UDF era. It was deployed again this time by the opposition in the National Assembly against the DPP-led government during the 2006/2007 and 2007/2008 budget sessions when the opposition refused to pass the budget for two consecutive years insisting that Section 65 should be implemented first. This was illustrated in the following statement by a UDF leader in Parliament, Hon. Dr. George Nga Ntafu:

We will not pass the budget if Section 65 is not invoked by the Speaker of Parliament, and if the current crisis talks fail to reach a compromise, (World News, June 18, 2008).

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<sup>7</sup> 'Malawi reviews third term debate' (BBC News, 10<sup>th</sup> September, 2002)



In the 2007 budget, the stand-off between the DPP-led government and the opposition, led to mediation by the Episcopal Conference of Malawi (ECM) which regulates the operations of the Catholic Church in the country, and the Centre for Human Rehabilitation and Resources, a civil society organization. The mediators were worried that opposition MPs' insistence on discussing Section 65 instead of the National Budget amounting to the equivalent of US\$1.2 billion for the 2007/08 budget session, would eclipse important discussion on economic and developmental policies in parliament.<sup>8</sup> In the 2008/09 financial year, government was on the verge of losing millions of dollars' support from donors, due to protracted political squabbles with the opposition over floor crossing.

Donor funding is usually tied to a tight timeframe, and procedures which include the signing of relevant documents which trigger disbursement of funds are usually tagged to this timeframe. When this process is delayed for whatever reason by a recipient incumbent government, it runs the risk of losing the much needed aid. This actually happened in 2008 when the Malawi government lost funds earmarked for infrastructural development from the World Bank. If these funds had been released, they could have been utilized to improve the supply of electricity in the country. Because of the delays caused by the squabbles in the National Assembly, the World Bank loan facility was withdrawn. The opposition only agreed to pass the budget after being assured by government that parliament would discuss floor crossing soon after the budget. However, as soon as the budget was passed, government reneged on the promise and the president prorogued parliament.

Although the 2001 amendment to Section 65 of the Malawi Constitution on floor crossing was successfully challenged in the High Court in the case of *The Registered Trustees of Public Affairs Committee vs. the Attorney General and Others* in 2003, where the court declared the amendment unconstitutional and invalid, Parliament failed to revert Section 65 to its original form (Patel 2008: 27). This was because there was no political will on the part of the ruling UDF government to implement the court's decision. This issue highlights how powerful the executive in Malawi is. Further, the Supreme Court also ruled on 15<sup>th</sup> June, 2007 in the *presidential reference case of 2006* that "...the High Court had no jurisdiction to invalidate any of the provisions of the amended section after the amendment was effected following due

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<sup>8</sup> 'Malawi May Lose Donor Money' (see Namibian 16<sup>th</sup> June 2008)

parliamentary procedures” (Chigawa: 2008). Section 65 of the 1994 Malawi Constitution, therefore, operates as amended by Parliament under Amendment Act No. 8 of 2001.

## **1.6 Recall Mechanism and the Different Constitutions**

### **1.6.1 Recall mechanism in the 1964 Constitution**

Although the legal provision of the recall mechanism was not expressly made in both the 1964 and 1966 Constitutions respectively, it was implied in Section 39 of the 1964 constitution highlighted above under 1.4.1(b and c) where it stipulates that, “a member would lose his or her seat if having been elected as candidate representing a political party in Malawi ceased to be a member of that party, and when the speaker was satisfied by the Executive Committee’s (of the party) decision that their member no longer represented the interests of the party in the constituency”.

### **1.6.2 Recall Mechanism in the 1966 Constitution**

Similarly, in the 1966 constitution, the recall provision was implied under Section 28 (2g) which stated the following:

A member of the National Assembly shall vacate his seat in the Assembly and cease to be a member thereof-

(g) if his seat becomes vacant under any laws made by Parliament providing for a seat in the Assembly to become vacant by reason of a failure by a member to retain the confidence and support of a majority of the voters in the constituency where he was elected.

### **1.6.3 Recall Mechanism in the 1994 Constitution**

When the Malawi Constitution was drafted in 1994, it contained a ‘recall’ provision under Section 64. This provision was intended to ensure vertical accountability of MPs to their various constituencies as stipulated under Section 12(ii and iii) as follows:

All persons responsible for the exercise of powers of state do so in trust and shall only exercise such power to the extent of their lawful authority and in accordance with their responsibilities to the people of Malawi. The authority to exercise power of 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 (Malawi Constitution, 1994).

This clause means that representatives of the people are mandated with the task of managing the affairs of the country on behalf of the people. If people lose trust and confidence in those mandated to govern them, they have every right to replace them, provided:

- (i) the petitioner is a registered voter in a constituency that the member being recalled has been elected to represent;
- (ii) has proved, on a balance of probabilities, that there is sufficient proportion of the electorate within a constituency being not less than half the total number of registered voters who desire that the seat representing the constituency should be contested in a by-election;
- (iii) Where there has been a successful petition for recall in accordance with subsection (i), the decision of the Electoral Commission should be notified to the Speaker of the National Assembly who shall, on such notification, declare the seat vacant and a by-election shall be announced (Chigawa: 2008).

However, the recall provision was repealed in the National Assembly in 1995 before it could even be applied. MPs argued that this provision was subject to abuse by those who wanted to remove a particular MP from parliament. MPs also argued that because of the levels of illiteracy in the country and the prevalent system of patronage, this system would not be conducive to the political environment. It was further contended that frequent recalls or withdrawals of representatives from the National Assembly would result in numerous by-elections which would not be sustainable economically.

According to Patel (2008:24), although a decade has passed since the recall provision was repealed, public demand for its reinstatement has not dwindled. This was evidenced during the run-up to the 2006/07 Constitutional Review Exercise where stakeholder' meetings and opinion surveys facilitated by the Malawi Law Commission revealed that the public argued for its reinstatement. They also added that the provision needed to be protected with clear guidelines

and procedures to avoid its abuse and a repeat of the 1995 scenario when parliamentarians successfully ejected it.

### **1.7 The Review of the 1994 Malawi Constitution by the Special Law Commission**

The Special Law Commission comprising twenty five people drawn from the judiciary, the public service, civil society, academia and other important segment of society was appointed by government in 2006 to review the 1994 Malawi Constitution. Reasons for reviewing the Constitution by the Law Commission of Malawi were three-fold: (a) it was contended that the 1994 constitution was drafted in a hurried manner in order to take advantage of the prevailing mood when the country was changing from the one-party system of government to multi-partyism. In the process it might have overlooked certain essential components which have led to; (b) numerous amendments to the constitution, such as Sections 65, on floor crossing (amended in 2001), Section 64 on the recall mechanism (repealed in 1995) and Section 68 on the Senate which was repealed in 2001, and the attempted amendment to extend the tenure of the presidency, which the Law Commission felt had not been done systematically; and (c) thirdly, the frequent court litigation especially among political players which gave the impression that there was need to review the constitution which did not seem to adequately address a number of governance issues.

Further, it was deemed necessary to review the Constitution in order to correct textual errors and inconsistencies which were identified by the Law Commission. Patel (2006:45) concurs with the spirit that was prevailing in the Law Commission regarding the Constitution when she stated that these several amendments to the Constitution had been a direct contravention of the spirit of the Constitution and was thereby detrimental to democratic governance. After thorough consultations with various stakeholders around the country, the Law Commission proposed several amendments to the 1994 Constitution. Due to the comprehensiveness of this exercise, this report will only highlight amendments that are relevant, and are within the scope. These are Sections 64 on recall mechanism, and 65 on floor crossing, respectively.

### **1.7.1 Proposed Recommendations to Section 64, Recall Mechanism**

After extensive consultation with different political parties and relevant stakeholders, the Special Law Commission charged with the task of reviewing this clause agreed with the recommendations to re-introduce the recall provision for Members of the National Assembly for two reasons. Firstly, because the exercise of power of the State is conditional upon sustained trust of the people of Malawi as required under section 12 (i) and (iii) of the Constitution. Secondly, if a president or judge can be impeached on specified grounds in stated circumstances, the same should apply to Members of Parliament so that transparency and accountability are encouraged. Conditions for withdrawing an MP were also indicated. These include, when a member is physically incapacitated; when he or she misbehaves; and if his or her constituency does not have any more confidence in their MP.

### **1.7.2 Proposed Recommendations to Section 65 – Floor Crossing**

Regarding Section 65, the Commission agreed that it should be retained and an addendum should be made which should incorporate a clause on independent candidates. This addendum is illustrated in the following highlighted statement:

1) The Speaker shall declare vacant the seat of any Member of the National Assembly who, having been elected to the National Assembly as a member of a political party, Voluntarily ceases to be a member of that political party, or having been elected to the National Assembly as *an independent candidate ceases to be an independent member*:

2) Notwithstanding subsection (1), all members of all political parties represented in the National Assembly shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly, and a member shall not have his or her seat declared vacant solely on account of his or her voting in contradiction to the recommendations of a political party, represented in the National Assembly, of which he or she is a member”.

These recommendations were submitted to Cabinet in 2007. However, no feedback has been received from them. As a way forward, some civil society organizations are contemplating lobbying government for the release of the report and Cabinet’s decisions on the proposed recommendations so that these can be debated upon in the National Assembly, and be implemented accordingly.

## **1.8 Further Court Battles over Section 65**

As already indicated above, Section 65 of the Malawi 1994 Constitution has endured several court rulings. Following the defections of opposition MCP and UDF MPs to the DPP, their

leadership wrote to the Speaker of the National Assembly asking him to declare seats vacant of all those who defected to the DPP, according to the Constitution. The Speaker, Hon. Lewis Chimango, announced that he would make his ruling on the said request on 31<sup>st</sup> October, 2005. However, before that ruling could take place, the government, through the Attorney General, applied for, and obtained an injunction from the High Court restraining the Speaker from making any ruling on the matter until further notice. The Speaker's hands, therefore, were legally tied.

### **1.8.1 The High Court Ruling**

Following the above mentioned developments, the State President, Dr Bingu wa Mutharika decided to join in the controversy over Section 65 by requested the High Court to review the said section claiming that it seemed inconsistent with other entrenched provisions as enshrined in the Chapter on human rights. Specifically, the President asked the High Court to determine whether or not:

- Section 65 of the Constitution was inconsistent with Section 32 - freedom of association, Section 33 – freedom of conscience; Section 35 - freedom of expression; Section 40 – which protects fundamental political rights;
- A Member of Parliament who at the time of election stood as an independent MP and whilst in the National Assembly decides to join a political party could be deemed to have crossed the floor;
- An MP elected on a party ticket decides to resign from that party and becomes independent and later joins another party that has no MP represented in Parliament elected on the party ticket could be deemed to have crossed the floor under Section 65;
- An opposition MP who accepts a ministerial appointment from a President elected on another party's ticket but does not resign from his or her party crosses the floor or not.

The special Constitutional Court comprising three judges: Twea, J. Kapanda. J. and Potani, J. ruled that:

- Section 65(1) of the Constitution was not inconsistent with sections 32, 33, 35 and 40;
- That section 65(1) of the Constitution is valid; and
- That a Member of the National Assembly who was elected under a party's ticket who decides to resign from that party and becomes independent and later joins another party that is not represented in the National Assembly elected on the party's ticket, crosses the floor;
- The three judges were unanimous on the three issues. However, on whether Members of Parliament who get elected as independents and in the National Assembly join another party cross the floor, Justice Twea and Potani held that such members did not cross the floor. Justice Kapanda held that such MPs cross the floor;
- On MPs elected on a party's ticket who accept ministerial appointment from a President elected on another party's ticket but does not resign from his or her party, Justice Twea and Potani held that it depends on the evidence and conduct of the MP to determine whether or not he or she has crossed the floor. However, Justice Kapanda held that such members crossed the floor.

However, using his powers as contained in section 89(h) of the Constitution, The President appealed to the Supreme Court of Malawi over the ruling by the High Court *In the Matter of the Question of the Crossing the Floor by Members of the National Assembly (Presidential Reference Appeal No. 44 of 2006) [2007] MWSC 1 (15 June 2007)*. The Supreme Court of Malawi made the following ruling on the State President's appeal:<sup>9</sup>

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<sup>9</sup> See Malawi Supreme Court of Appeal in the Matter of the Question of the Crossing the floor by Members of the National Assembly, (Presidential Reference Appeal No. 44 of 2006) [2007] MWSC 1 (15 June 2007) before the Hon. The Chief Justice Unyolo, Hon Justice Kalaile, SC, Hon. Justice Tambala, SC, Hon. Justice Mtambo, SC, Hon Justice Tembo, SC. <http://www/aawo.org/MWSC/2007>

### **1.8.2 The Supreme Court Ruling on Section 65**

After examining the evidence before them and the grounds for appeal by the State President regarding Section 65, the five Supreme Court Judges, namely Hon. Justice, Kalaile, Hon. Justice Tambala, Hon. Justice Mtambo, Hon. Justice Unyolo and Hon. Justice Tembo made the following judgement on 15<sup>th</sup> June, 2007:

- That section 65(1) of the Constitution was consistent with sections, 32, 33, 35 and 40 of the Malawi Constitution;
- That a Member of Parliament elected as an independent crosses the floor when he joins a party represented in the National Assembly;
- That a Member of Parliament elected as an independent crosses the floor when he or she joins a party not represented in the National Assembly;
- That a Member of Parliament crosses the floor when he accepts ministerial appointment.

Further, the Supreme Court of Appeal made the following observation:

To start with, the limitation placed upon a member of the National Assembly who voluntarily ceases to be a member of the political party that sponsored him or her to the National Assembly and joins another political party is a limitation that is prescribed by law, namely section 65(1) itself. In our view that limitation or restriction is reasonable. It is trite that the large majority of members of the National Assembly are sponsored by political parties and voted for on political party lines. As counsel for the Friends of the court put it, if section 65(1) was abolished that would allow or promote lack of accountability and integrity as that would allow persons to stand for election on the ticket of one political party, utilise all the resources of that party, be voted into office as a member of the National Assembly representing that party and then soon thereafter change political parties. Indeed the electorate might feel cheated by such conduct on the part of the member of the National Assembly, so too would the sponsoring political party.

Since Malawi follows a doctrine of binding precedent in the judicial process, the decisions of the High Court are binding over the subordinate courts. Likewise, decisions of the Supreme Court are final and are binding on the High Court as well as all the subordinate courts (Chigawa: 2008).



This being the case then, the ruling on section 65(1) regarding floor crossing is as observed by the Supreme Court. Although this ruling has temporarily put the matter to bed, uncertainties over Section 65 remain.

## **1.9 Problem Statement**

Floor crossing became common in Malawi after the introduction of multiparty democracy in 1994. Soon after, some MPs such as the late Fred Nseula, left the ruling UDF after being removed from a ministerial position. Later, a few more MPs such as the late Hon. Mwakikunga, Hon. Chakakala Chaziya and others left the MCP to join the ruling UDF party. However, none of these earlier politicians' movements could compare with the effects of the mass exodus of MPs, who followed Dr Bingu wa Mutharika and his party (DPP) in 2005, and the political instability and upheavals that ensued. Political problems started as soon as Dr Bingu wa Mutharika abandoned the party that sponsored him into office, and with him a number of party stalwarts in the likes of Mr. Paul Maulidi, Hon. Uladi Mussa (now president of Malawi Peoples' Party) and Hon. Salim Bagus, who quickly proceeded to convert the UDF structures into DPP.

As soon as President Mutharika assumed the reigns of office he declared a policy of 'zero tolerance' on corruption, which was quickly followed by arrests of some former UDF Cabinet Ministers accused of corruption. Within a space of eight months, three former ministers and some senior UDF party officials were also arrested on corruption charges. According to the Malawi Country Report (2008), there were indications that this process would continue and that many more officials would be prosecuted for corruption. This policy did not go down well with the UDF party, and especially, the former president Bakili Muluzi who felt betrayed by Dr Bingu wa Mutharika. The fallout between the former President, Dr Bakili Muluzi, and the incumbent presidents, Dr Bingu wa Mutharika, has continued, with the former president being investigated for corruption by the Anti Corruption Bureau, a government body responsible for investigating corrupt practices. It is alleged that a sum of MK1.7 billion of donor funds intended for government use was deposited into Dr Bakili Muluzi's personal account.

### **1.9.1 The Impact of Floor Crossing on the Malawi Political Landscape**

As already indicated, floor crossing in Malawi during the period under study, caused tremendous political tension and instability in parliament which spilled over to the public. There is a saying in Malawi that “*when two elephants fight, the grass suffers*”. This statement illustrates how floor crossing by MPs affected the political landscape. Firstly, it affected the efficient functioning of government departments through the lack of funding when the opposition in the National Assembly refused to discuss and approve the national budget two years in a row in 2006/07 and 2007/08 budget sessions. This affected the delivery of essential services such as water, health and sanitation amenities and salaries for teachers.

Secondly, because the government was in a minority, all bills that government introduced in the National Assembly for members to deliberate upon and approve were maliciously and deliberately rejected. The government could not carry the day in the National Assembly because of their minority status. Despite the government acquiring more than seventy opposition MPs through defections, it still did not have the needed majority to pass any government bills. It could also not rely on the goodwill of the opposition who were angered by the government’s continued poaching of its MPs, and not forgetting the defection of the President to form his own party. Because of this, the opposition made sure that they disrupted parliamentary debates, through walk-outs, hurling insults at the government, or placing conditions before any bills could be deliberated upon.

The joint opposition (UDF-MCP) also ensured that all government nominations to crucial position in government, including the appointments of the Inspector General of Police, Director of Anti Corruption Bureau, and Auditor General as well as the appointment of Commissioners to the Electoral Commission were rejected. All these were done in order to bring the government to its knees. Floor crossing also exposed several problems which the country might never have known had this phenomenon not taken place. These ranged from the weakness of Malawi’s democratic process; inter and intra party problems, the weakness in the Malawi’s political system; opposition weakness; problems with party discipline, party ownership and funding; the weakness in law enforcement, gaps in the republican constitution; the excessive power of the executive and a political culture that continues to be subservient to the political leadership, and

the deep-seated system of patronage. When Malawians embraced a new political dispensation by voting for a multi-party system of government in the 1994 General Elections, most were under the illusion that political problems and issues would be resolved. To the dismay of many, floor crossing had amplified the problems that needed to be attended to. Although Malawi was supposedly democratic, things were not progressing as satisfactorily as they should have been or had been envisaged on this democratic trajectory towards the consolidation of the same.

However, despite Malawi witnessing unprecedented chaos and tension caused by floor crossing in the National Assembly during the period under study, coupled with the unhealthy political issues being unleashed during floor crossing, Members of Parliament appeared impervious to, or undaunted by the whole episode. They continued to cross the floor in the National Assembly throughout the period, with other opposition members announcing their defections to government at DPP party meetings. This practice has continued because soon after the DPP's landslide victory in the 2009 General Elections, twenty five independent MPs joined the DPP soon after the elections.<sup>10</sup> This has increased the number of government MPs considerably, from 113 at election, to around 138 in a parliament of 193 seats. In one incident, the government had to turn away one very prominent independent MP, Dr Cassim Chilumpha, who was also a former vice president to Dr Bingu wa Mutharika during his first term of office in 2004.

Dr. Chilumpha wanted to join the DPP government benches after winning a seat as an independent candidate during the just-ended elections, and despite him being put under house arrest during Dr. Bingu wa Mutharika's first term of office between 2004 and 2009, he still wanted to belong to the ruling party. However, the government did not want him because of the poor relationship between him and the President. Secondly, he was not needed by government since they already had the necessary majority in the National Assembly. This situation illustrates how deep the problem of floor crossing is in Malawi, that despite the turmoil that it caused, and the negative impact it had on the democratic process in Malawi, MPs still want to change party colours after General Elections without regard to its consequences. Some are even prepared to forget the pain they went through such as being put under house arrest in order to join the winning team.

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<sup>10</sup> 'Bingu Pledges Growth, Stability' (Nation Newspaper of 8<sup>th</sup> June, 2009)

The main problem is not so much that MPs are crossing the floor, but rather, the aftermath of their actions; how that undermines the highest law in the land and consequently, how it impacts and weakens the political system and culture of the nation. As one continues to observe what is happening, one cannot stop asking questions such as: What is the source of these defections? Can anything be done to curtail this practice? How does this action contribute or undermine the political system of the country? Should the practice be stopped completely, and if so, would that not be infringing on a person's fundamental rights? What other implications would ensue? The law which is intended to regulate this practice does not seem to be enforced or adhered to, what other mechanisms could be explored that could strengthen the law so that it is made stronger than what it is now and be more effective? How can MPs be held accountable for their actions to the electorate? What mechanisms should be instituted to ensure that MPs remain in the status they were voted in for the duration of parliament's five-year term? What other political issues or weaknesses does floor crossing expose? What other political problems does floor crossing create? What factors reinforce this behaviour? What role can the party in government play in order to strengthen the opposition? What lessons can be learned from others in the country, and elsewhere in the region that could help reduce this tendency? Is patronage the engine behind MPs defections? And finally, what are the long term effects of this phenomenon on the development and consolidation of democracy, as well as on the political culture of the country? All these questions and others formed part of the investigations into the movement of MPs in the Malawi National Assembly between 2003 and 2009.

#### **1.10 The Purpose of the Study**

This study intended to investigate political factors that contributed to floor crossing in the Malawi National Assembly between 2003 and 2009. The objectives of the study were as follows:

- To establish factors contributing to floor crossing by MPs in the MNA during the aforementioned period;
- To explain factors determining this behaviour because these have had an impact on the consolidation of democracy in the country. They have not only slowed the democratic pace, but have exposed problems relating to the political system, internal democracy

leading to an increase in the number of independent candidates who form the biggest cluster of undecided, unprincipled and probably opportunistic politicians. Floor crossing has also contributed to the weakening of the opposition which plays a very instrumental and critical role in the National Assembly in reinforcing accountability of the ruling party, and in performing the necessary checks and balances on government's excesses;

- To suggest mechanisms that could curtail this problem, if necessary.

A further purpose of this study was to amplify the effects of floor crossing which might have long term negative consequences on the Malawi political and socio-economic development. It is envisaged that once attention has been drawn on these unhealthy factors, solutions could be suggested that could address them in order to avert the long term negative effects. Since these problems are not unique to Malawi, this study also intended to explore how other countries in the region, such as South Africa and Zambia have managed the situation, with the hope that positive lessons can be learned from their experiences that can be replicated in the Malawi political context.

### **1.11 Significance of the Study**

The significance of this study is six-fold: Firstly, it brings to the fore issues that perhaps people might not wish to acknowledge and discuss publicly, such as, institutional weaknesses in political parties and party systems that contribute and impact negatively on the young and growing democracy of the country. Secondly, people who will have the opportunity to access and read the report can begin to identify the negative effects of floor crossing and devise modalities for combating the problem since it is easier to treat a sickness that is known than one that is not. For instance, when MPs cross the floor, people usually look only at the short term, and not focus on the long term effects, and how the political culture and system is being undermined or affected. It is only when these consequences begin to be highlighted and publicized that solutions can begin to be suggested that could either curtail the practice, or effectively managed.

Thirdly, Malawi witnessed an election landslide victory for the ruling DPP in 2009 which started with the defection of the president from the party that sponsored him into power in 2004. There

are some questions to be answered regarding the change in the voting pattern, whether this is changing in Malawi, or it is a one-off episode. Since this change seems to have its origins from the President's defection, could it be concluded that defections are good? Fourthly, the results of the 2009 elections have extremely weakened the opposition in the National Assembly where debates are now one-sided and not as effective as they should be. What could be done to strengthen the plight of opposition parties in the country?

Fifthly, experience has shown that literature on floor crossing in Malawi is very limited. There seems to be extensive writing on the subject and its impact in countries such as South Africa, Zambia, and elsewhere, but this is not the case with Malawi. It is hoped, therefore, that this study can make a small contribution towards the literature and discourse on this subject in Malawi, as well as adding value to the African Politics domain. Since political issues do not take place in a vacuum, it is hoped that the findings of this study will enlighten others in the region, and perhaps lessons gained from the Malawi experience could be replicated in other countries in the region on whether or not floor crossing is useful and what mechanisms to put in place in order to curtail or limit this practice, if necessary.

Finally, it is hoped that parties can begin to work on their internal democracy or ideology which could reduce member desertion. Instead of blaming those who defect, this report can encourage party leadership to do some introspection and seek ways of improving their parties so that members do not see the need to defect. It is also hoped that parties can begin to lobby government to seal identified gaps and weaknesses in the Constitution that act as catalysts in floor crossing. It is also envisaged that some politicians who are contemplating leaving their parties can begin to identify the negative impact of their actions which have an overall effect on the political system and culture of the country with detrimental consequences for the consolidation of democracy in the country.

### **1.12 The Scope of the Study**

The trend in floor crossing in Malawi has been from the opposition to the government side. At one point, however around 2001, the country witnessed a change in the pattern where MPs were moving away from the ruling party (then the UDF), to the opposition or becoming independents. However, this study will concentrate on MP's movement from the opposition to the government

side between 2003 and 2009. Although much of the movement was done after the 2004 General Elections, several political factors began appearing much earlier than 2004 which laid the foundation and contributed significantly to floor crossing during the period under study.

### **1.13 Research Methodology**

This subsection will provide a detailed research framework and design that was employed in carrying out this study, and also give gives an overview of the research methodology that was used to collect, analyze data, and the justification for the choice of the selected research methodology and sample. The issue of validity and reliability of the instruments used in the study is discussed, as well as the definition of concepts used.

Mouton et al (1988:155) describes the two different research methodologies which are generally employed by researchers when collecting data as either applied or basic research. Applied research is usually used when trying to resolve practical problems, while basic research usually deals with acquiring new knowledge. However, basic research is not necessarily the equivalent of quantitative research. Similarly applied research is not the equivalent of qualitative research. Qualitative research could also involve basic research. The two research approaches are briefly described below:

#### **1.13.1 Quantitative Approach**

“Quantitative approach may be described in general terms as that approach to research in the social sciences that is more highly formalized as well as more explicitly controlled, with a range that is more exactly defined, and which, in terms of the methods used, is relatively close to the physical science” (Mouton et al, 1988:155). Whenever a researcher employs a quantitative approach in his or her study, she or he has to ensure that no more than a single meaning is attached to the word or concept that has been chosen, and it has to be specified from the outset how they intend to make an abstract concept visible, and formulate a hypothesis beforehand (Mouton: 1988). In terms of the observation process, quantitative researchers tend to study a phenomenon as outsiders for fear of becoming part of the process being investigated. They also tend to have difficulties during observations, to accommodate response patterns that are not anticipated or have not been envisaged.

The subject of floor crossing is by nature, very sensitive because it deals with people's feelings, and at times, even emotions. It therefore, requires close observation while allowing the meanings to unfold on their own in their context for one to make meaningful inferences. Employing quantitative methods to the proposed subject would mean that the hypothesis would have to be set before hand and at the same time, be explicitly controlled. It would also mean that the researcher would have to study the phenomenon from a distance, making it difficult for him or her to capture and interpret the real meaning or experiences of the subjects being studied, or as it unfolds. The overarching question to be considered would be whether or not, the quantitative approach would bring out the intended results which this study set out to investigate in the first place. Before this question can be conclusively resolved, it would be important to look at what a qualitative approach entails.

### **1.13.2 Qualitative Approach**

Qualitative approach is described as that approach which is based on induction, holism and subjectivism (Mouton, 1988:204). It is inductive in that the researcher attempts to understand a phenomenon or situation without imposing pre-existing expectations on the setting. Further, categories or dimensions of analysis emerge as a researcher comes to make sense of, and organizes patterns that exist in the empirical world which he or she is studying. As a result, researchers applying qualitative approaches are able to interpret a phenomenon on the basis of the wealth of meaning of the concept. This meaning is better understood as it unfolds itself within its context, and the researcher has the openness to observe forms of behaviour as and when they occur.

Lofland (1971, in Mouton, 1988:205) outlines four elements which are necessary when undertaking a qualitative study. These are:

- (a) Intensive immersion in a sector or social life to gain "intimate familiarity" with what is going on;
- (b) Focussing on and depicting the situation that the scrutinized actors are dealing with;



- (c) Focusing on interactional strategies and tactics of participants to cope or deal with the situation; and
- (d) Assembling and analysing an abundance of qualitative data of situations, events, strategies, action, people and activities to convey the reality of the place represented in its mundane aspects.

It must also be mentioned that qualitative research does not necessarily mean that there are no statistics involved in the collection of data since research is a process that consists of various stages or phases, and each phase may be characterised by a different type of approach (Mouton, 1988:155). For example, in the course of collecting data or interpreting the findings, it might sometimes become necessary to extrapolate some statistical information to interpret qualitative data and vice versa. It is, however, important for a researcher to know the distinct differences between the two approaches, quantitative and qualitative to ensure that the outcome of the research is not compromised by the selected approach, but rather that it is indeed as a result of employing appropriate tools.

It is against this background, therefore, that this study settled for a qualitative and not the quantitative approach to this study, so that the real experiences, meanings of the phenomenon being studied could be captured, and interpreted in the context in which they were unfolding. Further, the topic being researched needed to be studied closely to allow for any anticipated and unanticipated responses or patterns to be captured and recorded factually. There was also a need for an in-depth understanding of the phenomenon to allow the meaning of the situation to unfold while speaking for itself, taking into account any new discoveries that emerge during the investigation, to be incorporated into the study. The maximizing of the intended results would not have been possible had a quantitative approach been employed.

#### **1.14 Data Collection**

This study employed various methods of collecting data which included social interaction with significant subjects, telephone conversations on the topic, personal interviews with key informants from institutions, written responses to a pre-set questionnaire, information from scholarly articles and books, information accessed from academic journals, the internet and newspapers and informal focus groups with people from different political leanings who were

knowledgeable on the topic. It was important to use triangulation in order to increase the credibility and validity of the results. The collected data was classified into two categories, Primary and Secondary data.

#### **1.14.1 Primary Data**

Primary data is defined as that which comes directly from original sources, including unpublished material. In this study, this information was obtained from key informants from key institutions such as the National Assembly, government departments, politicians, lawyers and ordinary people. Other means of collecting primary data were through face to face conversations and telephone interviews using a prepared open-ended questionnaire, as well as written responses from prepared questionnaires. These respondents were purpose-selected because of the knowledge, experience and opinions that they held. Primary data was also obtained from scholarly books, journals and publications written by academics on the topic, sourced mostly, from the University of South Africa Library.

The main method of capturing data was note-taking using a prepared questionnaire, and from written responses to a prepared questionnaire and telephone conversations. Notes taken during interviews were transcribed as soon as the sessions were completed. To validate the notes taken during interviews for accuracy and corroboration, the researcher repeated what had been written down to the informant in order to get feedback from him or her and to acknowledge that what had been captured is what had actually been said before concluding the sessions. These sessions lasted between one hour and an hour and a half. In order to have quality time with the informants, these interviews took place in the locality which was usually a central place, or in offices which were conveniently situated. Interviews conducted by telephone were usually scheduled in the evening for the convenience of most informants. For those who were not available for meetings, a prepared questionnaire was electronically sent to them to complete and return to the researcher. In this way, all possible available means of collecting this information were utilized.

An observation that was made during the interviews with informants was that more information would emerge during the discussions which necessitated further reviewing of the literature and

expanding the size of the sample in order to get a better perspective on the subject matter. This did not only enrich the study, but also brought into perspective a better understanding of the phenomenon being researched.

#### **1.14.2 Secondary Data**

Secondary data consists of materials that emanate from second or third parties other than the original source. Because of their nature, it is essential to take precautions when dealing with this type of information in order to ensure that the information obtained is credible, valid, reliable and accurate. In the case of this study, secondary data was obtained from print media on the local, regional and international scene, as well as from the internet; reviewing scholarly articles and journals, both published and unpublished. This research also benefited from the use of the country's constitutions and other legal documents. Secondary data also complemented primary data and enabled it to be placed in the appropriate perspective. Reviewing literature for this study provided a starting point in the process of inquiry.

#### **1.15 Tools Used**

In this study, semi-structured interviews using a prepared questionnaire with slight modification to suit each specific category or group was used. Where it was not possible to have a face to face interview due to distance, a telephone interview was done instead. Questions were open ended in order to allow respondents to express their views as much as possible. The study also used free-narration questions, especially with some politicians who were willing to tell their stories. The advantage of conducting interviews was the fact that it was inclusive, respondents did not have to be literate and it also enabled the researcher to establish rapport with the respondent because of the informal setting, and in the process, was able to gain better insights into the subject because of the relaxed atmosphere.

#### **1.16 Sampling**

The study set out to understand why elected Members of Parliament cross the floor in the National Assembly. Once the accessible population had been identified, the study used purposive or judgmental and convenience sampling. Purposive or judgmental sampling entails selecting a sample that can be judged to be representative of the total population, and is made on

the basis of available information or the researcher's knowledge about the population. This type of sampling relies on the subjective considerations rather than scientific criteria (Collins et al, 2003:159). This sampling was complemented by convenience sampling which entailed selecting elements that were easily accessible at the time. The rationale for this choice was to capture a sample that had knowledge and opinion either by being directly involved, or affected by the phenomenon in one way or the other. The sample was identified through interactions with various political leaders and political party office bearers, key political institutions such as the Centre for Multiparty Democracy in Malawi, the Malawi National Assembly, some civil society organization, the media and ordinary people.

However, in the course of gathering information, some informants would recommend other organizations and individuals who they felt would add value to the study. This created a snow ball effect. It was during those sessions that the role of traditional and religious leaders in Malawi politics, especially in floor crossing was highlighted. This study, therefore, had to ensure that this group was included in the sample.

### **1.17 Data Analysis and Interpretation**

Analyzing and interpreting data is an important research process. Firstly, as already mentioned above under 1.13.1 – Research Methodologies, this study opted for a qualitative approach due to the nature of the topic being researched upon. For the collected data to be properly analyzed, it was essential that it should be organized in some order and structure so that it makes sense. As Mouton (1988:245) stipulates: “when doing qualitative coding, the researcher aims to organize the data so that he or she has a sense of the scope and coverage of the data set. Qualitative coding also facilitates understanding, because it suggests ways in which the data can be organized.” Analyzing and interpreting both primary and secondary data formed a very important process because in the course of coding, it also had to be put in appropriate categories. These categories had to be constantly checked, as they were being grouped, in order to ensure that they matched the collected data.

Data was analyzed simultaneously with data collection, and was grouped according to the different strata or themes as they emerged during the analysis. These were purposely categorized

as follows: respondents' overall views on floor crossing; respondents' views on the relevance of Section 65 of the Constitution; and respondents' views on Section 64, the recall mechanism. Content from these categorized responses was analyzed further in order to establish a pattern or framework to be used in the analysis. The emerging patterns or themes enabled the researcher to carry out a systematic analysis of the findings.

Interpretation involves reflecting on the possible meaning of data, exploring particular themes and hunches and ensuring that adequate data has been collected to support the researcher's interpretation (Collins et al, 2003:246). It was important to ensure that the categorized data was given meaning by drawing some inferences from the various statements collected and analyzed, so that a picture could emerge from the data.

### **1.18 Reliability and Validity**

Reliability entails a measure of consistency even when circumstances in which the study takes place change. The question to be considered is: "Will the same methods used by different researchers and/or at different times produce the same results?" (Smith, 1975:58 in Mouton 1988:79). According to Mouton (1988:81-90), reliability and validity of the research results can be influenced by four observation variables. Broadly speaking, these are (a) the researcher's effects which may include his or her orientation and characteristics; (b) the individual who participates in the research project (informant or participant). His or her frame of mind or orientation during the time of the interview; (c) the measuring instrument, which could be the type of question being administered; and the (d) research context under which the research is being conducted. This context could mean cultural, traditional norms as well as political factors which could have an impact on the process. These variables and other nuisances have to constantly be at the back of a researcher's mind when conducting research so that they do not interfere or influence the outcome of the research negatively.

In order to eliminate or minimize the effects of these challenges and improve on the study's reliability and validity, various strategies were undertaken. These included a deliberate move to increase the amount of data collected by increasing the sample size, and the improvement on the questionnaire being administered in order to make it more efficient. In certain instances, the

questions were translated into the local language for a targeted group to enable them to understand and to be able to express themselves fully and freely. Copies of the pre-test questionnaires and the final versions used in each category are included as Appendix II (a) and (b). This intervention was important so that generalizations from the findings could be made. To further improve on the reliability of the study, direct quotes from respondents were used. These are included in the analysis in Chapter four of the study. Further, respondent validation was done during interviews to cross-check the information with them before concluding the interview to ensure that the information was accurately captured.

Another means of ensuring reliability of the information gathered was by means of triangulation, which refers to the use of multiple methods of data collection (Mouton et al, 1988:91). This is done so that the different methods can be used to complement each other and make the results of the collected data more reliable than when only one method is used. In this case, the study employed observation during face-to-face interviews, note taking, open-ended questionnaires, telephone interviews and literature reviews so that these methods could complement each other and improve on the data collected. On tackling the researcher's effect, the researcher established rapport with respondents which enabled them to open up and answer the questions freely. This was possible by the fact that the researcher works with an organization which interacts regularly with Secretary Generals of all political parties that are represented in the National Assembly as well as those that are currently not. This enabled the researcher to have access to politicians and for them to trust her with information, and be able to comfortably open up and respond to the prepared questionnaires, as well as the face-to face and telephone interviews.

### **1.19 Limitations**

The main limitations to this study included lack of academic literature on floor crossing, especially, on Malawi. While on the international scene, literature on floor crossing seems to be readily available, this is not the case in the African context probably, because the re-emergence of multi-partyism on the continent is a recent phenomenon since almost all African political systems do not seem to have competitive democracies. The few that seem to have written comprehensively on the subject have been the Electoral Institute of Southern Africa (EISA), who

are based in South Africa, and some seminar reports from Konrad Adenauer Stiftung, a Germany based advocacy organization with offices in some parts of Africa who have also produced some publications on floor crossing in some countries in the southern part of Africa, after some workshops. Apart from these few, literature on floor crossing is scanty, and more so, on Malawi probably because it is an emerging phenomenon which only took shape after the re-introduction of multiparty democracy in the country in 1994. However, the little available material was useful in forming the basis of this study. It also encouraged the researcher to pursue the study vigorously as a way of making a contribution towards the subject.

Other limitations included the cultural legacy of ‘silence’ on political issues in Malawi. Although Malawi is now a democratic country, this enduring culture of not wanting to discuss political issues which has its origins from the one-party regime of Dr Hastings Banda lingers, leading to evasive responses from some respondents for fear of being quoted, despite being reassured that their names would not be published. This reassurance worked with some respondents, but others still remained guarded and could not freely discuss political issues with the researcher.

Since this study was carried out before, during and after the 2009 Malawi General Elections, it was not always possible to meet some of the politicians that needed to be interviewed. Before the elections, all of them were busy with election campaigns, while after the elections, some MPs who had crossed the floor before the elections and had failed to return to the National Assembly were not keen to respond to the study or to even discuss the subject, probably because it was a very painful experience. Others, however, left the capital city, Lilongwe where the National Assembly is located as soon as the elections were over and retreated to their respective villages where access was not easy either by mobile phones or by road. This is where the convenient sampling was useful.

In summary, the second part of Chapter two outlined the research methodology which was employed in this study, and described how data was captured, analyzed and interpreted. The section also outlined the justification for the approach used in the study as well as the sample that was chosen. The next section will define some concepts that have been used in this dissertation

which should be treated as working definitions only. A more elaborate explanation of these concepts will be given later.

## **1.20 Definition of Key Concepts**

The following key concepts will be defined below. These are the definitions that will be used in this study.

### **1.20.1 Floor Crossing**

The Malawi 1994 Constitution defines floor crossing (FC) as when a member who was, at the time of his or her election a member of a political party represented in the National Assembly, voluntarily ceases to be a member of that party by joining another party also represented in the National Assembly, or joins any other party, association or organization whose objectives or activities are political in nature. While Mawaya (2008) <sup>[11]</sup> defines floor crossing as the act of elected members of parliament or local assembly moving from one political party to another “in the house” without losing their seats. Mawaya also adds that this can happen due to members becoming independents or being dismissed from their parties.

### **1.20.2 Coalitions**

Coalition could be defined as a process of organizing parties together in pursuit of a common goal. It also entails a pooling of resources either human or financial towards the realization of that goal, and an agreement on distribution arrangement once the intended goal is achieved. Coalitions may involve parties represented in parliament or not in parliament forming an alliance for purposes of winning an election, or governing, as was the case in Malawi, with the Mgwirizano coalition in the run up to the 2004 General Elections. Prior to that, when the United Democratic Front (UDF) and the Alliance for Democracy (AFORD) went into coalition in September, 1994 in order to govern together. Party coalitions may also be as a result of not amassing enough votes during a general election to form a government, as was the case with the elections that took place in the United Kingdom recently where the Conservatives went into

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<sup>[11]</sup> Mawaya, C. 2008: To Cross or not to Cross, unpublished paper presented at the Netherlands Institute for Multiparty Democracy Eastern and Southern Africa Programme workshop held in Blantyre in 2008



coalition with the Liberal Democrats in May, 2010. The main reason parties seek to go into coalition or power-sharing arrangements is a realization that neither of them can manage to win an election or govern on its own.

### **1.20.3 Parliament**

Sections 48 and 49 of the Malawi 1994 Constitution defines parliament as an entity where all legislative powers of the Republic are vested. It consists of the National Assembly and the President as Head of State. Although it has primacy over other forms of law in government, it is subject to the Constitution.

### **1.20.4 Primaries**

This word denotes intra-party elections undertaken in constituencies by respective political parties to select candidates in preparation for general or local government elections.

### **1.20.5 Aspiring Candidate**

This denotes individuals either belonging to a political party or not who seek to be elected to the presidency or parliamentary seats in the national assembly.

### **1.20.6 Patronage**

According to Weingrod, in Sandbrook (1998:68), <sup>[12]</sup> patronage refers to “the ways in which party politicians distribute public jobs or special favours in exchange for electoral support... (and)... seek to turn public institutions and public resources to their own ends”. Patronage for a political scientist is tied to the electoral interests of a formally organized group, a political party, and includes appointments to high office such as cabinet positions and business interests. In a patrimonial system, the ruling elites, both political and administrative are based on personal relationships; the ‘big man’ politically establishes an informal sector to enhance his political career.

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[12] Sandbrook R, 1998. Africa Dilemmas of Development Change, Westview Press, Boulder, USA

### **1.20.7 Clientelism**

Brinkerhoff (2002: 2) defines clientelism 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). The patron has disproportionate power and thus enjoys wide latitude about how to distribute the assets under his control. In modern polities, most patrons are not independent actors, but are links within a larger grid of contacts, usually serving as middlemen who arrange exchanges between the local level and the national center. According to Kaufman (1974:285, in Brinkerhoff, 2002:3), clientelism manifests in the following characteristics:

- (a) The relationship occurs between actors of unequal power and status;
- (b) It is based on the principle of reciprocity; that is, it is a self-regulating form of interpersonal exchange, the maintenance of which depends on the return that each actor expects to obtain by rendering goods and services to each other and which ceases once the expected rewards fail to materialize;
- (c) The relationship is particularistic and private, anchored only loosely in public law or community norms.

### **1.20.8 Neo-patrimonialism**

Chinsinga (2009) <sup>[13]</sup> explains the term neo-patrimonial as having derived from the concept which can be traced back to the work of Max Weber which focused on the patrimonial state which can be described as one which is based on traditional forms of political authority, domination and legitimacy. A neo-patrimonial state emerges where patrimonial practices inhabit the realm of informal institutions that exist alongside formal, legal rational institutions. This is known as institutional hybridity. The right to rule in a neo-patrimonial regime is ascribed to a person rather than to an office despite official existence of a written constitution. Power is

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<sup>[13]</sup> Chinsinga B, 2009: Malawi's Political Landscape between 2004 and 2009. Paper presented at the Malawi Post election conference held in Lilongwe from 23<sup>rd</sup> – 26<sup>th</sup> June, 2009

concentrated in an individual who dominates the state apparatus and stands above its laws (Bratton et al, 1994 in Chinsinga, 2009).

### **1.20.9 Independents**

These are members of a political party who are suspended, expelled or blocked from running for political office by the party machinery within political parties, who therefore proceed to run for an election, and sometimes win on their own ticket. These may also be individuals who, after being frustrated during party primaries, choose to run on their own during elections. These members may not identify strongly enough with either any of the existing opposition to seek full membership with them, or are affiliated to a political party. In Indonesia, independent candidates are also known as legislative and executive candidates who nominate themselves not through a political party but as non-party candidates (Kledin: 2009)<sup>[14]</sup>

### **1.20.10 Factionalism**

Factionalism is splits within political parties or organizations by members struggling for control. These could be caused by various factors such as lack of internal democracy, lack of mechanisms for resolving conflicts and/or general misunderstandings

### **1.20.11 Development**

In this study, development denotes infrastructural construction of bridges, schools, rural roads, boreholes in a constituency. In Malawi, the electorate equates the role of an MP to that of bringing development into the constituency. In the absence of local councilors, aspiring MPs promise to bring development to their constituencies during the campaign period. This becomes a selling point and an MP's performance is judged by the number of development projects taking place in his or her constituency during their five year tenure as MPs.

In the subsection above, concepts to be employed when writing this dissertation have briefly been defined; an elaboration on the same will be done later.

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<sup>[14]</sup> Kleden I, 2009: Indonesian Political Parties From Party Machinery to Political Volunteerism, Jakarta, Selatan

### **1.21 The Structure of the Dissertation**

The dissertation is structured as follows: Chapter one introduces the study and provides the research methodology that was adopted, and defined key concepts used in the study. Chapter two provides literature reviewed for the study and outlines the theoretical framework that was used to benchmark the study. Chapter three analyzes and interprets the data in relation to the theory established in Chapter two, while Chapter four provides the detailed research findings, including direct quotes from interviews conducted with the selected sample. Chapter five draws conclusions from the study and makes some recommendations for the way forward.

## **CHAPTER TWO**

### **2. LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

#### **2.1 Introduction**

The purpose of this study was to investigate, explore and analyze political factors that contributed to floor crossing by elected members in the Malawi National Assembly between 2003 and 2009. The study on floor crossing was important because the phenomenon impacted negatively upon Malawi's young democracy, the political stability and on the performance of the government as a whole. It is envisaged that the conclusions and the recommendations which have been derived from the findings of the study will contribute towards an improved political system, and towards the consolidation of democracy in Malawi.

This chapter outlines the literature review which guided the conception of this research, and ends with the theoretical framework that was used as a benchmark and an explanatory tool for the study.

#### **2.2 Literature Review**

Reviewing the existing literature on floor crossing formed the starting point on this study. Several academic literature, published and unpublished journals from academia such as Dr Chigawa, fellow of the Cambridge Commonwealth Society and lecturer of the University of Malawi, who wrote on the concept on floor crossing in Malawi; the late Mr. C Mawaya from the University of Malawi who wrote on the topic; Mr. D Brinkerhoff who wrote on Clientelism, Patrimonialism and Democratic Governance; Konrad Adenauer Stiftung who pooled various scholars from different countries to make presentations on the Impact of Floor Crossing on Party Systems and Representative Democracy; renown regional authors such as Mr. V Shale and Mr. K Matlosa, both from the Electoral Institute of Southern Africa (EISA) who have also written extensively on floor crossing in South Africa and others, contributed significantly to the background of this study. This exercise was important in order for the research to have a foundation. It was also important for the researcher to understand the subject to be researched,

and to be able to identify any gaps. Equally important was the literature review from a few selected countries outside the region which provided a good comparison to the regional context and Malawi, especially, considering that literature material on floor crossing in Malawi is limited.

### **2.2.1 Floor Crossing in Malawi**

Floor crossing in Malawi can be explained as when a Member of the National Assembly who was elected as a member of a political party voluntarily decides to resign from that party in order to become independent, and then later joins another party, whether that party is represented in the National Assembly or not (Chigawa: 2008).<sup>11</sup> Floor crossing can further be explained as when a member in the National Assembly who has been elected from a political party decides to join another party whether or not that party is the National Assembly or not. The original context of Section 65 of the 1994 Malawi Constitution was meant to enforce accountability of MPs to their parties and constituents by barring them from joining another party in the National Assembly for which they were not voted for, without seeking a fresh electoral mandate. In practice, however, it has neither prevented MPs from changing their party alliances, nor has it made MPs accountable to their constituents, who are relatively ignored outside election times.

When Section 65 was amended under Constitutional Amendment No. 2 of 2001, MPs were considered to have crossed the floor if they joined political parties, organizations and association which were outside the National Assembly, as long as these entities were perceived to be political in nature. However, members are not considered to have crossed the floor when they voted according to their conscience in any of the proceedings taking place in the National Assembly. However, in principle MPs are supposed to take collective responsibility at a party caucus which takes place a day or so before party members are asked to vote on a specific issue in the National Assembly.

Further, members are not considered to have crossed the floor when parties form coalitions, like the short-lived MCP and AFORD did soon after the 1994 multiparty General Elections, and

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<sup>11</sup> Dr Chigawa is a fellow of the Cambridge Commonwealth Society. His paper on the Concept of Floor Crossing under the Malawian Constitutional Law was presented at the launching of the Malawi Law Journal in Blantyre, Malawi in July, 2008

again, the UDF and AFORD later in September, 1994. This is because the arrangement is usually made between two party leaderships who are supposed to have consulted widely with their members. Unfortunately in most cases this is not the case, and when the leadership disagrees with one another, they tend to pull out, leaving their members behind.

In terms of a member who has been elected to the National Assembly on a political party ticket, but who subsequently accepts a ministerial appointment by a president from another political party, this will depend on the evidence before the Speaker of the National Assembly whether or not that member has crossed the floor. In most cases, however, once these opposition MPs accept the ministerial appointments, they become part of government. It would be very difficult to categorize them as opposition.

Under the current operative law on floor crossing, elected independent Members of the National Assembly are not deemed to have crossed the floor when they decide to join any political party, whether it is represented in the National Assembly or not. This is a bone of contention among political parties in the country. Until this situation is resolved, independent MPs will continue to move in the National Assembly and join any political party as and when they want.

### **2.2.1.1 Factors Perceived to influence Floor Crossing in Malawi**

According to Magolowondo and Kadima in Lembani (2006: 54 – 55), <sup>[15]</sup> most politicians favour or actually cross the floor in the Malawi National Assembly for the sake of personal interest. An example in time is the Hon. Gwanda Chakuamba <sup>12</sup> who was the 2004 presidential candidate for the Mgwirizano coalition comprising several opposition political parties who united in order to usurp power from the United Democratic Front (UDF), during the 2004 General Elections. This coalition was inspired by the success of the National Rainbow Coalition (NARC) in Kenya

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<sup>[15]</sup> Lembani S, 2006: The Case of Malawi in The Impact of Floor Crossing on Party Systems and Representative Democracy, Konrad Adenauer Stiftung, Johannesburg

<sup>12</sup> Hon Gwanda Chakuamba is a veteran politician having been in the Malawi Congress Party for most of his life, was imprisoned by the MCP regime, joined the UDF while in prison, rejoined the MCP when he was released, formed his own party the Republic, stood as a coalition president for Mgwirizano, abandoned it to join the UDF and then deregistered the Republic Party in order to join the DPP. At the moment he claims to have retired from politics

which ended the thirty-nine year rule of the Kenya African National Union (KANU) (Kadima, 2006: 125-129).

When the Mgwirizano<sup>13</sup> coalition failed to unseat the UDF from power in 2004, Hon Chakuamba immediately abandoned it and signed a Memorandum of Understanding with the winning UDF party. This was happening when members of the coalition were gathering at his house on 3<sup>rd</sup> June, 2004 to plan for a court strategy to challenge the outcome of the election results. Later, when President Bingu wa Mutharika formed his party (DPP) in February, 2005, Hon Chakuamba de-registered his Republican Party, where he was party president in order to become the second Vice President of the newly formed Democratic Progressive Party (DPP). According to Kadima (2006: 129), Hon Chakuamba indicated that he decided to join the government because it was the “best way forward for the country”. As part of the deal, Hon Chakuamba secured the return of property that was seized by government when he was in prison in the 1980’s. He also got MK5 million (equivalent to US\$33,000) in arrears of rent and more than MK30 million (equivalent to US\$197,000) in interest (Magolowondo, in Kadima: 2006).

Almost simultaneously, after Hon. Chakuamba’s desertion, some members from the Mgwirizano coalition also defected to the ruling UDF government. These were also followed by twenty-five independent MPs. Mr. Brown Mpinganjira who had previously left the UDF in protest against Dr. Bikili Muluzi’s bid for the third term of office, and had started his own party, the National Democratic Alliance (NDA), which had challenged the ruling party during the 2004 election, also decided to disband his party and rejoin the UDF government. According to Patel (2008:28) this situation is not new because opposition MPs were also enticed with money in 2001 in order to support the former President’s (Dr. Bakili Muluzi) bid for a third presidential term. All this making and the unmaking of political party coalitions and the repositioning of politicians to places where there is better chance of accessing state resources is evidence that most of these movements were motivated by or intrinsically linked to personal gain.

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<sup>13</sup> Mgwirizano which means Unity was orchestrated by the churches in Malawi in order to get rid of the UDF in the run up to 2004 general elections. It comprised several opposition parties such as the Republican Party, Movement of Genuine Democracy, Malawi Forum for Unity and Development and the others. However, the MCP was not part of the coalition



Cammack (2009) describes this Malawian scenario as follows:

While I have no individual explanation for my friend's ability to change his colours so thoroughly, I do recognize the inclination, for several other Malawians I know have also followed the same path: a middle-status but relatively unknown person who is openly critical of senior politicians is drawn into the political arena by his desire to be 'in the know', to influence policy, or to gain access to otherwise scarce resources. In Malawi (and in Africa generally, because it's poor) there are relatively few avenues outside of politics to obtain access to real power and wealth. Being close to a powerful man who commands the state, its people and wealth is one of the few ways to gain the personal and financial satisfaction to be derived from being a 'player' at the 'centre of events'. Also, it's easier than being a critic, which can deprive you of a livelihood and more.<sup>[16]</sup>

It is further contended that some MPs cross the floor in the Malawi National Assembly because of the prospects of development projects in their constituencies that are given as rewards to loyalists by the president. However, floor crossing is not always caused by bribery or political opportunism because there have been cases where MPs have been compelled to leave their parties and have joined hands with other like-minded people based on moral, principled and ethical grounds (Patel, 2008: 27 – 28). These sentiments are echoed by Lembani (2007: 55) who argues that it would be simplistic to conclude that floor crossing is based merely on greed and institutional weaknesses external to parties. Invariably, there are other factors that are at play and contribute considerably to floor crossing. These include intra-party democracy and the enduring legacies of patronage which influences politicians to cross the floor. Floor crossing, therefore may also be as a result of lack of mechanisms for resolving conflicts within the parties.

Mawaya (2008), posits that the 'concept of floor crossing (FC) is good for democracy and fits in very well with the fundamental principles of a truly democratic political system (e.g. freedoms of speech, association and movement) because, according to him, floor crossing accords representatives an opportunity to more appropriately represent the interests of their constituents without fear or hindrance by moving to spaces that allow them to do this. It also frees the consciences of representatives and the chains that might otherwise bind them in performing their jobs more appropriately.

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<sup>[16]</sup> Cammack D, 2009: The Politics of Chameleons revisited: the burden of Malawi's Political Culture. Paper presented at the post election conference held at Crossroads hotel in Lilongwe in June, 2009

Further, Mawaya contends that the fact that party leaders know that members can cross over to the other party, can check their dictatorial tendencies because once members cross over, the party that has been left behind could begin to take stock of their operations in order to prevent further departures. However, this is not guaranteed, and undemocratic tendencies could actually continue. Mawaya (2008) lists the following as factors contributing to floor crossing in the Malawi National Assembly: lack of party ideology; personal interests of leaders and members; neo-patrimonial tendencies;- lack of democracy within political parties and excessive party control by leaders; general poverty and weak accountability systems; lack of regulatory frameworks; constituents themselves asking their representatives to cross over, and party leaders running out of ideas or sense of direction. These and many others contribute to floor crossing.

#### **2.2.1.2 Movement of MPs in the Malawi National Assembly: 1994 – 2009**

The table below illustrates the movement of MPs due to floor crossing during the period 1994 to 2009. Although the scope for this study is only from 2003 to 2009, the period has deliberately been extended in order to show how floor crossing has evolved over the years, and also to bring the situation into context for better understanding of the situation.

**Table 3: Party Representation in the Malawi National Assembly between: 1994-2009**

Party	Seats after 1994 Elections	Seats after 1999 Elections	Seats in NA mid 2000	Seats After 2004 Election	Seats in NA December 2005	Seats in NA After May 2009 Election	Seats in NA as at October 2009
<b>DPP</b>	Party did not exist	Party did not exist	Party did not exist	None	6 After By-Election Gained 60 MPs from other parties	114	140 <sup>14</sup>
<b>AFORD</b>	36	29	30	6	1	1	1
<b>UDF</b>	85	93	99	50	40	17	17
<b>MCP</b>	56	66	64	57 + 2 in by-election = 59	55 4 Defected	26	26
<b>RP</b>				15		-	-
<b>NDA</b>				8		-	-
<b>PPM</b>				7		-	-
<b>MGOE</b>				3		-	-
<b>PETRA</b>				1		-	-
<b>CONU</b>				1		-	-
<b>INDEPENDENTS</b>		4		38		32	6

Source: Lia Nijzink: University of Cape Town

From the schematic representation above, one can observe MPs' movements especially after the 2004 general elections which saw AFORD's membership sharply decline from thirty six Members of Parliament in 1994 to a mere six in 2004, and then just one MP after the 2009 General Elections. This scenario clearly illustrates the effects of defections on the political party system and, in some instances, in the way political parties are eventually being perceived by the electorate who seem to vote for independents more than candidates from political parties. The UDF also lost nearly 50 percent of its MPs in the 2004 elections, either to splinter groups or independents. The party witnessed even further reduction in membership when president Bingu wa Mutharika abandoned the UDF party and formed his own political party (Democratic Progressive Party) in 2005 where almost ten, out of the twenty-two cabinet posts were filled by

<sup>14</sup> At the 2009 General Elections, the DPP won 113 parliamentary seats. However, it now has 140 MPs, twenty-seven Independent have joined the ruling DPP government

former UDF MPs. In essence, these MPs became DPP as soon as they accepted ministerial positions in the new party.

Further, after the 2009 general elections, smaller parties seem to have gone into oblivion. Petra lost its sole MP to the ruling DPP through defections before the 2009 General Elections. Out of the eleven political parties that contested in the 2009 General Elections, only six are in the National Assembly This could be a result of the smaller parties being assimilation into bigger parties which also seem to be losing members due to defections.

The MCP too was not spared from the effects of defections, albeit at a slower rate at the beginning than the UDF. After the 2004 General Elections, MCP had fifty nine MPs (Kadima, 2006:122), while during the 2009 General Elections, it managed to win back only twenty six parliamentary seats. Independents won more seats in the 2009 General Elections than the UDF, MCP and AFORD who are considered to be the main political parties in Malawi. Table 2 below illustrates results of the 2009 General Elections where the independents came only second to the ruling DPP.

**Table 4: Number of seats won by political affiliation across the regions in 2009**

Political Affiliation	North	Centre	South	Total
DPP	24	37	52	113
Independent	8	8	16	32
MCP	0	27	0	27
UDF	0	0	17	17
Aford	1	0	0	1
Mafunde	0	0	1	1
MPP	0	1	0	1
<b>Total</b>	<b>33</b>	<b>73</b>	<b>86</b>	<b>192</b>

Source: Tenthani: 2009 – compiled from Electoral Commission results of 2009 General Election

However, as soon as these independent MPs were sworn in, nearly all of them, except five, defected to the ruling DPP. Hon Nicholas Dausi for example, who was voted into the National

Assembly as an independent candidate during the 2009 General Elections, has been rewarded with a deputy ministerial position when he rejoined the DPP.<sup>15</sup> The current parliament seating plan shows that the ruling DPP has about 140 MPs (although it won only 113 seats) out of a total of 193 parliamentary seats. Twenty seven independent MPs have defected to the ruling DPP.

Although there might be other opposition MPs who might wish to cross the floor, the government might not really be excited about this prospect because it already commands a majority in the National Assembly, and is able to pass both the national budget and government bills with relative ease. Besides, if the government saw the need to lure more MPs to its benches, it would have already instituted mechanisms or machinery to start luring them by now, as was the case before. As Cammack (2009) asserts, individual MPs in Malawi who are just as opportunistic as their leaders when it comes to switching loyalties, are usually available to the ‘highest bidder’. This phenomenon is common and crossing over to the government is therefore, more attractive than to parties that are not in power. The increased number of independent MPs in the National Assembly also demonstrates that the people’s perception of political parties is negative. This could be as a result of lack of delivery on the part of representatives from political parties on the promises made during election campaigns.

### **2.2.2 Floor Crossing in Other Countries**

Since floor crossing is not unique to Malawi, the following section will discuss floor crossing in other selected countries such as the United Kingdom, Germany, Zambia and South Africa. These countries have purposely been chosen because of the following reasons. In the case of the United Kingdom (UK), Malawi used to be its colony, and the first Constitution was derived from the British Constitutional Law. Germany was selected in order to offer a different perspective from another ‘developed democracy’ context, apart from the UK. Zambia is an interesting country because it has a similar political background to Malawi. Both countries were in the Federation of Rhodesia and Nyasaland. The choice of South Africa enriches the study in that despite the fact that its democracy is quite young; South Africa has had vast experience in floor crossing from the period when floor crossing was permitted in 2002, up to the time it was legally

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<sup>15</sup> Hon Nicholas Dausi used to be a special body guard to former President Hastings Kamuzu Banda. He left MCP to join the DPP. He was rejected by the party during the 2009 primaries and stood as an independent. After winning in the elections, he rejoined the DPP (the party that rejected him at primaries)

abolished in 2009. South Africa, therefore, offers more insight into the phenomenon than any other country on the continent because of its vast experience, which could enrich the study. The comparison will start with the United Kingdom.

### **2.2.2.1 Floor Crossing in the United Kingdom**

The term ‘crossing the floor’ in the UK context refers to a situation where a member of the House physically and voluntarily changes sides and begins to conduct business on the side of the chamber that was not originally his or her own. If a member wishes to vote against his or her party, the member literally crosses the floor to get to the other side of the House, the same applies to a member who wishes to switch parties. Floor crossing in the United Kingdom, therefore, entails a person elected to the House of Commons on a party ticket voluntarily leaving that party and joining another party that is represented in parliament. Under the English constitutional law, a Member of Parliament can only cross the floor within the Chamber itself (Chigawa: 2008).

The concept of floor crossing has its roots in a United Kingdom parliamentary system of government where the House of Commons are divided into two opposite parts or sections. Members of the House that belong to the governing party sit on the one side of the chamber, while the opposition who include independents and smaller parties sit on the opposite side of the chamber. It is acknowledged that Sir Winston Churchill moved from the Conservative Party to the Liberals in 1904 and from the Liberals back to the Conservatives in 1924. As late as 2008, Bob Spink <sup>[17]</sup> moved from the Conservatives to Independent over a party dispute and from Independent to United Kingdom Independent Party in the same year. Although the United Kingdom does not have a written constitution their parliamentary democracy is well entrenched and effectively practised.

Compared to the United Kingdom UK), therefore, the constitutional provision governing floor crossing in Malawi is wider than it is in the UK, and, as was originally envisaged when the constitution was drafted in 1994.

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<sup>[17]</sup> UKIP gets its first MP as former Tory defects.  
[Http://www.guardian.co.uk/politics/2008/apr/22/otherparticiates.conservatives](http://www.guardian.co.uk/politics/2008/apr/22/otherparticiates.conservatives)

### **2.2.2.2 Floor Crossing in the Federal Republic of Germany**

Although some floor crossing did take place in the 1960's and 1980's, this phenomenon rarely takes place in the German National Assembly, Bundestag, because it is not looked upon very favourably or kindly by the electorate and "public opinion in Germany does not favour floor crossing" (Veen, 2007:15). Besides, comparative government studies have shown that Germany has both, a strong party and government systems that are stable and powerful in leadership. Grand coalitions are normal in Germany because there is usually lack of outright victory for any single party. Some misunderstandings can happen over coalition partnership, and some internal conflicts can take place leading to some withdrawals of some members from their parties. However, once these individuals have withdrawn, they remain in the National Assembly as independent members because no other party can take them on board.

According to Veen (2007:15), 50 percent of MPs are elected in single member constituencies, while another 50 percent are elected according to the principle of proportional representation following party lists. However, all MPs, including those voted for in their constituencies are seen as representatives of the party that put them forward, following a lengthy nomination process. As a result an MP and his or her party are perceived as being one and the same, and are voted together. "...Floor crossings are perceived as democratically illegitimate, although, every elector knows that according to Article 38 of the German constitution MPs are representatives of the whole people, not bound by orders or instructions and responsible only to their conscience" (Veen, 2007:15). This clause is intended to cater for an individual MP's fundamental rights.

In terms of party discipline, political leaders ensure that their parties take a position on an issue and this is done in order to safeguard party discipline and to guarantee a stable majority on a decision to be taken in parliament. Although it is an unwritten law, it is an obligation for MPs to vote in unison as a parliamentary party. The law also recognizes the constitutional principle of the independent mandate where an MP is responsible to his or her own conscience, which is a precondition for guaranteeing the right of free speech, freedom of conscience and decision making. Although this might be the case MPs who cross the floor in Germany are seen to be distorting the voting intentions of citizens, and are therefore, viewed as being democratically

illegitimate (Veen: 2007). Similarly, in Malawi party discipline is carried out through party caucuses and their whips where members and their respective parties take a position on a particular issue before voting takes place in the National Assembly. This, however, does not take away an individual's right to vote according to his or her conscience, as enshrined in Sections 32 and 33 of the 1994 Constitution.

Floor crossing in Germany is not very popular and not as actively practised as it is in Malawi. Although members are constitutionally allowed to cross the floor, this act rarely takes place because it is frowned upon and those who are involved, risk being sidelined and even ignored by other parties. However, with a country like Malawi where democracy is still growing and its political culture is rooted in its political economy and its past (Cammack: 2009), it will take a while before floor crossing becomes less contentious than it is at the moment.

### **2.2.2.3 Floor Crossing in Zambia**

Zambia and Malawi have some similar political and historical backgrounds. Both countries were colonized by Britain, and were in the Central African Federation which did not enjoy the support of the indigenous people, and Britain ceded independence to both countries in 1964. Below is an explanation of what constitutes floor crossing in Zambia and where it might be different from the Malawi context.

Floor crossing is defined as the act whereby a member of parliament from either the government or opposition benches physically leaves his or her seat and votes with another party, and when an MP leaves the party to which he or she was affiliated when elected into the legislative body and joins another party which is represented in parliament (Momba, 2007:61). Zambia barred floor crossing in 1966, just two years after its independence largely due to political expediency following the resignation of two MPs, one from the opposition, African National Congress Party, and the other, from the then ruling United National Independence Party (UNIP) who subsequently joined a newly formed, United Party. When multiparty politics was re-introduced in Zambia in 1991, the clause barring floor crossing was also retained with minor modifications in order to take into account MPs, elected as independents, joining a political party. Article



71(2)(a) of the *Zambian constitution of 1991* provides that an MP loses his or her seat if he changes his or her political affiliation after election, or after being elected as independent candidate, he or she decides to join a party.

Article 71(2)(a): In the case of an elected Member, if he becomes a member of a political party other than the party of which was an authorised candidate when he was elected to the National Assembly or, if having being an independent candidate, he joined a political party.

This clause meant that independent candidates who joined a party in the National Assembly were deemed to have crossed the floor and could risk losing their seats.

During President Frederick Chiluba's reign, (between 2<sup>nd</sup> November 1991 and 2<sup>nd</sup> January, 2002), MPs defected mostly, from the ruling party to the opposition, or started their own parties. In August 1993 a total of nine MPs, which included three former Cabinet Ministers and two Deputies, left the ruling Movement for Multiparty Democracy (MMD) to form the National Party (Momba, 2007:62 – 63). However, when the Speaker of the National Assembly declared their seats vacant, five of them challenged the decision and argued that it was a violation of their fundamental human rights. The High Court then ruled that an MP who resigns from the party that ushered him or her into parliament could do so, provided that they did not join another political party. When the government appealed against the ruling, Article 72(2) (c) of the constitution was amended to read as follows:

In the case of an elected member, if he becomes a member of a political party other than the party of which he was elected to the National Assembly, or if having been an independent candidate, he joins a political party or having a member of a political party, he becomes an independent (Momba, 2007: 63).

This amendment was made to ensure that MPs remained in the status they were voted in throughout the life of parliament. Members did not have a window through which they could use to escape in order to achieve their political ambitions.

During President Levi Mwanawasa's rule, from 2002 until his death on 19<sup>th</sup> August 2008, the trend changed. This time, MPs moved from the opposition to the government, as the president

embarked on appointing opposition MPs to ministerial positions without entering into any form of agreement with the opposition parties concerned, or with their leadership. Throughout his tenure, President Levi Mwanawasa continued to lure opposition with top positions in the government. This created inter-party as well as intra-party tensions resulting in legal battles, which in most cases were left unresolved.

According to Simutanyi (in Momba, 2007: 65), the practice of floor crossing was condemned by many Zambians because it contributed towards an already weak and unstable party system, as well as towards the weakening of the opposition in the National Assembly. In addition, most opposition MPs who were being lured by government were among the most senior, influential and able leaders in the opposition camps. To illustrate how senior these members were, the United Party for National Development (UPND) lost its National and Deputy Secretaries as well as Deputy National Chairman to the Movement for Multi-party Democracy (MMD). People were concerned that if these government manoeuvres were left unchecked, they would lead to the collapse of an effective opposition in the National Assembly, and perhaps even return the country to a one-party state. Because of this, political parties and several civil society organisations, including the Council of Churches of Zambia and several Trade Unions united and decided that all MPs who cross the floor should be barred from contesting elections for the rest of the life of that parliamentary season (Momba, 2007:67).

However, in order to protect the rights of an MP's and to differentiate between those who lost their seats on account of defecting to another party, especially the ruling party, and those who lost on account of being unfairly expelled, the Electoral Reform Technical Committee of Zambia (ERTC) put the following mechanisms, firstly for those who voluntarily abandon their parties:

A Member of Parliament who resigns from the party on whose ticket he or she became a constituency Member of Parliament should lose his or her seat and should not be allowed to stand for election to Parliament for the duration of the life of that Parliament from which he or she resigned.

For the one who may have been unfairly treated by his or her party the ERTC put the following safety valve:

A member of Parliament who is expelled or suspended by the Party on whose ticket he or she became a Constituency based Member of Parliament should not lose his or her seat, unless his or her expulsion is endorsed by a Tribunal appointed by the Chief Justice that finds the reasons for expulsion do not infringe upon the Member of Parliament's rights and privileges provided and protected by the National Assembly (Powers and Privileges) Act {...} or are not unfair vindictive, frivolous, vexations, unsound or unlawful (Momba, 2007: 68 – 69).

As can be observed from above, the Zambian constitutional provisions governing floor crossing, are more comprehensive, concise and clearer than the Malawi provisions because the Zambian one articulates clearly the consequences of an MP's actions when he or she voluntarily defects to another party after succumbing to temptation to move to another party for personal gain, and when they disguise their intention to move by first becoming independent in order to protect their seat. The Electoral Reform Technical Committee mandated to review the Zambia electoral system has also been instrumental in recognizing the need to differentiate between voluntary defections and those instigated by differences with their parties, and how these could be handled. These modalities are not elaborated upon in Malawi, and perhaps the country could learn from Zambia's best practices.

Further, Momba (2007: 69) concludes by stating that self-interest by members was one of the main motivations for joining political parties in Zambia, and many people who contest in National Assembly Elections look forward to ministerial appointments. He maintains that Zambians across the spectrum are not in support of floor crossing because they believe it drains resources intended for development when government is forced to hold by-elections. Further, floor crossing undermines political structures and slows down the progress of democratic consolidation. Momba (2007) also concludes that barring the practice has somehow managed to strengthen the party system in Zambia.

As outlined above, MP's motives for crossing the floor both in Zambia and Malawi are similar. These are centred mostly on personal gains. The consequences of floor crossing too are the same in both countries. These undermine the opposition and weaken the political system. The only difference between the two countries is that Zambia has instituted means in its constitution to deal with the issue of independent candidates in a much more comprehensive and articulated manner than is the case with Malawi at the moment.

#### **2.2.2.4 Floor Crossing in South Africa**

Below is a discussion of what constituted floor crossing in South Africa, and how it was abolished. The research opted for South Africa as a second African country because of its experience in the phenomenon.

According to (Kotzé: 2007:75), the term floor crossing in South Africa referred to individual representatives leaving one political party and joining another without losing their seats in the legislature; or when a divided political party merges with or part of an existing party forming a new party on its own. After holding its democratic election in April 1994, South Africa's political parties were embroiled in a chain of alliances and defections between the period 2000 and 2004 (Booyesen: 2006). The African National Congress (ANC) was motivated by the desire to consolidate its 1994 victory by taking control of the two sub-national units, the provinces of the Western Cape and KwaZulu Natal where they did not have an outright majority in the election. According to Kotzé (2007: 71-84), when floor crossing was legalized in South Africa in 2002, it enabled members in the three spheres of government (local, provincial and national) to change their party allegiances, and for parties to realign without losing their legislative seats.

Floor crossing was made possible during the period 1st – 15 September in the 2<sup>nd</sup> and 4<sup>th</sup> year following an election, and was confined to a maximum of 15 days at a time. It was also allowed if at least 10 percent of members within a single political party indicated that they wished to defect. Despite opposition from some parties such as the United Democratic Movement (UDM) and others alleging that floor crossing undermined basic structures of the constitution and other relevant tenets of democracy, the Constitutional Court ruled that the act was not inconsistent with the Constitution of the Republic of South Africa. However, for six years, opposition parties argued that it was only the governing party of the ANC that was benefiting the most from this practice. The illustration in the table below confirms this point:

**Table 5: Political Party representation in South African National Assembly: 1999 - 2004**

Party	Seats after 1999 elections	Seats after 2003 floor crossing	Floor crossing gain/loss	Seats after 2004 elections	Current seats	Floor crossing gain/loss
ANC – African National Congress	266	275	+9	279	287	+8
DA – Democratic Alliance	38	46	+8	50	47	-3
IFP – Inkatha Freedom Party	34	31	-3	28	24	-4
NNP – New National Party	28	20	-8	7	-	-7
UDM – United Democratic Movement	14	4	-10	9	6	-3
ACDP – African Christian Democratic Party	6	7	+1	7	4	-3
FF – freedom Front Plus	3	2	0	4	4	0
UCDP – United Christian Democratic Party	3	3	0	3	3	0
PAC – Pan Africanist Congress/or Azania	3	2	-1	3	1	-2

**Source: Lia Nijzink – University of Cape Town**

From the table above, one can deduce that from 1999 to 2004, it was only the ANC that benefited the most from elected representatives changing party affiliations, followed by the Democratic Alliance (DA). The rest of the parties either registered negative gains or remained the same. It was therefore, not surprising that other parties began to raise concerns over the practice. Because of pressure from these parties, the ANC in 2007 had no choice but to abolish floor crossing all together. The Bill scrapping floor crossing in South African National Assembly, Municipal Council and Provincial legislatures was assented to by former President of South Africa, Kgalema Motlante on 6<sup>th</sup> January 2009.

In comparison to Malawi, the South African experience was more regulated and more systematic than the Malawian context. The system had laid down rules within which floor crossing could take place, and the parameters under which it could happen. However, the consequences were the same where the smaller parties and the opposition were weakened leading to a one party

dominance which may not be healthy for the consolidation of democracy. Further, although the South African systems are more advanced than Malawi, the motives for crossing the floor may be the same, where ‘the highest bidder’ in this case the government, which had more resources and visibility becomes a more attractive destination for members of parliament. However, Malawi can learn from the way South African managed the whole process of floor crossing.

### **2.2.3 Summary**

This section reviewed literature and what entails floor crossing in Malawi in comparison with four countries, two from developed countries, namely: the United Kingdom and Germany; and two from the Africa region, namely, South Africa and Zambia. From the comparisons with the four countries, it was established that the concept of floor crossing is more or less the same, but the way it is applied and its implications varies from one country to country. While in the United Kingdom, floor crossing takes place only within the confines of the National Assembly, in Germany, this phenomenon rarely takes place because parties usually form grand coalitions. Members who cross the floor are usually from smaller parties, and once they do, they are forced to remain independents because no other party would dare accommodate them because of the way floor crossing is perceived by voters. In Zambia, floor crossing is banned and the law regarding floor crossing is usually enforced. In South Africa, floor crossing entailed individual representatives leaving one political party and joining another without losing their seats in the legislature; or when a divided political party merges with or part of an existing party forming a new party on its own. It also used to happen at a certain electoral period, however, after several calls and concerns over the practice, floor crossing in South Africa was banned. Malawi could learn from the experiences of the four countries above, especially the Zambian context to see how the legal machinery operates regarding floor crossing, and South Africa, how the country managed to have the act abolished all together.

## **2.3 The Theoretical Framework**

The final section of Chapter 2 outlines the theories that were used to guide the study, and to provide some explanation to the behaviour that was exhibited by the defectors. These theories are: Patron-Clientelism, Neo-patrimonialism and Rational Choice.

A theoretical framework is defined as a collection of interrelated concepts which guide one's research, determining what things to be measured, and what statistical relationships one has to look for. Theories are necessary because they assist in one's understanding of a phenomenon by arranging it in a more coherent and logical manner. They also provide a springboard for an informative contribution on complex issues. Theories underpinning this study will be articulated below beginning with patron-clientelism, followed by the neo-patrimonialism and ending with the rational choice.

### **2.3.1 The Theory of Patron-Clientelism**

Patron-clientelism normally works in tandem with the theory of neo-patrimonialism. Sandbrook (1998: 69) defines patron-clientelism as a salient feature of African politics which is characterized by unequal status, based on reciprocity, which are arranged hierarchically within bureaucracies which are organized on impersonal and universalistic criteria. Individuals seeking personal substitutes align themselves to 'big men' who are capable of providing protection and even advancement. It is a 'personal security mechanism' which operates in a neo-patrimonial regime where the informal and formal structures exist side by side. The poor and marginalized members of society are drawn into these 'problem-solving' networks as a pragmatic means of finding solutions to their every day concerns, since they often have limited access to formal sources of assistance. This practice flourishes in insecure political and economic environments, both rural and urban, and is integral to the 'politics of survival' for both patrons and clients (Migdal, 1988 in Brinkerhoff, 2002: 2).

The patron-client relationship is neither unique to one particular country nor is it an African problem only. It manifests in most parts of the world. However, because of poverty, in Malawi the practice is common and acceptable. The patron is usually a member of the executive, while

the client may be an MP who may harbour ambitions to advance his or her political career. The MP might provide services to the executive in anticipation of some personal rewards or favours. These could come in the form of appointments or financial rewards in exchange for loyalty. Those who do not display loyalty or are deemed not to tow the executive's line of thought might find themselves discarded, or even outright dismissed unceremoniously. This is the politics of what one respondent called "kuthana" (translated: to finish him or her off) if they are not loyal. In the Malawi's political and enduring culture various items of patronage are dispensed by the executive to entice an MP to cross the floor. In Malawi, the Alliance for Democracy (AFORD)'s coalition with the United Democratic Front (UDF) in 1994, and the creation of an unconstitutional position of second vice president, and the awarding of seven ministerial positions to AFORD MPs, is an example in time. These political movements were done in order to strengthen the ruling (UDF) party's position in parliament, while at the same time, reward AFORD. This is a classic example of patron and clientelism at work.

Politicians who are not at the centre of activities, or are not seen to be loyal to the incumbent president, usually do not benefit from this system. Because of this, their political careers might be threatened as they become less visible than those who are drawn to the centre of political activities by the incumbent. This is the reason why there is a constant desire from the opposition to be included in the distribution of the national cake so that they too can redistribute the same to their own patron-client networks in their respective constituencies. This improves their chances of being re-elected in future elections. Because of this, politicians seem to be perpetually busy recruiting and cultivating relationships with clients in order to advance their political career.

Patron-clientelism which is the unequal relationship between a patron and his or her client, who dispenses patronage in the form of jobs or privileges in order to gain favours, is embedded in a neo-patrimonial system. This system is important because it is like blood flowing through the political system that sustains political individuals and ensures the survival of political regimes. As one tries to understand the behaviour of politicians and movement in the National Assembly, one also needs to make a deliberate effort to appreciate and understand the role played by the informal sector operating alongside most formal African regimes.



However, it would not be entirely accurate to assume that patron-clientelism, patrimonialism operating in a neo-patrimonial system is always infallible. On the contrary, it does have its loopholes and sometimes both patrons and clients can be exploited. For instance, despite overwhelming patronage capacity of some patrimonial regimes such as former presidents Frederick Chiluba of Zambia, Jerry Rawlings of Ghana and Moi of Kenya, all these were dislodged during elections that took place in their respective countries (Gyimah-Boadi, 2007:30-32). Although patronage may not translate into electoral victory for everyone, it does stand the test of time and lingers in the corridors of political power. It cannot, therefore, be dismissed outright because it plays an important and defining role in the politics of Africa. Cammack (2009) made this realization when she wrote the following statement:

What is amazing is that it took many of us several years after the transition to recognize that this system of neo-patrimonial politics – honed to perfection by Dr Banda (Mhone, 1992, cf. Harrigan, 2001) – was still vibrant. We were blinded by the imposition locally of democratic structures from 1994 – e.g., a liberal Constitution, a nominally independent assembly, a decentralized local government, constitutional organizations – and by the belief that the ‘third wave of democratization’ (Huntington, 1991) that took place in Eastern Europe as well as Southern Africa would create a ‘new world order’. Some of us naively thought that multipartyism and elections would do away with patronage, clientelism, corruption and big-man politics and parties, and would kick-start development. But political-economy institutions are deeply rooted in Malawi and they have outlived the transition, though they have had to bend somewhat to survive.<sup>[18]</sup>

This quote summarizes the claim that patronage is enduring. It does not change because the country has become a multiparty state, just as Malawi has done. Since independence Malawi has consistently exhibited patronage characteristics and tendencies. During the Banda era (1964 - 1994), president Hastings Kamuzu Banda dispensed jobs to the party (Malawi Congress Party) faithful or loyalists. These were in the form of appointments to senior parastatal organizations, embassies, ministerial portfolios and the like. During the current era, the party stood as a machinery to dispense patronage, and the faithful or loyal clients were rewarded accordingly. In Malawi where resources outside the state are limited, political power and control of the state remain the main source of economic wealth. It is therefore, very important for politicians to

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<sup>[18]</sup> Cammack D, 2009: The Politics of Chameleons revisited: the burden of Malawi’s Political Culture. Paper presented at the post election conference held at Crossroads hotel in Lilongwe in June, 2009

have access to state resources in order for them to survive through patronage to their clients or patrons. Without establishing these clientelist networks, the 'big man' does not have a guarantee that he would be returned to parliament.

This situation has also been compounded by the fact that most political parties in Malawi do not espouse or have any ideologies. Most people do not join politics because of a special belief or political orientation. Since Malawi's poverty levels are high, everyone is drawn to the state resources. A political party that is in opposition, therefore, has a difficult task of maintaining clients to support its political career. This process starts with the consolidation of power in one person who becomes the patron or big man. Since he or she is able to control the distribution of resources, he gets surrounded by those who are also eager to have access to the resources. These relationships are based on patronage, anchored in the appropriation and distribution of state resources, or rents acquired through access to the state, which pass towards particular constituencies rather than national development (Cammack et al, 2007).<sup>[19]</sup> If one has to understand the political dynamics and culture in Malawi, he or she should also strive to understand the deep cultural roots which started with the first president, Dr Hastings Kamuzu Banda, how he used power and authority to dispense patronage in exchange for loyalty to himself and the party.

Although Dr Bingu wa Mutharika comes from a different background, having retired as a technocrat and former Secretary General of Common Market for Eastern and Southern Africa (COMESA), he has not been spared from patronage. Right from the start when he established his party, he used ministerial positions as rewards for those who joined his newly established party (DPP). He became the patron and dispensed lucrative jobs in order to remain afloat in his minority government after the 2004 elections. These have continued and most MPs have defected to President Mutharika's party (DPP) so that they could avail themselves of the state resources.

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<sup>[19]</sup> Cammack D, 2007: Neo-patrimonial politics, decentralization and Local Government: Uganda and Malawi in 2006. <http://www.ids.ac.uk/downloads.cfm?objectid=157A8AB9-FDD5-5784-COBAC5ECC5695AE>

### **2.3.2 The Theory of Neo-patrimonialism**

The theory of neo-patrimonialism is intended to explain the relationship that exists between the formal and informal systems that characterize the political system. In a neo-patrimonial regime, governance structures are based on a combination of traditional and modern state structure, and where formal rational-legal state apparatus co-exist, and are supplemented by an informal patrimonial system of governance (Chinsinga: 2008). This is where relationships of loyalty and dependence pervade a formal political and administrative system and leaders occupy bureaucratic offices not to perform public services but to acquire personal wealth and status (Bratton, 1998: 277).

Malawi is described as a neo-patrimonial state where the framework of formal law, administration, and the state machinery are informally linked to patronage networks. Systems are created in order to please the select few. Cabinet positions are also created and expanded in order to give jobs to the select few. The informal structure usually overrides the formal bringing a drain on the country's economy due to patronage. However, this situation is not unique to Malawi. Neo-patrimonialism is described as the institutional hallmark of politics in post-colonial Africa, because it prevails in most countries in the region (Bratton: 1998). In a neo-patrimonial state, the distribution of office spoils is usually more paramount than formal functions of the state. This is where patrimonial logic is internalized in the formal institutions which provide essential operating codes for politics (Cammack, 2007).

Patrimonialism is associated with clientelistic politics where the patron dispenses privileges which include jobs to a few selected clients in return for political favours. These jobs may, in certain instances, even be more valuable than posts offered by the state. In neo-patrimonialism, patrimonial practices inhabit the realm of informal institutions which exist alongside formal, legal rational institutions (Bratton and van de Walle, 1994, in Chinsinga 2009). This implies that neo-patrimonial regimes are characterized by governance structures that are based on a combination of traditional and modern state structures. Neo-patrimonialism is thus as system of governance where formal rational-legal state apparatus co-exists, and is supplemented by an informal patrimonial system of governance.

Cammack (2007: 3 – 4) defines four essential elements that make a neo-patrimonial state as follows”

#### **2.3.2.1 Institutional hybridity:**

This entails formal institutions which are concrete with written documents such as constitutions, laws and regulations, codes of conduct and procedures that guide the operations of the government. These operate alongside the informal institutions which are implicit and based on unwritten understanding such as socio-cultural norms, routines and traditions, hence the hybridity that is the informal patrimonial norms and practice operating alongside the formal legal-rational rules or institutions. The informal structure, with the unwritten laws is usually more influential in a politician’s life than those rules that are written.

#### **2.3.2.2 Existence of both patrimonial and legal-rational institutions**

In purely patrimonial regimes, the question of the legitimacy of patrimonial practices does not arise because no distinction exists between the public and private spheres. In a neo-patrimonial states, patrimonial practices utilize and ride on legal-rational institutions, and are therefore distinguished by the existence of formal rational-legal institutions, no matter how dysfunctional, and elite commitment (however rhetorical) to the separation of the public and private spheres, alongside informal patrimonial norms.

#### **2.3.2.3 Relative importance of formal and informal institutions:**

All modern states exhibit practices that can be characterized as patrimonial. Neo-patrimonial states are distinguished by the patrimonial logic being widespread and, often, dominant (Chabal and Daloz, 1999; Clapham 1982, in Cammack et al, 2007:3).

#### **2.3.2.4 Institutional Incompatibility**

Further, Cammack (2007) maintains that in neo-patrimonial states, the formal and informal rules usually contradict each other and there is lack of predictability resulting in uncertainty about which rules should be enforced. The patrimonialism or informality of neo-patrimonial states manifests itself in three basic characteristics which are fundamental in understanding behaviours and dynamics observed in neo-patrimonial states. These are:

- Weak or no separation of the public and private spheres resulting in the private appropriation of the public sphere and the use of public resources for political legitimating for clientelism, horizontal exchange relations and nepotism;
- The primacy of vertical over horizontal ties: Sub-Saharan African (and other neo-patrimonial) states continue to have predominantly agrarian or pre-capitalist economies. Weak class formation means that Africans tend not to identify their interests with, and organize along, horizontal lines. They maintain predominantly vertical relationships and/or those based on primordial or ascriptive ties. Combined with weak separation of the public and private spheres, the primacy of vertical ties results in the systemic clientelism found within neo-patrimonial states.
- Personalism suffuses neo-patrimonial states and expresses itself both in the form of leadership („presidentialism“) and in the nature of power and relations throughout society. As noted by Bratton and van de Walle (1997:62), neo-patrimonial states tend to be presidential. This refers not to the formal political system (although these, too, are usually presidential) but to the fact that power is concentrated in one individual “who dominates the state apparatus and stands above its laws“ (Cammack et al, 2007:4).

Although Malawi is supposed to have three arms of government which are the Executive, Judiciary and Legislature operating autonomously, but also complementing each other, the executive manifesting in the presidency is very powerful. Patel (2008: 22) explains how the presidential nature of the political regime in Malawi dominates over the legislature, resulting in parliament being assigned a secondary role. Matlosa (2006:44) also observed that the striking feature of Malawian politics is the concentration of power at the top which is also a legacy of the past. Because power is concentrated in the hands of one person, usually the president who has access to state resources, he or she uses it as an instrument of patronage to consolidate his power and status. He seeks above all, to stay in power, and has little interest in rotating parties, to and from government and opposition, and fair elections. Normally, he or she will buy support by

handing out cabinet posts, providing opportunities for rent and using government funds to campaign or increase personal wealth (Cammack et al, 2007). This was evidenced during the open/third term bid for the president in Malawi in 2001, where it is alleged, MPs were lured and bribed with 'brown envelopes to pass wrong and unprincipled bills' (Patel, 2008:28). These persevering legacies take precedence over the formal rules of the political game and provide essential political operating codes that are valued, recurring and reproduced over time (Jackson and Rosberg, in Bratton, 1997:63).

In Malawi both the formal and the informal system operate alongside each other, with the informal being more pronounced than the formal. This situation is not new, it has been there since independence, and has now become the prevailing political culture of the nation. As has already been discussed above, political positions are created alongside formal positions in order to please a select few. Appointments to plush positions usually take place in the informal sector. For a student of African politics, it is important to understand and appreciate the role that is played by the informal political sphere where cultural norms, values and traditional procedures pervade any other formal institution, and not to dismiss these elements as outright idiosyncratic expressions.

Theories of Patron- Clientelism and Neo-patrimonialism have attempted to provide insight into the behaviour of MPs defecting to other political parties. They also tried to explain that MPs' behaviour and attitude towards floor crossing could be attributed to Malawi's political culture, norms and values which have a great influence over them. The cultural context in which MP's operate, and the informal systems that prevail in those settings have a bearing on the behaviour of an MP. The theories also explained that it is normal to seek to be re-elected, hence the need to set up mechanisms that can maintain that status quo. The remaining theory, rational choice will attempt to explain that MPs crossing the floor use logic and weigh costs and benefits before making their move.

### **2.3.3 The Theory of Rational Choice**

Rational Choice theory comprises two concepts. These are rationality, which is premised on the rules of logic and the ability to verify actions, and choice (Kotzé, 2004: 22 – 23). There are various assumptions about rational choice which include the following:

- That decision makers have a complete understanding and knowledge of the value preferences of their followers or constituencies, and of the relative weights or importance of such preference;
- That decision makers are aware of all available decision options – all options must be taken into consideration to ensure that the best option is chosen; if some options were excluded or were not considered in the process the outcome will not necessarily guarantee the maximum benefits;
- That decision makers are informed about all the possible consequences (advantages and disadvantages) of each of the options: it is not sufficient to be only aware of all options, but the relative advantages and disadvantages of each of them should be known to him or her;
- That they can determine the costs and benefits of each option;
- That they will definitely select the most beneficial, efficient and cost-effective option.

Rational choice theory assumes that individuals are self-interested, and all have the rational capacity, time and emotional detachment necessary to choose a best course of action, no matter how complex the choice (Marsh et al, 1998:79). Unfortunately, an individual may not always have the necessary facts on hand to know for certain the outcome or consequences of their actions because their choices may be based on the assumption that they are maximizing expected utility.

It is assumed that MPs, who cross the floor are rational, educated and enlightened enough to know and understand the consequences of their actions. They are also aware of what the Malawi Constitution says regarding the law governing floor crossing. When these are approached by a recruiting agent willing to entice them away from their respective parties, these individuals have the capacity to weigh the advantages and disadvantages of either allowing to be enticed or

staying in the parties that they were voted in. The final decision is made after they have weighed the costs and benefits of their move. Sometimes, if they decide to cross over they are rewarded, sometimes they are not. The rational choice theory explains that human beings have this opportunity to decide on their own after weighing the costs and benefits of either crossing the floor or not. These could be financial rewards, having access to developmental projects, or even becoming more visible so that in the long run their political career can be enhanced.

The enlisting of clients by patrons is basically so that they can enhance their status and political careers. This is a decision that has to be made after weighing several options. Some may yield fruits while others may not. In some instances, there might be enough information to make informed choices, while in other circumstances that may not be possible. Thus, MPs in Malawi change political colours after going through several options and eventually settling on one that they think will bring the greatest rewards in terms of the enhancement of their political career and their prominence in the country.

Rational choice does also apply to the patron. Before he or she approaches a prospective defector, he weighs the necessity or what needs to be accomplished in his or her party. He or she calculates the financial implications against the intended decision and the envisaged results. In this case then, even the patron juggles and rationalizes before deciding on who to approach, when, how and what benefits could be realized by engaging the opposition MP to move over to their party. In the case of floor crossing, the rationalizing, and finally the decision to move in the National Assembly affects, not only the clients, but the patron as well. As already indicated above, it is not always possible to predict the outcome of these movements or propositions, however, the assumption made is that once the transaction is completed successfully it should be able to maximize the intended position and results. In the case of the patron, if the desire was to increase its strength in the National Assembly in order to pass bills without much resistance from the opposition, when that is achieved, they have maximized their goal. On the other hand, when clients, who are in this case, MPs, have the desire to join politics in order to have access to the scarce state resources, they take their decision based on the intended expected outcome. Whatever reasons there might be for choosing to move to another party in the National



Assembly, an MP will have made that decision based on rationality that the intended course of action maximizes his or her given potential and the act will bring out the intended rewards.

However, sometimes the choice and decision for MPs to move to another party may not be made by an individual. In Malawi, some traditional and religious leaders play a pivotal role in influencing decisions of MPs. It is therefore important to understand that rational choice in the Malawi context may extend beyond the individual. There may be other important players who can influence an individual MP to take a decision to move or change party allegiance in the National Assembly in the interest of a group. The rational choice theory, therefore, can extend beyond the individual and incorporate the significant and complex choices that individuals make after being influenced by the traditional norms and values that contribute to the political culture of a nation. This is perhaps why what might be considered as ‘corrupt’ practices in the northern hemisphere, will be an acceptable practice in the southern hemisphere because it takes into account the norms, values and traditions that are expected and accepted as normal. MPs that move usually will have used their logic and weighed both the advantages and disadvantages before changing party colours.

#### **2.3.4 Summary**

In summary, the last part of this chapter outlined the theoretical framework that guided this study. Theories of patron-clientelism as well as neo-patrimonial provided insight into the behaviour of MPs in the National Assembly, while rational choice theory provided the rationality behind an MPs’ decision to change parties. It is important to appreciate that there might be forces behind MPs’ movements which have far reaching consequences for the parties and the nation as a whole than can be envisaged. However, equally important is to appreciate the political landscape where these dynamics are taking place in order to fully understand the political culture of the nation.

#### **2.3.5 Conclusion**

Chapter 2 reviewed literature guiding this study and also highlighted the different interpretations, connotations attached to floor crossing by comparing literature on floor crossing from four different countries, two from the African region (Zambia and South Africa), and the other two

from the developed world (Germany and the United Kingdom), in order to gain a wider perspective on the subject. Finally, Chapter two outlined the theories that were used as a benchmark for explaining and guiding the study. The next chapter will analyze and interpret the data.

## CHAPTER THREE

### 3. DATA ANALYSIS AND INTERPRETATION

#### 3.1 Introduction

This chapter will analyze and interpret the research findings of the study using trends that have been identified from the data that was gathered, and will focus on the purpose of the research which was to investigate, explore, explain and analyze political factors that contributed to floor crossing in the Malawi National Assembly (MNA) between 2003 and 2009. This analysis was informed by the findings of the study.

Although the research set out to investigate political factors contributing to floor crossing, the study also established that there were other salient issues which played a catalytic role in influencing or promoting the act of floor crossing. In order to analyze them better, these factors have been put into three clusters namely: Institutional, Constitutional and Others. These will be analyzed as follows:

#### 3.2 Institutional Factors Contributing to Floor Crossing

There were various institutional factors which occupied the political parties' space in Malawi which contributed significantly to floor crossing. These were:

##### 3.2.1 The Nature of Malawi's Political Parties

Political parties do play a vital role in democratic governance and are a useful vehicle for contestation of power, for without them democracy would be a distant mirage (Matlosa and Shale: 2008).<sup>[23]</sup> Political parties have several functions which include: aggregating interests, presenting political alternatives to citizens, nominating candidates and linking voters with elected public officials. However, as the study revealed, Malawian political parties have unique characteristics, which have to be understood against their political background and culture.

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<sup>[23]</sup> Matlosa & Shale, 2008: Political Parties as Pillars for Contemporary Democracy: A Critical Analysis of the State of Affairs and Perspectives for the Future. Paper presented at the Eastern and Southern Africa Regional Programme Conference held in Blantyre, Malawi, 13 – 14<sup>th</sup> March, 2008

These characteristics interact and constantly engage each other and contribute significantly to the nature and culture of Malawian politics.

The characteristics of Malawian politics include its centralist as well as its 'chameleon-like' nature which contribute negatively to the progression of the political system both at the micro, signifying the political party level, and at the macro, being political parties at the national level. This centralist nature where political leaders consolidate power in themselves brings about the type of leadership style that is not conducive to the current political dispensation. This poor leadership style is overbearing and manifests heavily during party nominations for primary elections. These leaders also dictate how the party should be run, and they rarely consult their membership when making important party decisions affecting them, leading to members' frustration and discouragement.

Cammack (2009) also adds that Malawi's political parties are centralist in nature with a culture that is rooted in its political economy and its past, and although Malawi may have undergone a political transition, from a one-party to a multiparty system of government since 1994, it has not really been transformed (Chirwa, in Cammack: 2009).<sup>[24]</sup> There are still some political remnants from the historical past and legacies which have been carried forward from the previous undemocratic regime of Dr Banda, into the new political dispensation which make complete political emancipation for most politicians, especially the old guard, difficult. This is because leading politicians in the 'new' Malawi also held prominent positions during Dr Banda's one-party era (Englund, 2002:18). They learned their politics from him and as a result, Dr Banda's political culture has continued to influence the political system, behaviour and culture of Malawian politics, leading to what is termed, 'chameleon-like character and nature because of its opportunistic and duplicitous nature of its leaders who may be opponents one day and welcomed with open arms the following day (Cammack 2009: 153).

The nature of Malawian political parties can also be witnessed in the territorial penetration, with the Alliance for Democracy (AFORD) having its base in the north where its leaders come from, the Malawi Congress Party (MCP) being very prominent, and entrenched in the central part of

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<sup>[24]</sup> Cammack D, 2009: The politics of Chameleons revisited: the burden of Malawi political culture

Malawi, while the Democratic Progressive Party (DPP) and the United Democratic Front (UDF), battling it out in the southern part of Malawi. These regional configurations have an influence on the behaviour of politicians on the Malawian political space. Further, Malawian political parties are transient and election-oriented (Lembani, 2008: 39). Their lifespan is short, and they seem to be more prominent or visible prior to elections, after that they seem to fizzle out. Malawian politics is also about patronage which ensures its survival. The centralist nature of Malawi's politics can also be better understood through party formation. This is discussed below:

### **3.2.2 Party Formation**

The nature of Malawian political parties is also greatly influenced by their formation. According to Kadima (2006:113), the formation of political parties in Malawi can be classified into four categories: (a) First generation which is associated with former National Liberation Movements (NLM) or pro-independence/ nationalist struggles. These include the Malawi Congress Party (MCP); (b) Second generation which came into being in the wake of the re-democratization agenda (Post independence, pro-democracy movements). In Malawi, these include the United Democratic Front (UDF) and the Alliance for Democracy (AFORD); (c) Third category comprises splinter groups that emerged after 2001 as breakaway factions which include the Republican Party, among others. The final category is the unclassified, which include professionals and academics. These parties include the Peoples Transformation Party and Malawi Forum for Unity and Development. The manner in which these parties are formed influences their performance, the culture they assume and the political behaviour that the party and its leadership exhibit. This situation is compounded by ineffectual laws governing the Political Party Registration Act and by the lack of monitoring and regulating by the relevant authorities to ensure that parties comply with relevant legislation.

Since the introduction of multiparty politics in Malawi in 1994, the number of political parties has soared from eight (8) in 1994, to thirty-seven (37) at the general elections in 2009. However, out of sixteen (16) that contested in 2009, only six (6) won at least one seat in the National Assembly. The proliferation of political parties in Malawi is as a result of various reasons which also contribute to floor crossing in Malawi. One of those reasons is the way political parties are registered in Malawi. Firstly, registration of political parties in Malawi is governed by two

statutes; the Malawi Constitution and the Political Party Registration Act. Section 40 of the Malawi Constitution stipulates that:

Every person shall have the right to: (a) form, to join, to participate in the activities of, and to recruit members for, a political party; (b) to campaign for a political party or cause; (c) to participate in peaceful political activity intended to influence the composition and policies of the Government; and (d) freely to make political choices.

While the 1996 Political Parties Registration Act stipulates the following which have to be complied with if one wants to register a political party in Malawi:

- (a) A list of names and addresses of no less than 100 registered members;
- (b) Be a Citizen of Malawi;
- (c) Should have attained voting age of voters in parliamentary elections, which is 18;
- (d) Apply in writing to the Registrar for registration;
- (e) The application for registration should be signed by office bearers and be accompanied by:
  - Two copies of the party constitution, rules and manifesto;
  - List of names and addresses of office bearers of the party;

The Registrar may reject an application of a political party; if

- (a) The application is not in conformity with this Act;
- (b) The name of the party is (1) identical to the name of another registered party (2) nearly resembles the name of registered party, (3) is provocative or offends public decency; and
- (c) The purpose of the party is unlawful.

The Constitution grants every person the right to form and join any political party. This freedom to exercise one's rights has not been properly matched with the legal instruments for monitoring this Act. Currently, when a party has been registered, the authorities have no legal mechanisms to monitor its performance or existence. This lack of appropriate regulatory mechanisms to monitor political parties and their activities has led to a proliferation of parties which only

become visible during election periods and disappear soon after. This fragments political parties and, at times, can confuse voters when they are faced with too many choices of political parties to choose from, because having too many political parties does not necessarily equate to the consolidation of democracy.

Further, this Act has not been reviewed since it was enacted in 1996, and coupled with the lack of appropriate regulatory mechanisms, it has given an opportunity to politicians to use it as a window for forming other political parties when they have internal problems, instead of seeking ways of addressing internal conflicts. When new parties are formed out of frustration, unresolved issues are only carried forward and these continue to multiply and manifest elsewhere with detrimental consequences.

Further, most of these parties do not last long because they are not formed out of differentiated ideology. The Political Party Registration Act in its current form encourages registration of smaller political parties which easily disband after losing elections, and their leaders are easily co-opted or assimilated into bigger parties leaving their membership behind bewildered and at a loss. An example is the de-registration of the National Democratic Alliance of Mr. Brown Mpinganjira in 2004, who, after leaving the UDF in protest against president Bakili Muluzi's third term bid in 2002 and 2003, decided to return to the UDF after losing in the 2004 elections. Examples of this nature in Malawi abound, and this contributes significantly to the lack of trust by the populace towards political parties. Because of the weak legal system governing registration of political parties, there is lack of commitment and seriousness in the formation of new political parties. Party formation is also intrinsically linked to party funding, an element being discussed below.

### **3.2.3 Party Funding**

All political parties, regardless whether or not they are in government, require funding in order to function and be able to deliver on their mandate. Through funding, political parties are also able to effectively participate in governance, and for opposition, resources assist them in challenging the ruling party effectively. Geraldene Chaplog-Louw (2008) argues that:

Strong parties require money. Without adequate funding the party structures are unable to organize, mobilize. Where adequate funding is not forthcoming from membership and/or public funds alternative sources are sought from wealthy patrons which opens the process up to undue influence. Accordingly in many instances political accountability becomes for sale and is indeed traded to the highest bidder. By accepting funds from business interests that intentionally support political campaigns as a way of ensuring lucrative contracts with the state or possibly worse yet for assurances that the state will turn a blind eye to their illegal business practices or from godfathers who will turn political parties into their proxies the independence and accountability of parties is compromised. Strong leaders and/or key persons within parties often become the strategic fundraisers albeit from private coffers or personal connections which can then establish personal monopoly over funding sometimes leading to enriching themselves and stifling intra-party debate. In some cases candidates are willing to forgo political competition or abandon their political parties in exchange for money. <sup>[25]</sup>

Provision of funding to political parties is pertinent, and adequate state funding is necessary if the playing field of political contestation is to be leveled. Political funding in Malawi is linked to the formation of political parties. Generally, when a party is being established, the founder is the sole financier of that party. This state of affairs, as was the case with the UDF and Dr Bakili Muluzi, has implications in the way parties are governed and how they function. It can sometimes lead to the stifling of intra-party debate and the creation of personal empires with negative consequences on accountability to both the electorate, and the party itself. This, therefore, could lead to the opening of a window for members to begin to seek alternative political parties, or if the founder of the party is in government, he or she has the ability to ‘buy’ off opposition members with ease.

Provision of funding for political parties by the State is provided for in the Constitution of the Republic of Malawi (1994, Article 40.2), which stipulates that:

The state shall provide funds so as to ensure that, during the life of any Parliament, any political party which has secured more than one-tenth of the national vote in elections to that Parliament has sufficient funds to continue to represent its constituency.

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<sup>[25]</sup> Chaplog-Louw G, 2009: Money and Politics: the case of (Public) funding of political parties, pitfalls for sustainable democracy



This clause means that funding for political parties is restricted to only those parties that have managed to secure one-tenth of votes in the National Assembly. Broadly speaking, therefore, this means that those parties that do not meet this threshold do not qualify for State funding. Currently, there are six political parties in the National Assembly, three of these have one MP only in Parliament, and therefore do not qualify for State funding, according to the clause. It would appear that the framers of the Malawi Constitution assumed that securing 10 percent of a national vote would translate into some form of representation in Parliament. Unfortunately this is not the case for Malawi which follows the winner-takes- all, or the First-Past-The-Post (FPTP) system. With this system, it is technically possible for a political party to have 10 percent of the MPs with less than 10 percent of the national vote. It is also possible to get 10 percent of the national vote or even more but not get a single seat in parliament. This point is illustrated in a table below:

**Table 6: Share of National votes vs. Share of seats in Parliament**

Party	Share of national vote (parliamentary)	Share of seats	Actual number of seats
DPP	37.7%	58.03%	112
MCP	26.6%	14%	27
UDF	11.8%	8.8%	17
Independents	29.6%	16.06%	31

Source: Malawi Electoral Commission Election Results 2009 (in Magolowondo 2009) <sup>[26]</sup>

Based on the public financing formula for political parties which is based on legislative strength, not voter support, this clause means that the party in government is over compensated, while the UDF could lose access to public funds because it only has seventeen MPs representing 8.8 percent of the share of seats in Parliament although its share of the national vote is already above the 10 percent threshold (at 11.8%). Further, the current state funding arrangement only benefits

<sup>[26]</sup> Magolowondo A, 2009: Political Parties in Malawi and the 2009 General Elections: any learning curve insight? Paper presented at the Post election conference held in Lilongwe from 23 – 26 June, 2009 at Crossroads Hotel, Malawi

the 'big' parties while those parties with less than nineteen MPs could lose out. It is therefore not surprising to see that in effect, the constitutional provision has for practical reasons, been replaced with numbers of MPs that a party has in parliament, meaning 10 percent of seats in Parliament (Magolowondo, 2009).

Political party financing is an important aspect in the institutionalization of political parties because it defines the role of an individual, party leader and the party organization, and provides the necessary links or relationships with other party elements such as accountability of the leadership both to the party and the electorate, party ownership by members, discipline procedures in the party and the kind of leadership style exhibited by the party leader. Another source of funding for political parties in Malawi that have representation in the Malawi National Assembly is through the Netherlands Institute for Multiparty Democracy (NIMD) which provides bilateral and cross party funding to only those parties that have representation in the National Assembly, regardless of how many MPs each party has. The scheme was expanded recently and NIMD now provides funding that can be used for cross party activities such as training, to benefit even those parties that currently do not have representation in the National Assembly, but who fielded a parliamentary and presidential candidate in the last general election in 2009.

However, the NIMD bilateral funds which are channeled through the Centre for Multiparty Democracy – Malawi (CMD – M), are disbursed using an agreed formula set by the CMD –M Board which allocates funding based on the number of MPs a party has amassed in the National Assembly during the general elections. In practice, therefore, this translates into the greater the strength of the party in the National Assembly, the higher the amount it receives. In the end, this disadvantages the smaller parties, who by virtue of their weak strength in the National Assembly, not only miss out on the State funding, but get less from the NIMD as well. Although these smaller parties have raised their concern over the distribution formula, nothing much has been done to improve the situation. The DPP, therefore, with 113 out of 193 seats in the National Assembly, gets most of the funding from the NIMD, followed by the MCP and UDF, then the smaller parties.

Apart from the sources indicated above, most parties in Malawi are funded either by individuals, who are usually presidents or chairpersons of those parties or some few local business people who may have political links to the party or some well wishers from abroad. Parties do not usually disclose sources of their funding for fear that the donors may be negatively affected by such disclosure. These donors, therefore, remain anonymous. Lack of party funding has a detrimental effect on the overall institutional development of the party. Firstly, the party lacks ownership by members, and leaders do not feel obliged to be accountable to their members or voters, leading to party dictatorship and the creation of factions within the party and a lack of mechanism for leadership succession as well as lack of transparency.

This situation is compounded by the fact there is lack of credible database on party membership. The selling of party membership cards triggers very painful memories in older Malawians because of what the public went through during the one-party era of Dr Hasting Banda and the Malawi Congress Party. This lack of knowledge on membership has led parties to assume that they have members, who in essence do not belong to them. In a survey on political parties that was carried out in 1998, the cumulative number of members that all political parties claimed to have at that time was at 18,000,000 when the population in Malawi was around 9,000,000 (Kadzamira, 1999 in Magolowondo: 2009). This disparity explains the magnitude of this problem in Malawi.

Because of problems that might have been triggered by lack of funding and the consequences thereof, some frustrated members within political parties who are affected by the behaviour of party leaders, and who also feel sidelined or undermined by the financiers and owners of the party, do not feel they belong to the party, and ultimately, decide to locate to a party that seems to have better opportunities for them to realize their political dreams and enhance their political careers than the present party, or to form their own parties since the legal framework governing the registration of political parties in Malawi is very liberal.

### **3.2.4 Lack of Democracy within Political Parties**

As discussed above, political parties are considered pillars of democracy, and it goes without saying that democracy without political parties is unthinkable because the primary function of

parties is to capture power in order to form governments (Chinsinga, 2008: 14). Before one can understand what lack of democracy in political parties is all about, there is need to define what democracy is. According to Dahl (1971: 2 in Magolowondo: 2008), <sup>[27]</sup> for a system to be qualified a democracy, it should fulfill three fundamental conditions: (a) citizens should be able to formulate their preferences; (b) express these preferences among themselves and also to the government, either as individuals or in group; and (c) those preferences have to be weighed equally in the conduct of government. To talk about internal democracy therefore refers to the extent to which a party subscribes to, and abides by these basic democratic tenets and what mechanisms the party puts in place to enable party executives to be responsive and accountable to its membership. It also means internal political contestation or competition and participation of the members in the affairs of the party. Further, just like in a democratic polity, a democratic political party should be tolerant to and accommodative of divergent views within it. Thus, party discipline would not necessarily mean absence of what Scarrow (2005 in Magolowondo: 2008) calls, an organized factionalism. These factors are critical for effective democracy within a political party.

However, these democratic tenets are not always present within political parties resulting in the proliferation of political parties, individuals leaving political parties, an increase in the number of independent candidates and the weakening of both the party system as well as the political system. Magolowondo (2009) defines a party system as the characteristic of a set of parties operating in a political system whose structure varies along four dimensions: (a) the number of parties; (b) the relative size of parties; (c) the ideological polarization among the major party alternatives; and (d) the pattern of interaction between the parties. Lise Rakner and Lars Svåsand (2005:6), <sup>[28]</sup> add that “An axiom in political science is that modern democratic governance requires the development of a stable party system.”

Lack of internal party democracy, as it was established during the study, contributed significantly to MPs’ movement in the National Assembly. Perhaps one of the reasons parties tend to fail to become drivers of the democratic process and also fail to democratize within

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<sup>[27]</sup> Magolowondo A, 2008. Democracy within political Parties: A Comparative analysis of the state of affairs in Eastern and Southern Africa, its challenges and how it may be institutionalized, unpublished copy

<sup>[28]</sup> Rakner L, and Svåsand L, (2005): “Fissions and Fusions, foes and friends: Party-system restructuring in Malawi in the 2004 general elections”. CMI Working Paper

themselves is precisely because they tend to have inevitable and inherent “oligarchic tendencies and are thus inherently undemocratic” (Kellman 2004:14 in Matlosa: 2008).<sup>[29]</sup> There is need, therefore, for political parties to put in place mechanisms that will allow dissent within parties to be heard, where discipline will be carried out unselectively and where the process of selecting candidates to stand for elections is done in a transparent manner, and where leaders are, and act democratically. When these democratic tenets are not available within political parties, the following may be the consequence:

#### **3.2.4.1 An Increase in the number of Independent Candidates**

Although major political parties in Malawi have constitutions to guide them in selecting parliamentary and presidential candidates, these instruments are deliberately and systematically ignored during primaries (Patel, 2008:30). There were incidences during primary elections in 2009 when popular aspirants were forced to withdraw their party candidature to make room for other candidates of the high command’s choice. A recent example was the rejection by the Malawi Electoral Commission of the ruling DPP’s request to replace its certified candidate who had won the primaries, whom the party considered a ‘light-weight’ in favour of a former Defence Minister, Mr B Khamisa, whom the party felt was a heavyweight and a preferred candidate for the party. Fortunately, the ‘lightweight’ candidate, Hon Namakhwa, whom the Electoral Commission maintained won the parliamentary seat and the ‘heavyweight’ lost.<sup>[30]</sup> This illustrates how influential the party leadership and machinery can be during elections.

The lack of democracy within political parties which is more pronounced during primary elections has continued to contribute considerably to the increase in the number of independent candidates during elections in Malawi. The table below illustrates this point clearly.

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<sup>[29]</sup> Matlosa & Shale, 2008: Political Parties as Pillars for Contemporary Democracy: A Critical Analysis of the State of Affairs and Perspectives for the Future. Paper presented at the Eastern and Southern Africa Regional Programme Conference held in Blantyre, Malawi, 13 – 14<sup>th</sup> March, 2008

<sup>[30]</sup> ‘Malawi Electoral Commission (MEC) Rebuffs DPP’ ( The Daily Times, Monday 30 March, 2009)

**Table 7: Registered Parliamentary Candidates, by Year, Party and Independents**

Party	YEAR OF ELECTION			
	1994	1999	2004	2009
AFORD	159	75	40	29
DPP				192
Independents	<b>12</b>	<b>114</b>	<b>373</b>	<b>485</b>
MAFUNDE			21	1
MCP	177	187	167	134
PETRA			18	16
UDF	177	191	164	170

**Source: Compiled by Magolowondo (2009) based on Electoral Commission Reports**

According to Magolowondo et al (2009), in the first multiparty election, independent candidates accounted for only two percent of the total number of candidates (12 independent candidates in 1994 to 485 in 2009). The big jump in the number of independent candidates came in 2004, but continued to increase also in 2009, when 41 percent of candidates registered as independents. This increase is due to lack of democracy within political parties, lack of transparency in the selection of candidates by parties, favouritism, factions and splits within the party and as a result of not accepting the outcome of primary election results by both party candidates and leaders.

The diagram below further illustrates how primaries are conducted in Malawi.

## Diagram 2 - Primaries



As already indicated above, the way the leadership selects its party candidates during primaries can be a source of frustration leading to an increase in independent candidates. Patel (2009),<sup>[31]</sup> states that nomination of candidates has both internal and external aspects. These are: at what level in the party organization does nomination take place, and second, how the “selectorate”, those that are authorized to make the nominations, are composed? These have a bearing on the outcome of the identification of candidates at primary level.

All parties in Malawi, except for Alliance for Democracy (AFORD) elect their candidates in the primaries by asking voters to queue behind a blindfolded candidate of their choice (as indicated above), and the one with the highest number of people is declared the winner. AFORD is the only party that has the system of a secret ballot. The system of queuing behind the desired candidates has problems which contribute considerably to frustration, intimidation and to an increase in the independent candidates.

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<sup>[31]</sup> Patel, 2009: Malawi General Elections 2009: The Politics of Nomination. Paper presented at the Post Election Conference held in Lilongwe, Malawi from 23 – 26 June 2009.

Further, lack of internal democracy during primary elections contributed considerably to weak party institutionalisation that led to the formation of breakaway parties in 2004. A study by Shale (2008) revealed that in Malawi, independent candidates in the 2004 general election, polled and captured more parliamentary votes than party candidates. According to Khembo (2004:110 – 111), there is correlation between centralization of candidate nomination and the size of a political party in Malawi. The bigger the party, the higher the propensity to centralize candidate nomination methods and processes, leading to higher numbers of independent candidates as the UDF did in 2004. There were more independent candidates and more independent MPs in the southern region of Malawi than any other region. Their departure was as a result of lack of transparency and intra party democracy within the party.

As the study revealed, most MPs who are disappointed with the way primaries were held in their constituencies proceeded to run as independents, and in some cases, they won a parliamentary seat. Invariably, these independents are easily swayed and can change party allegiances without resistance. This problem is felt across the board as nearly all major political parties in Malawi are in a state of flux due to lack of internal democracy, perennial leadership problems, destructive power struggles and domination by a single leader, and they tend to get absorbed in never ending intra and inter party squabbles (Chinsinga, 2008:14). Further, there is need to put in place mechanisms within political parties for resolving differences without which members may resort to unconstitutional means of expressing their dissatisfaction (Shale: 2008), - including floor crossing.

### **3.2.5 Poor Leadership Style**

The findings of the study revealed that some of the reasons that were pushing opposition MPs to government benches were lack of good leadership styles in the various parties, and lack of or poor management of the parties by the leaders. Good leadership is essential, and the effectiveness and vibrancy of any political party in respect of its contribution to a working democracy, is heavily dependent upon its leadership. A party's performance during and in-between regular general and local government elections are determined, among other things, by how visionary its leadership is (Matlosa et al: 2008). Political parties exist to (a) contest state power; (b) control the levers of the state; (c) retain power as long as it is constitutionally



permissible and (d) contain opposition within the limits of the established constitutional and institutional framework. How well this responsibility is performed, depends on how visionary and democratic its leadership is (Matlosa: 2008). Party leadership as key drivers of democracy within political parties can either be an asset or a liability to the party. When flaws in leadership are left unchecked, these can contribute considerably to members' movement in the National Assembly.

Matlosa (2006:44) argues that because Malawi embraced a parochial political culture during the one party rule, this culture has lingered in many forms, resulting in an interference with the current open and democratic feature of the new political dispensation because, it accords excessive respect to those with political authority to the detriment of open and democratic debate. This culture also creates a challenge for political parties in that they do not have viable institutional mechanisms for succession (Chinsinga, 2008:14). This is because support for the parties is often synonymous with support for individual leaders, and not an indicator of ideological orientation. A consequence of this is that, groups within parties do not feel loyal to the party as such, and therefore easily defect to other parties (Rakner: 2005).

Because of this legacy, leaders' declarations are never challenged as was witnessed during one parliamentary session in 2008 when the incumbent president decided to prorogue parliament as soon as the issue he wanted discussed in the National Assembly, that is the national budget, was passed, denying members of parliament the opportunity to resume debate of Section 65, which was a pre-condition for passing the budget in the first place. During this period, not a single civil society organization, voter or faith-based organizations raised any concern over the president's directive and behaviour. Since democracy at both the macro-level of the nation and the micro level of the parties requires democrats, it is imperative that party leadership becomes democratic in order to embrace democratic culture and practice (Shale and Matlosa: 2008).

As already highlighted above, Malawi seems to suffer from past legacies of centralist leverage as highlighted by the incumbent president's behaviour mentioned above. Nearly all political parties exhibit legacies reminiscent of the one-party era, including a sustained political culture of secrecy, and patrimonialism (Lembani, 2008:41). The problem of party leadership starts at party

formation. The one who forms it becomes the owner and patron of the party. Succession is therefore never discussed until the patron dies. Even during party conventions the agenda for the party deliberations is usually pre-set. The conventions, therefore, become a rubber stamping mechanism. Because of this practice, coupled with the way parties are formed and perceived, leadership in political parties becomes a problem because it comes with dictatorial tendencies which are never challenged.

However, for some members this autocratic style of leadership is tolerated, if not acceptable since it is embodied in the cultural norms and values that they believe have to be preserved and protected. They do not believe there is anything wrong with an autocratic leadership style being exhibited in their party. These cultural norms, however, at times do clash with democratic principles especially when leadership imposes candidates on constituencies during elections, or hand-picks a candidate as was the case with Dr Bakili Muluzi in 2004 when he hand-picked Dr Bingu wa Mutharika without even consulting some of his senior party cadres. This move had a detrimental effect on the political party, was catastrophic on the constitutional realm, and triggered an exodus of senior party leadership. It must be mentioned that the UDF has never recovered from this incident and the party's performance has continued to decline with more and more defections, and fewer and fewer MPs being elected to the National Assembly on the UDF ticket since 2004. This situation has been made worse by the announcement of Dr Bakili Muluzi, former chairperson's announcement that he was stepping down as party leader in 2009 due to ill health without a proper succession plan in place.

Dzimhiri and Phiri (2004:56) posit that "there is a post-Banda establishment of a culture of politics based on personality rather than ideology. Before and after the 1999 elections, all major parties in Malawi have been built around a major personality who could 'claim' to possess the 'right' to the party either as 'founder,' or true heir' or true leader." This political culture which is based more on personality than ideology contributes negatively to democracy within political parties in Malawi. This also contributes to weak party coalitions because the leadership negotiates party affiliations with another without consultation with membership.

### **3.2.6 Coalitions**

Coalitions are defined as any combination of separate players (such as political parties) to win a voting game. The most common form of coalition arises where legislation requires a majority to be passed, but no one party controls as many as half of the seats in the assembly. Although there have been party coalitions in Malawi since 1994, these have not been very successful. One of the reasons being that the legal framework in Malawi does not explicitly recognize party coalitions because when several parties form an electoral coalition and field one presidential candidate, the law does not recognize this candidate as belonging to a coalition, but rather, he or she has to register as belonging to his or her political party using the party symbols. This ultimately confuses the voters (Kadima, 2006:130).

Further, another reason for its failure has been lack of consultations by leaders of the political parties with their members. Very often the driving force behind coalitions in Malawi has been either to increase the numerical strength of the incumbent's power in the National Assembly, or to unseat the incumbent party (Kadima: 2006). These coalitions take place either after or prior to a general election. Coalition discussions usually take place at the leadership level. Examples of party coalitions in Malawi have been between the MCP and AFORD in 1994, AFORD and UDF in 1995 and 1996, MCP and AFORD in 1997 and 2000.

Because of lack of comprehensive consultations with party members prior to the formation of these coalitions, these have resulted in a wane in public trust for political parties and politicians, as evidenced in the declining participation in elections by the public in 2004. In 1994 the voter turnout was 85.54 percent but public's participation in elections dropped to 65.6 percent in 2004 (Kadima, 2006:121). Possible reasons for this diminishing voter turnout could have been disillusionment among voters over the lack of fulfillment of voters' expectations and promises, as well as a disjoint between the leadership and their members. The table below illustrates how parties such as AFORD and UDF have been affected by these convenient coalitions which were made without proper consultations with their membership since 1994:

**Table 8: Members of Parliament since 1994 General Elections held every five years**

<b>Party</b>	<b>1994</b>	<b>1999</b>	<b>2004</b>	<b>2009</b>
AFORD	<b>36</b>	<b>29</b>	<b>6</b>	<b>1</b>
DPP	N/A	N/A	N/A	113
MCP	55	66	57	27
UDF	<b>85</b>	<b>94</b>	<b>49</b>	<b>17</b>

**Source: Adapted from Kadima (2006) based on Malawi Electoral Commission figures**

From the table above, AFORD representation in the National Assembly has continued to drastically decline from thirty-six in 1994, to one in 2009. UDF too shows a remarkable decrease, albeit with a short reprieve in 1999. The UDF started out with eighty-five MPs in 1994, it increased in 1999 but experienced a dramatic drop in 2004 and, finally an abysmal performance in the 2009 general elections. According to Malawi's coalition experience, AFORD and UDF have been in the forefront of establishing coalitions compared to other parties such as MCP. From 1994, AFORD went into coalition with MCP, and later in the same year, with the UDF. AFORD's going in and out of coalitions with other political parties eventually led to formation of a splinter group within the party called Movement for Genuine Democracy (MGODE) which was formed in protest against the mother party's coalitions without proper consultations with its members.

Although the MCP did forge alliances with AFORD in 1994 and 1997 – 2001, respectively, it has practically remained steadily alone. Incidentally, MCP is the only major party that did not join the Mgwirizano coalition which was formed with the help of the churches in Malawi to dislodge the ruling UDF in the 2004 general elections. The other two major parties, UDF and AFORD continued to fuse and break alliances. From the table above, the two parties, AFORD and UDF seem to have paid for their actions. This could, as already indicated above, be because coalition consultations took place only at the leadership level, with their membership completely ignored. These coalitions did not work satisfactorily probably due to personal ambitions and

power struggles within the coalition group. Therefore, party coalitions have not been very successful in the Malawian politics.

The point above was raised to illustrate that the legal framework governing the registration of political parties in the country is weak, resulting in the contribution towards the proliferation of parties which become seasonal, appearing only during election periods and disappearing soon after. Although party coalitions do take place, and are used as alternatives to forming new parties, experience has shown that party alliances are short-lived for the following reasons: Firstly, these coalitions are negotiated at party leadership level without consultation with their members; and secondly, these alliances are formed for a specific reason, either to oust an existing government or to help consolidate the power of the party in government. Because these coalitions are short term purpose-driven, they are disbanded as soon as the goal for forming them is achieved by one of the concerned parties. These coalitions are therefore, convenient gateways for floor crossing candidates.

### **3.2.7 Summary**

The discussion above reveals that political factors that contributed to floor crossing between 2003 and 2009 were triggered by unfavourable elements within political parties which compelled MPs to change their party allegiances in the National Assembly. These included lack of democracy within political parties, poor leadership style by most political leaders which contributed to a plethora of other factors such as an increase in the number of political parties, and in the number of independent candidates, lack of predictable or steady party funding which promotes party dictatorship by party financiers, leading to a lack of accountability by the leaders to both the electorate and members. The discussion also highlighted the need to monitor the Political Party Registration Act and to find mechanisms for regulating it. The section also explained the problems faced by coalitions which continue to expose the weaknesses in the political party system in the country.

### **3.3 Constitutional Factors Contributing to Floor Crossing**

The following are constitutional issues which contributed to floor crossing in the Malawi National Assembly between 2003 and 2009:

#### **3.3.1 Section 65 of the 1994 Malawi Constitution**

The Malawi Constitution was adopted in 1994 to operate provisionally for one year and was enacted into definitive force in 1995.<sup>[32]</sup> The adoption of the Constitution followed the results of a referendum which was held in 1993 in favour of a multi-party system of Government. The study findings revealed that MPs crossed the floor between 2003 and 2009 by taking advantage of the weaknesses and gaps which were identified in Section 65 of the Constitution on floor crossing. This clause was silent on independent MPs crossing the floor in the National Assembly. As a result members exploited it to their advantage knowing that their actions were not illegal. Unless these gaps are sealed as recommended by the Special Law Commission Report of 2006, they will continue to be exploited by those wishing to cross the floor in the Malawi National Assembly. A full report on the proposed Constitutional changes recommended by the Special Law Commission on independents crossing the floor has comprehensively been discussed under section 1.7 above.

However, it appears there is no urgency on the part of government to implement these recommendations because it is benefiting from the situation because independent MPs are overtly declaring their allegiance to the government without any fear of reprisals. This is because there is no provision in the current constitutional arrangement to hold these independents accountable for their actions, or any enforcement of the law on all MPs who cross the floor in the Malawi National Assembly. Although the Constitution is the highest law in the land, it does not stop politicians from using it to their advantage or amending it to suit their need. This is because the office of the president in Malawi, as already indicated above, wields a lot of power.

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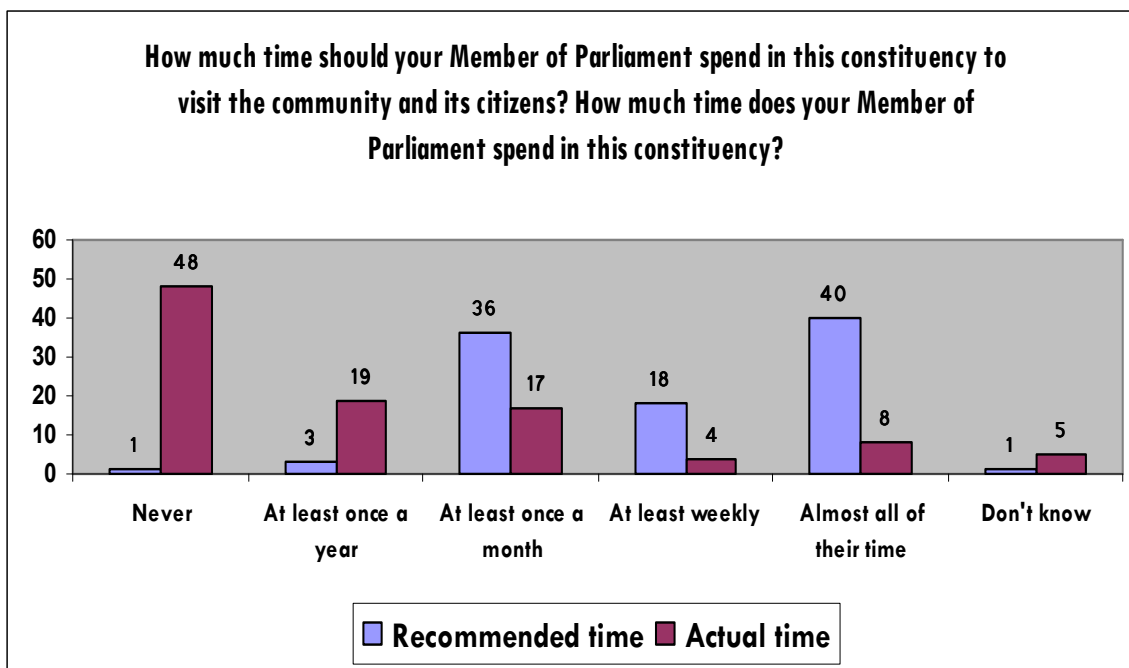
<sup>[32]</sup> See Malawi Law Commission Report on the Review of the 1994 Constitution

### **3.3.2 Section 64 of the Malawi 1994 Constitution**

Representative democracy calls for accountability both horizontally and vertically. Section 12(iii) of the 1994 Malawi Constitution stipulates that “the authority to exercise power of 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”. Although this clause is clear, MP’s accountability to the voters in Malawi is weak, and they do not feel compelled to be accountable because most parties are formed and financed by an individual and they lack mass ownership. These elements contribute to dictatorial tendencies in parties which have their roots in the cultural legacy. Section 64 on recall mechanism which was intended to hold representatives responsible and accountable to the voters was removed from the Constitution in the National Assembly in 1995. Legislators argued that the inclusion of this Clause in the Constitution would be subject to abuse by unscrupulous politicians who would take advantage of the people’s illiteracy levels, poor conditions and patronage to acquire the necessary number of signatures (about 100) from the constituency of a sitting MP, to have him or her removed from the National Assembly. Patel (2008:24) concurs with this when she states that using the politics of patronage and personality prevalent in Malawi, ‘big men’ of politics would use the recall mechanism as a tool to change the legislature’s composition in their favour.

The findings of the study revealed that the removal of this Clause from the 1994 Constitution has contributed to lack of vertical accountability of MPs to their constituencies. Conversely, MPs argue that their lack of visibility is attributed to the fact that the people in the constituencies do not fully understand what their role is. Because of this ignorance, MPs are inundated with incessant requests to provide coffins to bury the dead, to provide school fees for the children in the constituencies, to provide transport to ferry the sick to the hospital, and many others, which they feel is outside of their mandate. These requests take place each time an MP visits his or her constituency. MPs feel that voters demand these favours because of their vote. Because of this lack of communication and understanding between the voter and the MP, some MPs decide not to visit their constituencies as often as they ought to. The Afrobarometer Survey of 2008 illustrates this point below:

**Table 9: MP's and Time Spent at Constituency**



Source: Adopted from the AFROBAROMETER Survey No. 4 of 2008

The 2008 Afrobarometer results revealed that 48 percent of respondents interviewed indicated that their MPs never visited their constituencies as they ought to. Only 19 percent of the sample that was interviewed indicated that their MPs visited their constituencies at least once in a year. The same survey revealed that 53 percent of the population felt that the most important responsibility of an MP is to listen to and to represent constituents' needs.

However, lack of accountability goes beyond the repealing of Section 64, and might have its roots in the office of the presidency in Malawi. While MPs may be vertically accountable to the public, the executive, which is headed by a president who commands power over both the executive and legislature is usually not accountable to anyone, not even the constitution which is amended very easily for political expediency as was witnessed when Section 65 was amended in 2001 by the Muluzi government to trap MPs fleeing from the UDF over the unpopular third and open term bid by the president. This could also be a legacy from the one party system where authorities made decisions unilaterally without consulting members. It could also be as a result of the Malawi culture where elders or those in authority are not accountable to their subordinates. Lack of accountability by those in authority is therefore not new in the country. It



has its roots in culture as well as from the thirty years of one-party autocratic rule of Dr Hastings Banda.

Section 65 (on floor crossing) of the Malawi 1994 Constitution demands an MP's accountability to the party, while Section 64 (recall mechanism) demands an MP's accountability to the electorate. With the removal of the recall provision, MPs do not feel obligated to be accountable to their constituencies at all, because there is no legal enforcement to hold them responsible. Matlosa (in Patel: 2008) argues that "the principle of accountability of MPs is undermined by hegemonic tendencies of party leaders who inculcate a culture of party discipline to the extent that elected members virtually become party operatives at the expense of their watchdog role and their mandate from their constituencies". MPs feel more obligated to tow party lines instead of the people who voted them into power. With the removal of the recall mechanism, voters do not have the opportunity to hold their elected members accountable, and usually have no say when their MPs cross the floor.

The movement of MPs and the lack of discipline as they move between different political parties without any remorse also indicate lack of accountability to their electorate. For instance, the electorate is not given an opportunity to review or assess their representative on their mandate or performances against their campaign promises, because the MPs keep changing party colours. Further, there are no mechanisms, currently to hold MPs accountable to their campaign promises in-between elections. The only mechanism that was meant to hold MPs accountable to the public or their constituencies, which was Section 64, the recall provision, was removed from the Constitution by Parliamentarians in 1995.

### **3.3.3 Lack of Separation of Powers**

The government of Malawi comprises three branches, namely the Judiciary, Legislature and the Executive. These branches are supposed to complement each other. However, the executive arm of the government in Malawi wields too much power to the detriment of the two other arms, the Judiciary and Legislature (Matlosa, 2006:49). This is evinced by the frequent amendment to the Constitution. The latest example is when the executive voted with the opposition in the National Assembly for the position of Leader of Opposition. Their influence managed to oust

the Leader of Opposition, Hon John Tembo, and replace him with a young and moderate MP, Hon Abel Kayembe. Fortunately, this move was reversed in a court of law.<sup>16</sup>

When President Mutharika took over office for the first time in 2004, he headed a minority government having won with only 35.89 percent votes. The UDF on whose ticket he won his presidency had only 49 seats out of a total of 193 parliamentary seats. When he left the UDF to form his own Democratic Progressive Party in 2005, he did not have his own MPs apart from those who followed him. According to Chilenga (2008: 49), the government requested the courts to run its affairs. The judiciary (court system) frequently came to the aid of government. Further, the State President heads the Executive and all Cabinet Ministers. The civil servants, therefore, are under the Executive, and the running of government departments is the responsibility of the president. Further, most Cabinet Ministers are chosen from Parliament. It therefore becomes difficult for the executive not to influence the activities of the legislature.

Because of this excessive and concentration of power in the presidency, government tries to steer things in its direction. An example of this situation is when the State President, Dr Bingu wa Mutharika in 2005 sought the Malawi Supreme Court intervention to over rule the High Court's ruling over Section 65, on floor crossing. The President argued that Section 65 was inconsistent with other sections in the Constitution. Although the Supreme Court did reinstate the High Court's ruling, the State President issued a statement, which in essence was condemning the judgement (Chilenga: 2008). He even went to the extent of obtaining an injunction to restrain the Speaker of Parliament from acting on Section 65, until a ruling was made on his referral.

Further, after the Supreme Court had pronounced judgment on the matter, forty three government MPs from the ruling party who were led by Hon. Yunus Mussa, sought and obtained an injunction restraining the Speaker from acting on the petitions, and an order of stay on the issuing of petitions and requiring answers to be made on petitions. With the order being granted on 28<sup>th</sup> June, 2007, the Speaker could not exercise his powers under section 65 of the

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<sup>16</sup> See Civil Case No. 565 of 2009: the State vs the Speaker of the National Assembly where Hon John Tembo challenged the government for voting him out of the position of Leader of Opposition in the National Assembly. The government, taking advantage of its majority in the National Assembly voted with the opposition for the position of Leader of Opposition and Hon Abel Kayembe became Leader of Opposition instead. This position was overturned by the High Court and Hon John Tembo retained his position as Leader of the Opposition

Constitution (Chilenga, 2008: 53 – 54). This goes to demonstrate that the party that is in power can sometimes influence the work of the judiciary. This is done because political power is concentrated in them, and in particular, in the presidency. It therefore, becomes difficult sometimes to see where the demarcation between the judiciary, executive and legislature lies. After enduring thirty years of executive dominance under the one-party rule of Dr. Hastings Banda, Malawians expected some kind of emancipation in the new political dispensation of multiparty system of government. Unfortunately, the opposite is true, the executive have continued to dominate the legislature and have assigned parliament a secondary role. According to Patel (2008:22 – 23), the government has continued to control parliament in the following manner:

(a) Parliament being denied necessary resources to operate, thereby transferring control to the executive;

(b) Parliament sessions being held only when the executive needs parliament approval, as witnessed during the 2007-2008 budget session;

© Parliamentary Committees being held only when government releases funds.

These are only released when Committees are expected to focus and cooperate on an executive-driven agenda.

However, this scenario is not unique to Malawi. In most African democracies, the presidency is the most important elected office in the land, a situation that contributes to lack of separation of powers when the executive seem to control every arm of government. This practice makes it difficult for opposition MPs not to be lured to where the political position offers greater rewards than their current position.

### **3.3.4 The Electoral System**

At independence in 1964, Malawi inherited the First-Past-the Post (FPTP) electoral system from the British colonialists. Until the advent of genuine pluralism this electoral system was widely accepted. Malawi now has had four general elections, in 1994, 1999, 2004 and 2009.

According to Justice Anastasia Msosa, Chairperson of the Electoral Commission in Malawi, (2006: viii), various stakeholders have commented that the system does not deliver satisfactory and fair representative electoral results. Various studies that have been undertaken by the Konrad Adenauer Stiftung (KAS), have confirmed that despite the fact the FPTP model promotes stability and accountability of representatives to their constituencies, it does not address certain political elements such as de-escalating conflict or redressing regionalism and promoting inclusive and consensual politics necessary for consolidation of democracy (KAS 2006: xix).

According to the KAS report (2006), the FPTP system in most times creates poor representation in the National Assembly in that the winner takes all does not take into account the aggregated votes of the minority who might have voted differently. An example in time is when President Mutharika won the first presidential election in 2004 with only a very small percentage of about thirty-six. These results meant that a total of 64 percent of the population's votes were wasted. The country was therefore run on a minority vote, which can affect the government's legitimacy and the credibility of its policies. Further, because of this scenario, parties that come to power in minority cases have no alternative but to begin the process of luring opposition members in order to strengthen their political power. This is what happened during President Bingu wa Mutharika's first tenure of office in 2004. Apart from those MPs who followed him from the UDF, his party (DPP) had no MP who had come into the party through the ballot box. It was therefore necessary for him to institute a mechanism for attracting the opposition MPs to join him. The Malawi electoral system allows one to stand as an independent candidate for either presidential elections or as an MP. This situation would become tricky if a president won with a minority vote. The solution usually lies in enticing members from the opposition, or the opposition being drawn to the ruling party because of the obvious perks such as ministerial positions or other plush positions.

### **3.4 Others**

Under this theme the following will be analyzed:

#### **3.4.1 Weak Legal Enforcement**

The findings of the study established that having a Constitution to guide the population as well as to police legislators' behaviour was one thing, ensuring that the statute is adhered to, or is enforced by the lawmakers is another. This was one of the problems which parliament encountered with defaulting MPs in that there was no political will on the part of the government to allow the law to take its course on all defecting MPs. If the law enforcers had pursued the matter and acted upon it, most of the defectors would have lost their seats in the National Assembly. This, however, did not take place and the situation did not change until the 2009 general election. This illustrates how powerful the party in government can become. Despite the Speaker of the National Assembly's efforts to invoke Section 65 and to declare seats vacant of all those MPs who crossed the floor, this was not possible because of legal maneuvering by the ruling party through court injunctions.

Further, the Speaker of the National Assembly was not able to declare seats vacant of those who had crossed the floor because of Parliamentary procedures which have to be adhered to and followed before any expulsion can take place. According to these procedures, a supposed defector is expected to appear before an appointed committee to defend himself or herself once a petition has been submitted to the Speaker of the National Assembly. However, most MPs who cross the floor are aware of these procedures, but choose to deliberately ignore or undermine them in order to safeguard their parliamentary seats. Until this process is properly followed and achieved, the petition cannot be acted upon by the Speaker of the National Assembly. This is a weakness in the system that has made it possible for MPs crossing the floor to do so unhindered because they know they will be shielded by the executive who have power to frustrate the efforts of the opposition, and that their seats cannot be declared vacant, especially when they cross over to the government benches.

### **3.4.2 Patronage and Politics of the Stomach**

The study established that the overall attraction for most people in joining politics, and in particular, in crossing the floor, was the constant search for ways of surviving and enhancing their personal lives. Politics, therefore becomes a means to an end, and crossing the floor, especially to the government side is the fulfillment of that ultimate goal. The motivation for defecting, therefore, is intrinsically linked to personal gains, the payoffs being larger than the personal or career costs of betraying the electorate (Lembani: 2006). Crossing the floor with the prospect of becoming a Minister is very attractive to an MP because Cabinet Ministers earn an average monthly salary of MK880, 000 (equivalent to US\$6,000) per month, while a Member of Parliament (MP) earns an average monthly salary of around MK365, 000 (equivalent to US\$ 2,400). In comparison with the earnings of professionals in the middle income range, salaries paid to politicians are much higher, especially when they become Cabinet ministers.

Further, over and above the salaries, a Cabinet Minister is also entitled to a chauffeur-driven executive vehicle, monthly fuel allowance, provision of a house in a low density area with utility allowances and security guards services. In addition, each time they attend Parliament, they are entitled to a sitting allowance. Although MPs are also entitled to some benefits, albeit smaller than the Cabinet Ministers, regardless whether or not they belong to the ruling party, those from the government side have better access to government resources than their colleagues. Besides, in terms of visibility and enhancement of their political career, an MP from the ruling party has higher leverage over his opponent, and for him or her, the chances of becoming a cabinet minister are also higher than his opponent. They also stand a better chance of being elevated to prominent position in society and to be voted back into power because of their higher visibility.

In the current government, MPs who belong to the government are more favoured than their counterparts. For example, all Parliamentary Committees in the National Assembly are now chaired by government MPs. This is an anomaly and not conducive to good governance. However, government will not listen to any criticism to change this state of affairs and allow for a more balanced situation where opposition MPs too, are allowed to chair some Parliamentary Committees. This makes government MPs more powerful than those in the opposition. Further, because of their numerical strength in the National Assembly, government MPs are assured that

their proposals and views will be passed in the National Assembly with much ease. Because of these opportunities and advantages, those in opposition find it attractive to join the government benches so that they too can avail themselves of these privileges. This situation may also be more attractive to MPs who belong to smaller political parties because most of them know that because of the size of their parties, they many never have an opportunity of ever forming a government. The temptation to join the ruling party when an opportunity knocks is therefore very high.

However, it would be simplistic to conclude that floor crossing is merely caused by poverty, or lack of knowledge or information by members of the opposition. This is not always the case, as Lwanda (2004: 56) argues, Hon Khwauli Msiska, the AFORD MP who introduced the Third Term Bill in Parliament in 2001 is a highly educated man who was at one time, a Deputy Minister for Economic Planning and Development, and yet he was persuaded to table a very controversial third term bill. Besides, even the sixty or so opposition MPs who defected to the newly established Democratic Progressive Party (DPP) in 2005 could not be described as poor. They were already serving MPs and some of them were Cabinet Ministers who were on the government payroll, and yet they were able to be persuaded to move. This, therefore, goes to illustrate that people with power and who have access to state resources are capable of enticing anyone, including those who are knowledgeable and seemingly, well off. Further, this also demonstrates that money may not be the only motive for MPs to cross the floor in the National Assembly. Besides monetary or personal gain, there are other underlying factors behind an MP's behaviour in choosing to cross the floor despite the constitutional and legal prohibitions. This could be recognition and being able to utilize his or her position to gain political support and power so that he or she can distribute the gains to the clientelistic networks that have been created to serve the intended purpose.

Unequivocally, there are many other factors contributing to politicians' movement in the National Assembly, but examples cited above confirm that indeed the system of patronage is a salient feature of Malawi's politics. The governments in power will do anything to strengthen their political power or bases, whether by forming alliances or enticing individual MPs with monetary rewards or government positions. Likewise, MPs in power will tend to utilize and tout

their positions for personal gain. For the clients, the rewards from their patrons are seen as a quick means to resolving their financial problems or enhancing their profile in the political arena. However, this relationship is based on reciprocity. Although patrons seem to have an upper hand, in reality they too are held to ransom and have to continue supplying or meeting the needs of their clients in order for the relationships to thrive.

Another factor related to monetary and personal rewards for MPs is the issue of accessibility to state resources. Sometimes MPs cross the floor so that they can have direct access to scarce resources which only government is able to dispense. This element is discussed below.

### **3.4.3 Accessibility to Public Resources**

The study established that MPs crossed the floor because of the need to have access to state resources. These are necessary for redistribution to clients if an MP has to continue promoting his or her political career and if he or she is to maintain their clients, accordingly. This is more important now in the absence of local councilors who have not been on the ground since 2005. Malawi has not held Local Government Elections since 20<sup>th</sup> November, 2000. In the absence of local councilors, MPs play a very important role in constituencies. According to Lars (2004),<sup>[33]</sup> in societies where civil society and private economy is weak, state institutions control the distribution of key resources. Publicly elected offices provide access to significant business opportunities and are, therefore, attractive to ambitious politicians. In Malawi, as in many other African political systems, access to public office accords one an opportunity not only to decide and implement policies, but also provides political career opportunities and financial means to reward individual supporters as well as their constituencies collectively.

The findings of the study revealed that MPs cross the floor and sit on Government benches so that they can avail themselves to resources that are made much more accessible to them when they operate within the confines or realms of government than those who are in opposition. In an effort to enhance an MP's visibility in his or her constituency, the Mutharika government introduced a Constituency Development Fund (CDF) which is allocated to each MP to be used

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<sup>[33]</sup> Svåsand L, 2004: CMI Working Paper Fissions and Fusions, Foes and Friends: Party-system



for development in their constituencies. While this fund may enhance the relationship between parliament and local assemblies, especially in the absence of local councilors, this gesture raises other fundamental questions of whether or not government is not using this scheme as a carrot to lure more opposition MPs to its benches (Patel, 2008:35). Patel maintains that MPs cross the floor in the National Assembly because they are enticed by the desire to bring developmental projects to their constituencies. In Malawi, development in constituencies entails the construction of school blocks, bridges and the drilling of boreholes, among other projects. MPs who belong to the ruling party seem to be more privileged at accessing developmental resources, on top of the CDF from the government, than their counterparts because they have inside information during their party caucuses about expected programmes and how these will be funded. During the last General Election in 2009, government MPs had access to campaign materials such as cloth, T-shirts, caps and other attractive materials, which the opposition did not have access to. These were distributed to the voters in their constituencies. It is not known where these campaign materials came from but it was speculated that they might have come from government resources.

Further, in 2009 when candidates' nomination fees were pegged at MK100, 000 per candidate, most aspiring candidates withdrew from the race because they could not afford to pay these exorbitant nomination fees. However, the ruling party which was already in government then, managed to field candidates in all the one hundred and ninety three constituencies and paid the nomination fee of MK100,000 for each of their candidates. Nobody knows where the resources came from. Above all, government candidates also had access to a lot of campaign materials which others could not afford, including more fertilizer coupons. They also enjoyed full coverage of their activities on the state radio and television stations, a privilege the opposition did not have. Because of this preferential treatment, government candidates were more visible and had better leverage than their opponents.

Regarding development projects at local assemblies, in the absence of local councilors, District Commissioners continually consult an MP of the area. However, even at that level, there is potential for government interference because in 2009 government amended the Local Government Act which gives the executive more power. For instance, the appointment of the

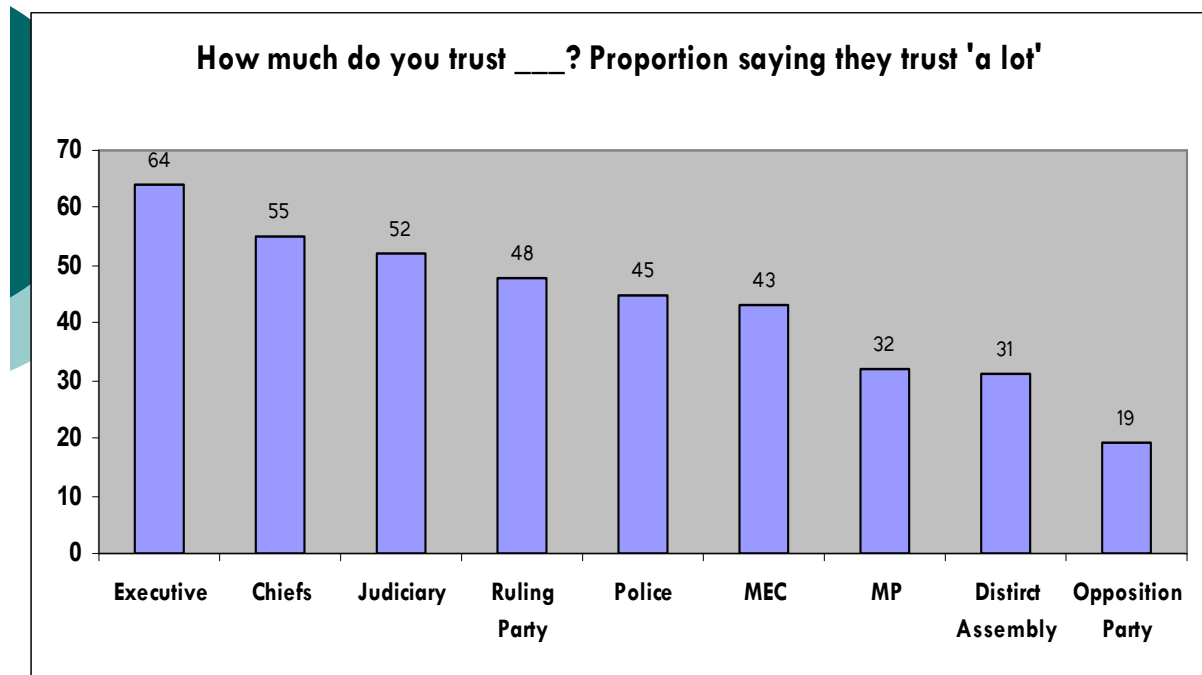
District Commissioner who is the Chief Executive of the Local Assembly is now done by the Minister of Local Government. MPs are also allowed to vote in the Local Assembly, now known as District Councils. Considering how powerful and influential the party in government can be, it will be very difficult for District Commissioners not to appear to support the executive at the expense of the opposition MP. It also means that the position of District Commissioners has deliberately been politicized, making it difficult for them to be neutral in their decision making process regarding development at the local level. This too grants more leverage to a government MP than it does to the opposition. There are also other obvious advantages to being seen to be supporting government efforts because District Commissioners have been known to be transferred unceremoniously out of their duty stations to far off stations if they appear not to tow the party line, or are seen to be out of step with government's ambitions. If the government has managed to put the traditional leaders in its pocket by offering them patronage, what will stop them from doing the same with District Commissioners.

#### **3.4.4 The Weakening of Opposition Parties**

Opposition political parties play a very critical role in a democracy. They are supposed to carry out checks and balances on the ruling party as they hold them accountable to the excesses as they formulate policies. However, opposition parties are usually undermined by those in power. The study established that when government identifies a strong MP or member from the opposition, it entices them with material rewards or a plush position to encourage them to join the party in government. This is done in order to either silence or weaken the opposition. In Malawi the opposition's image was tarnished during the 2007 and 2008 Budget Session when they insisted on discussing Section 65 of the Constitution instead of the national budget. The opposition's insistence on discussing Section 65 made them very unpopular in the public's eyes, while the government received sympathy. The opposition seemed to be out of tune with the wishes of the people who saw their behaviour in the National Assembly as a hindrance to the economic development of the country. The opposition, therefore, suffered high levels of mistrust, reflecting the internalization of propaganda by the government. The opposition may have suffered from what Gyimah-Boadi (2007:26) describes as "the cynical desire on the public to go with the winner and patronage dispenser:"

The unpopularity of the opposition in Malawi is supported by the findings of the Afrobarometer survey which was conducted in October, 2008. This survey established that only 19 percent of the general public trusted the opposition, compared to 64 percent for the executive. This information is illustrated in a diagram below which has been adapted from the Malawi Afrobarometer Survey of 2008.

**Table 10: Public Opinion towards MPs**



Source: Adapted from AFROBAROMETER Survey No. 4 of 2008

The opposition is further undermined by government when their financial base is deliberately weakened by policies not favourable to small parties, especially in the area of funding. The party in government usually has more direct access to public resources than their counterpart since they are in power and the line between party and government functions is usually blurred. Because of that privilege the party in government is more attractive to people than their counterparts, making them more visible to the public than their counterparts. Since it is normal to want to align oneself to the winner, being in opposition is not very attractive, hence the tendency for opposition members to want to move to the ruling party. This is often done after

opposition MPs have weighed costs and benefits of staying or moving, resulting in an action that provides the best outcome for them.

### **3.5 Conclusion**

This chapter set out to analyze and interpret political factors that contributed to floor crossing in the Malawi National Assembly between 2003 and 2009. The study established that there were several factors which contributed significantly to floor crossing during the period under study. The government in power was able to lure opposition MPs to its benches in an attempt to bolster its strength in the National Assembly. Although Malawi transitioned from a one-party to a multiparty system of government and embraced democracy in 1994, the political party system is still weak and poorly institutionalized. There are various factors contributing to this slow growth in the institutionalization process. These range from the very nature of Malawi's political parties which can only be described as centralistic, with power being concentrated in the presidency; lack of democracy within political parties which leads to factions, splits and an increase in independent candidates. Lack of party funding also plays a detrimental role in the institutionalization of political parties as well as poor leadership styles. All these factors have an impact on political parties and especially on the strengthening of the political system in Malawi.

Institutional factors which constantly interacted with constitutional issues also compounded the floor crossing situation further. There are gaps in the Constitution, especially pertaining to independent MPs who seem at liberty at crossing the floor. This situation has also been compounded by a lack of will on the part of the government to enforce the law in the National Assembly over MPs crossing the floor in the National Assembly. Blurred demarcation lines between the three arms of government, namely the Executive, Judiciary and Legislature have also contributed to the floor crossing equation by virtue of the fact that the Executive arm of government seems to influence the legislature and in some instances tries to influence the decisions made by the judiciary because of the excessive power and authority vested in the Office of the presidency. However, it would sound deterministic to suggest that the judiciary is always controlled by the executive. There have been cases when the Judiciary have been able to operate and make a ruling independent of the Executive as was the case described under 3.1.2 (c) above.

The study also established that patronage plays a significant role in floor crossing. Although individual MPs strive to enhance their personal and political lives, the other underlying factor is the need to acquire resources which can be redistributed to their clients in the form of patronage. Patronage strengthens their political career as it increases their visibility on the political landscape and improves their chances of being re-elected into the National Assembly when necessary. When one considers factors that influence floor crossing in Malawi, he or she also has to be aware of the dynamics and elements that are constantly interacting, which at times play a catalytic and yet important role in influencing the behaviour of those involved in floor crossing. Unless these factors are acknowledged, understood and mitigated properly, they will continue to plague the political system of Malawi leading to a slower pace in the consolidation of democracy in the country.

## **CHAPTER FOUR**

### **4. RESEARCH FINDINGS AND PRELIMINARY ANALYSIS**

#### **4.1 Introduction**

This section will present overall perceptions and views from respondents on what motivates politicians to cross the floor. This will be followed by a preliminary analysis of the responses in order to identify common thematic clusters for discussion. Direct quotes from respondents who were interviewed have also been included in order to emphasize the element of validity and reliability. Based on the data that was collected, the following categories and patterns emerged which were organized and classified as follows:

- Respondents' Overall Views on Floor Crossing;
- Respondents' Views on the Relevance of Section 65 in the Malawi Constitution;
- Respondents' Views on Section 64 – the Recall Mechanism.
- Conclusion

#### **4.2 Respondents' Overall views on Floor Crossing**

When respondents were asked what their overall views were regarding floor crossing, some supported it, while others did not. The following section will present these varied responses according to their categories, starting with MPs who crossed the floor, followed by those who did not.

##### **4.2.1 Responses from Sampled MPs who crossed the Floor**

Eight MPs who crossed the floor were interviewed to establish whether or not they supported floor crossing, and why they themselves crossed the floor. Although some of the interview sessions with this sampled group took place after the 2009 General Elections, and five out of the eight in the group actually lost their parliamentary seats, all of them supported the act of floor crossing. The five that lost their seats added that they would do it again if given another opportunity. The following excerpts from this group explain why they supported this act, and would do it again if they were, given another chance:

In Parliament, politicians need to be aligned to a party, you cannot be alone. If you are alone you miss out on the Business Committee which is a caucus where parties are briefed on the agenda of the day. I was independent then joined AFORD but was dissatisfied with party leadership and moved out to become independent again and in February, 2005, I moved with the newly formed DPP as an independent, then became Minister of Sports (Interview with Hon. Vuwa Kaunda on 25<sup>th</sup> June, 2009).

This was an independent MP who explained the importance of belonging to a political party, hence the necessity to move to a party in the National Assembly. This situation also highlighted the fluidity of independents who are calculative as they wait for an opportune time to move to a different political party or align themselves to a party which they gauge could yield best results for them. In Malawi the mass exodus of MPs who moved to the DPP in 2005, declared themselves independent first, before moving on to the party they wanted. This was done because Section 65 of the Malawi Constitution is silent on independent MPs crossing the floor. This statement also highlighted problems with party leadership.

Another defector who supported floor crossing explained that advancing one's political career was more important to him than loyalty to his old party, hence the need to align himself with an appropriate party. This is highlighted in the following statement:

If you want a political career, you have to move away from the party that does not have a good reputation. I like policies being pursued by Dr Bingu wa Mutharika which are similar to Dr Hastings Kamuzu Banda, such as financial discipline and leadership style. I cherished Kamuzu's leadership style and I can see that in Bingu (Interview with Hon. N Dausi, Deputy Minister in the President's Office, on 26<sup>th</sup> June, 2009).

According to Hon Dausi after the death of Dr Hastings Kamuzu Banda, the leadership that took over from him did not measure up to his standards. After weighing all the advantages and disadvantages of belonging to the Malawi Congress Party, and the need to advance in his political career, he decided to join the ruling Democratic Progressive Party (DPP). In his case, both political career and following, what he termed as good leadership, prompted him to move away from his party.

Another MP who also supported floor crossing stated that an MP is voted into the National Assembly as an individual, not as a member of a party. Because of this, he or she should have the

freedom to move to any party he or she so wishes since the electoral system allows one to stand as an independent candidate during an election. An individual does not need to belong to a party or the backing of the party in order for him or her to stand for either parliamentary or presidential elections. This was captured in the following statement:

Unlike Mozambique or South Africa, in Malawi people are not tied to their parties. People vote for an individual not a party. In the National Assembly you have the government and the opposition. Because of this system, people vote for the individual and not the party (Interview with former MP, Hon. F Nyirongo on 26<sup>th</sup> June, 2009).

The same MP maintained that lack of democracy in the party can force an individual to abandon his or her party. This was expressed in the following statement:

Personality problems within the party, especially with financiers of the party, leadership style and gossip can force one to leave the party (Interview with former MP, Hon. F Nyirongo on 26<sup>th</sup> June, 2009).

The study revealed that lack of intra-party democracy as well as mechanisms for resolving conflicts within political parties can contribute immensely to floor crossing. The intra-party problems can also be exacerbated by the fact that most political parties are financed by an individual who eventually behaves like he owns it at the expense of group or other founding members. Because of this problem, there is favouritism by prominent leaders in the party during primary elections, and the development of 'inner circles' which favour a particular person over another. This situation leads to elitism where the leaders or prominent persons exclude others and create a divide between them and the rest of the group. These can become breeding grounds for independent candidates as well as the creation of numerous political parties caused by frustrations within the parties. Unfortunately, the lifespan of these small political parties is short because they lack means of sustainability, and in certain instances, they do not even grow.

In supporting floor crossing, one former prominent Cabinet Minister and MP who moved from the UDF to DPP in 2005 and later formed his own party, indicated that he changed party colours because he saw brighter prospects with the DPP than with UDF, and that this was done after weighing the costs and benefits of the two parties, and deciding which party had better prospects for him. He also indicated that he joined the government benches after being appointed a



Cabinet Minister. In other words, people's movement in the National Assembly can be attributed to the fact that they have been appointed to the position of Cabinet Ministers in the government by the State President, a position most people would not turn down. Because of that they usually do not have a choice and often resign from their party to join the ruling party. This is captured in the following statement.

I joined the DPP after being appointed Minister of Agriculture by the President. When one is in the opposition and the president appoints you as minister, you have no choice but to move because your own party becomes suspicious of you and does not trust you anymore because this is a personal appointment; the party leadership is not usually consulted. You cannot therefore, attend the party caucuses. Because of that, you are left with no choice but to join government (interview with a Hon. Uladi Mussa on 27<sup>th</sup> August, 2010).

According to this respondent, a member is not considered to have crossed the floor when he or she is appointed to a ministerial position because one is not joining a party, but asked to serve the nation. However, the party where he or she is coming from does not trust them anymore, especially when the President did not consult the leadership of the party, which he rarely does unless he wants to sign a Memorandum of Understanding with the party. In the end the opposition MP who has been appointed a minister, joins the government side in order to belong or to feel that he belongs to the party that can accept him after being rejected by his or her former party for accepting the ministerial position.

An interview with a former lady Minister who also defected confirmed that good leadership was the reason she defected from the UDF to DPP in 2005. The following was stated:

Between the two leaders, Dr Bakili Muluzi and Dr Bingu wa Mutharika, I thought Mutharika was a better leader and that was why I decided to move to DPP (interview with former Minister, Hon. Callista Chapola-Chimombo (now first lady), June 4<sup>th</sup>, 2009).<sup>17</sup>

Another MP who also crossed the floor in the last government indicated that his constituency, which includes traditional and religious leaders, asked him to change his political allegiance in

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<sup>17</sup> Hon Callista Chapola-Chimombo is now first lady married to the State President, Bingu wa Mutharika. Researcher was former college mate

order to benefit from more subsidized fertilizer coupons from the government. Although this is a government programme and there should have been equity in the distribution of this programme to all rural farmers, it seems government MPs had more access to fertilizer coupons for distribution, than their opposition counterparts. Government MPs also seemed to have more detailed information about what is in the pipeline regarding government development programmes than opposition MPs. Because of this advantage, they are able to influence where development projects should be located, and how much resources are available. Those in government have leverage over those that are not. The following was stated to emphasize this point: ‘I moved to the DPP so that I could bring some development to my constituency (Interview with former MP, Hon. F. Mzembe on 2<sup>nd</sup> July, 2009).

These sentiments were echoed by a former lady MP, for Mzimba, Hon. G. Mkandawire, who indicated in an interview in April 2009 that she left her party, the Peoples Transformation Party and moved to DPP after the traditional leaders in her constituency asked her to do so in order for them to benefit from the distribution of fertilizer coupons. She claimed that the farmers in her village had observed that MPs belonging to the ruling party distributed more fertilizer coupons than those who were not. It was, therefore, important for her to move to government so that her supporters could benefit from more fertilizer coupons. Another reason she cited for leaving her party to join government was lack of good leadership which she experienced in her party. She claimed that the president of her party never visited her constituency despite her bringing benefits which put the party on the map. She therefore felt isolated and lonely hence the need to move on.

Although government development projects are supposed to be distributed equally in the country, often this is not the case because MPs belonging to government seem to take advantage of their positions to ensure that their areas or constituencies are favoured over others. This is because those in government usually have prior information about developments or projects that are in the pipeline, as a result they are able to influence the location of these projects for the sake of their publicity and visibility which gives them an edge over their opposition counterparts. For example, they influence where a borehole should be dug, or where a school should be built. They also have more access to resources such as subsidized coupons than their counterparts which are distributed to their supporters to cement their relationship in order to be voted back

into the National Assembly during general elections. This was highlighted by one respondent as follows:

For the leaders, it is what or how they can get resources from government in terms of developmental projects. Politicians join the government side because of the need for development projects in their constituencies. They need to have inside information so that they are able to influence where these developments take place and in the end get re-elected, to bring more developments to their areas (interview with Hon. Vuwa Kaunda, on 25<sup>th</sup> June, 2009).

However, one respondent expressed concern over the illusion that traditional and religious leaders have about joining the government because the anticipated resources may not always be available. He expressed his concern in the following statement:

Traditional and religious leaders are attracted by development, and they ask their MPs to move. This is very common. MPs are influenced by the electorate, 'kupindulako' (to gain from development). However, promises are not always fulfilled. Some people are abandoned without their promises being realized. Civic education is not extensive, the electorate does not understand political dynamics, and they get carried away with government developments. They ask their representatives to cross without an understanding of the repercussions (Interview with former MP, Hon. P. Nkhwazi, and 2nd July, 2009).

This scenario explains that not all who cross the floor in search of better fortunes or the desire to be at the centre of power realize those dreams. Some who crossed the floor have been bitterly disappointed because they have been left out in the cold after the cake has been distributed to the few faithful. As an illustration, four former cabinet ministers who moved to the DPP in 2005 and won the 2009 elections have not been re-appointed as cabinet ministers in the new government. They sit as back benchers. There is need, therefore, for traditional and religious leaders to be enlightened accordingly.

In summary then, all the eight MPs who defected to the ruling party during the period under study, overwhelming, supported floor crossing, despite some of them losing their parliamentary seats in the 2009 general elections. Usually, there is a reason why people do certain things differently or behave in a certain manner amidst protest from others. According to these MPs, there were several reasons that contributed to their movement in the National Assembly. Some

of them were: intra-party problems; poor leadership styles; personal benefits; career movements and advancement in politics; and accepting some advice from their constituencies, and traditional leaders. For others, the appointment to a ministerial post in the government necessitated their move because their own parties rejected them as soon as they accepted those positions because they did not have the blessing of their party leadership. To be able to distribute the goods to their clients was also one of the reasons which should not be dismissed outright.

#### **4.2.2 Responses from Sampled MPs who did not Cross the Floor**

In order to effectively compare these results, the study interviewed six MPs who did not cross the floor during the period under study in order to establish why they did not do so given the fact that they all faced the same political context. From the outset it must be mentioned that these were all from the one party, the Malawi Congress Party (MCP). They were selected because of their proximity and availability, as well as the fact they were still in the National Assembly throughout the period when floor crossing was rampant. In order to allow for divergent views, the study extended its interview to a further nine political leaders from different political parties other than the MCP, who at one time or another were in the National Assembly and had lost their seats. Others were MPs who did not cross the floor, but who came from a different party other than the MCP. This was necessary so that the outcome of the findings could be balanced out. It was also envisaged that the responses from these other nine politicians would add value to the findings of this study.

The six MCP MPs who did not cross the floor indicated that, although they were also approached by government to cross over to their side in the National Assembly. However, they declined the offer because they were loyal, committed and believed in their political party. They admitted that three of their colleagues, namely, the late Hon. Kate Kainja, Hon. Bintony Kuntsaira and Hon. Ted Kalebe who succumbed to pressure and moved onto the ruling party were awarded with ministerial positions as soon as they changed party colours. They further revealed that although the temptation was great, they were mindful of the fact that the party had used its resources extensively to support their election campaigns, and that they owed their success in winning a parliamentary seat to the party and its machinery which worked tirelessly for them. Their statement was summarized by one of them as follows:

Politicians should not change parties because when campaigning they use political structures, resources, both human and party. MCP has forty people at branch level working with a candidate. It is morally wrong to walk away from the party just because of money (Interview with MCP Spokesperson, Hon. Mrs. Nancy Tembo on 2nd July, 2009).

In another interview that took place with the Director of Research and a Trustee of the same party in Lilongwe on 8<sup>th</sup> August, 2009, revealed that they were very happy with their party leadership, and wondered whether poor leadership which was cited for leaving the party by others, was a genuine reason. According to them, there was no difference in leadership styles in most of Malawi's political parties because they all learned their politics at the feet of Dr Hastings Kamuzu Banda. These erstwhile leaders were now heading the main political parties. They maintained that almost all political parties were grappling with the same socio-economic issues such as food security, health, sanitation and education.

Further, these non-defectors stated that they could not cross the floor because they felt the incumbent president (Dr. Bingu wa Mutharika) had no track record and was a novice in the political arena. His political leadership skills had not been tested or proven elsewhere, although he had been Secretary General of Common Market of Eastern and Southern Africa (COMESA). They were, therefore, not sure whether he would even survive the impeachment threats that were being instigated against him for abandoning the party (the UDF) that sponsored his presidency in 2004, and forming his own party – the DPP. Above all, they indicated very strongly that it was morally wrong for them to betray the trust of the party that had sponsored them into power, as well as the people who had put their trust in them and voted for them during elections. Because of the foregoing, they felt that no monetary incentive or promises of a lucrative political career could make them shift from their political alignment and join the ruling DPP.

As already alluded to above, these respondents all came from one political party, the Malawi Congress Party (MCP). These politicians have always been in the same party since independence, and they were not about to change their alignment. Secondly, the MCP has its stronghold in the central region of Malawi, and its support is embedded in the cultural values and norms of the people. As a result it is very difficult politically to penetrate the central region of

Malawi. So far, it is the only region in Malawi where the party and the people seem to be enmeshed together. MCP politicians who cross the floor risk losing their parliamentary seats as was the case with the two cabinet ministers mentioned above, Hon. Bintony Kuntsaira and Hon. Ted Kalebe. Hon. Kate Kainja died of natural causes in 2008. There is a joke that when a political candidate contests in the central region under the label of a different party other than MCP, even a mere object contesting under an MCP label will win against the candidate because the people of the central region are sold out to the party because their loyalty is very strong and enduring.

Although parties are regionally based, politicians have been able to make some in-roads in the northern region as well as the south. This has not been the case with the central region. Evidence over the years has shown that the northern region seems easier to penetrate for politicians and political parties than the south. This is evidenced by the 2004 and 2009 election results which show AFORD, which is supposed to be a northern-region based party perform very poorly, reducing its number of MPs from thirty-three in previous elections in 1999, to six in 2004 and finally to only one in 2009. MCP's strength in the central region could also be attributed to the party's four cornerstones, namely: Unity, Loyalty, Obedience, and Discipline, the principles and foundation on which the party was founded.

For an individual to penetrate this region, he or she has to know, understand and appreciate the cultural norms and beliefs that are embedded, entrenched and interwoven into the political culture of the region. The only time when this culture seemed slightly shaken was during the last general elections in May, 2009, when the incumbent president, Dr Bingu wa Mutharika of DPP narrowly defeated John Tembo of MCP, the biggest contender in a presidential contest, by a mere 3 percent of the total national votes when he polled 20 percent against 17 percent for John Tembo accordingly.<sup>[20]</sup> In the north, the president polled 14.6 percent of the national votes against 0.5 percent for John Tembo. In the south, the president amassed 30 percent of the national votes while John Tembo polled only 2 percent (Tenthani: 2009).<sup>[21]</sup> Although John Tembo lost in the central region, figures show that MCP still remains strong, and the President

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<sup>[20]</sup> See Appendix III for regional presidential results - 2009

<sup>[21]</sup> Tenthani K, 2009: Statistics compiled from the 2009 General Elections Electoral Commission results

did not win the region easily. This suggests that there are still some regional loyalties in Malawian politics which one has to take into account in order to understand the politics of the country.

These results are illustrated in the following table.

**Table 11: 2009 Elections Presidential votes**

<b>Candidate</b>	<b>No of Votes – North</b>	<b>No of Votes – Centre</b>	<b>No of Votes – South</b>
Bingu wa Mutharika DPP	650,791	<b>931,254</b>	1,359,714
John Tembo MCP	20,829	<b>770,758</b>	569,662

**Compiled by researcher using Electoral Commission 2009 results**

The results above illustrate the point that the MCP is still very strong in the central region of Malawi. John Tembo polled very poorly in both the north and the south, but he held out quite gracefully in the centre.

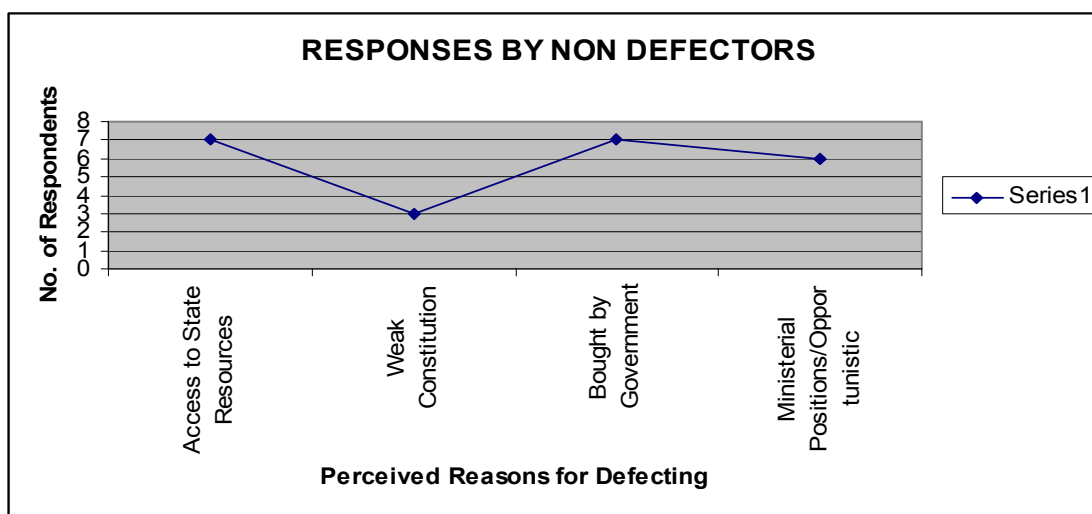
In summary, those who did not cross the floor and were mainly from one political party, the MCP indicated that they were loyal to the party and that was why they did not cross the floor. They also indicated that they were happy with their leadership. However, as has already been indicated above, this party traditionally, has strong roots in the central region of the country. It is important for one to know these values in order to appreciate the cultural dynamics and understand why members of this party seem to stand solidly behind their party and leadership. When floor crossing was at its peak in Malawi in 2005, the MCP lost only three MPs against twenty six from the UDF and twenty four independents.<sup>[22]</sup> This proves that there must be some special ingredients in the MCP, which other parties might not have, or do not have in large quantities which help MCP members to bond despite political changes taking place around the country. These could be their significant cultural values and norms which impact heavily on the region.

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<sup>[22]</sup> Source: H Makande, Deputy Secretary, United Democratic Front (UDF)

Further, in order to better understand the phenomenon, the study asked the MPs who did not cross the floor to explain, in their understanding, why their counterparts decided to cross the floor. Almost all of them responded that their colleagues and counterparts defected in anticipation of financial rewards and ministerial positions from government. These sentiments are illustrated in the following diagram.

**DIAGRAM 3: Responses by non Defectors**



**Non- Defectors - Perceived Motive for Defection**

The following statement expresses these perceptions as follows:

These were bought by government and some were promised ministerial positions and were awarded. They were also after brand new vehicles which they received as Cabinet Ministers (interview with two senior MCP politicians on 8<sup>th</sup> August, 2009).

The politicians were convinced that the government had bought their counterparts, because according to them, they too were approached and the issues mentioned above were promised to them as well if they agreed to the government’s proposition to cross the floor. Although these indicated that they were loyal to the party, one also has to understand that they were safeguarding their future political careers and positions within the party which has its roots embedded in the cultural norms and values embraced in the central part of Malawi.



Another respondent who did not cross the floor indicated that his colleagues defected by taking advantage of the flaws and gaps regarding independent candidates in the Malawi Constitution. For as long as these gaps persisted, politicians would use them to their advantage. This was articulated in the following statement:

Opposition MPs took advantage of the gaps in the constitution regarding independent candidates, so they decided to cross because they knew they would not be held accountable. Section 65 is not clear on independents. It needs to be strengthened. Politicians should not exploit that gap by joining other parties because according to the Constitution, a member can vote with the government without losing his/her membership. It is therefore not necessary for them to use that as a reason for joining another party. (Interview with former MP for MCP, who asked for anonymity on 26<sup>th</sup> March, 2009).

A female MP also indicated that access to resources and the power of the presidency were some of the reasons some MPs crossed the floor. She explained that because of the power which is invested in the presidency, even if the seats of defectors were declared vacant and a by-election was called, they would still win. This was expressed in the following statement:

The presidency is too strong in Malawi; legislature is subservient to the executive. A presidency should enhance democracy – we have never been like this in the past. For example, all who moved from MCP to UDF (before the DPP government) never lost in their by-elections but only during General Elections because government never loses by-elections due to availability of resources during campaigns because they have an upper hand. Government has resources for its MPs. For example, in the 2009 elections, DPP MPs were given MK500, 000 (equiv. of US\$3,000) each for campaign, materials such as bicycles, T-shirts, caps, cloths. People want positions, such as ministerial positions. People are opportunists and government MPs are favoured when it comes to providing infrastructural developments such as in digging boreholes. The electorates blame their MPs when they do not have a good hospital or roads in their constituencies. There is need to educate the electorate that it is not MPs who build hospitals, but government (Interview with MCP Spokesperson, former MP Hon. Mrs. Nancy Tembo on 2<sup>nd</sup> July, 2009).

In summary, MPs who did not cross the floor in the National Assembly in the last government suggested that their counterparts defected because they were bought by the government by being offered ministerial positions as was the case with the three members already mentioned above. They also felt that their colleagues joined the government so that they could have direct access to state resources for personal gains. Further, the gaps in the constitution regarding independent candidates contributed considerably to floor crossing because MPs who wanted to cross the floor

would first declare themselves independent, then announce their defection later. There was need therefore, to seal this loophole in the Constitution.

#### **4.2.3 Responses from other categories on Floor Crossing**

In this section, responses from the following categories of respondents will be outlined and briefly analyzed. These are: politicians from different political parties who were not members of parliament at the time the study was being carried out. However, some had been MPs at one point or another, but had lost their seats during previous elections. Others were senior party members and party presidents. The other categories include a representative from the donor community, international and local civil society organization, and others from key government departments as well as ordinary people.

##### **4.2.3.1 Views from Politicians from Different Political Parties**

This category of respondents consisted of nine politicians who included party presidents, secretary generals, publicity secretaries and senior members from different political parties who were not MPs during the period under study (2003 – 2009). Similar to the views expressed by MCP members, these politicians did not support floor crossing. The following statements highlight their sentiments:

Floor crossing is bad practice which should not be condoned. People vote for a person from a particular party or an independent position. They expect them to remain such and when they cross the floor they betray the people, who put them in those positions (Interview with the Deputy Secretary of UDF, Mr. Makande on 13 May, 2010).

This politician also indicated that MPs crossed the floor because of lack of understanding, greed, ignorance and selfishness. These sentiments were echoed by others as well who indicated that lack of understanding of the principles of multiparty democracy and a lack of appreciation of the ideology of the political party contributed to this behaviour. While others felt that floor crossing was caused by poverty. Some described MPs who crossed the floor as opportunists. This was asserted as follows:

My views on MPs crossing the floor in the Malawi National Assembly are that such MPs are unprincipled, political opportunists and that they joined politics with the view to personally benefit at the expense of those who voted for them. Floor crossings have been

worse in the current parliament than was the case in the Muluzi era (Interview with a Secretary General of Malawi Forum for Unity, Mr. L. Ganiza on 28<sup>th</sup> April, 2010).

According to this respondent, floor crossing in the National Assembly weakens political parties, especially the opposition, and records have shown that floor crossings are mainly from the opposition to the ruling party. No one seems to cross over to the opposition. According to him, this proves the point that they are after personal rewards and that the President entices people away from their parties in order to weaken the opposition and to consolidate his power. The politicians also stated that defectors were after receiving rewards from the President in the form of lucrative cabinet positions in the government. Further, they alleged that defectors joined politics in order to gain something from it since they were not grounded in party ideology, and they did not know what their parties stood for.

However, one politician indicated that floor crossing should be acceptable because as the Malawi electoral system stands, an independent can stand for presidency. Because of this situation, presidents should be allowed to lure independent MPs to his party. This was highlighted in the following statement:

Currently presidents do not have to belong to a party to be elected in that capacity. The question is: Where would he or she get his MPs from when he is in government if he is not allowed to poach? (Interview with a former MP Hon. F. Nyirongo on 26<sup>th</sup> June 2009)

This statement could be countered by the following from an MP who defected to the ruling party in 2005 but lost his seat in 2009. His sentiments were raised as follows:

Floor crossing should be extended to presidents as well. They should not form another party once elected. Presently, presidents are setting a precedent, a thing they should not be allowed to do (Interview with a defector and former MP, Hon. P. Nkhwazi on 2<sup>nd</sup> July, 2009).

This statement presupposes that if Section 65 is to be taken seriously, and for it to be effective, it was important that those who had political authority should lead by example. The practice should therefore start with State Presidents. The problem is that in Malawi at the moment the electoral system is the First-Past-the-Post where Presidents or MPs do not necessarily have to belong to a party in order for them to stand as candidates to be voted into power. The ‘winner takes all’ system can also usher into power a President or an MP with minority votes. However, it has been

observed that once these individuals are elected to positions of power, they become very powerful and act as they wish.

From the discussion above, one observes that views on floor crossing are varied. Those whose colleagues were lured to the ruling party were against the practice because, according to them, it weakened their political parties. For others, they felt that the current electoral system contributes to the problem because Presidents as well as members of parliament can be elected as individuals. As a result when they need to form a government, or when they are in a minority in the National Assembly, they tend to entice opposition members with financial rewards in order to strengthen their positions. This study also established that the presidency in Malawi is a very powerful position.

#### **4.2.3.2 Views from a Representative of a Donor community**

This category of respondents deserved its own space because the respondent came from one of the most important donors in the country who provides budget support to the government of Malawi. Their influence in the country is also significant as they come from a country that once colonized Malawi. British ties with Malawi are therefore still very strong.

The study asked the views of one representative regarding floor crossing and what she thought was the reason behind the act. The following is her statement:

Floor crossing is a natural thing, what should stop MPs from doing it. MPs should not be judged on morality but incentives, and it is not about individuals but one has to look beyond the act. Further, MPs who cross the floor should not be blamed because there are no mechanisms in place to hold them accountable in-between elections (Interview with a representative from a donor community, Ms C Duncan on 5th May, 2009).

This respondent also added that there are a lot of factors contributing to floor crossing. These include poverty and power seeking, lack of monitoring systems for MPs in-between elections, lack of clarity from the Constitution regarding floor crossing, the electoral system and lack of mechanisms to hold MPs accountable to their constituencies. As donors, they try to assist the country by working with the National Assembly in programmes that are aimed at developing the capacity of staff and interfacing with other institutions, such as Civil Society Organizations, in

order to help MPs to become more accountable to their constituencies. She added that in order not to appear to be meddling in the internal affairs of political parties, donors try and link political parties in Malawi with UK-based organizations such as the Westminster Foundation of Democracy to help promote cross party activities and to provide ongoing engagement network.

In summary, this respondent gave a different perspective to floor crossing in urging the public not to rush to condemn the act, but rather to look at the whole picture and begin to understand the circumstances that lead these MPs to cross the floor. She also urged politicians to examine and understand that there are weak institutions or mechanisms that are not conducive to holding MPs accountable to the electorate. If these institutions were strengthened, perhaps floor crossing would not be necessary or conversely, floor crossing would not draw as much attention as it currently does.

#### **4.2.3.3 Views from Local and International Non Governmental Organizations**

When representatives from these organizations were asked about their views regarding floor crossing, almost all indicated that they were not in support of the exercise. According to one of them, the biggest question one needs to ask is why these MPs cross the floor, and according to him, materialism, benefits, money and positions are the main reasons these people cross the floor. He illustrated this point by highlighting the fact that these movements are usually one directional, from “brown to green pastures”. He summarized this by stating that:

Nobody has left government to join opposition. When they have, they have tended to form their own parties, such as National Democratic Alliance (NDA) or Congress of Democrats (CODE). What they also do is to form alliances with other parties but not joining the opposition (Interview with a representative of the Danish Church Aid, Dr. G. Chigona, on 8<sup>th</sup> May, 2009).

This point emphasizes the idea that MPs cross the floor to join government benches in search of greener pastures because the government holds the string to the purse, and if one is to benefit or to have access to this purse, he or she has to be in close proximity to the government. This respondent also added that people cross the floor in search of development programmes in their constituencies. According to him, people always attribute development initiations to the government in power, even if these may have been initiated by the opposition. This means that

if an MP wants to become visible in his constituency, and if he or she is to continue enjoying prominence as a politician and gain the respect of his voters, he or she has to show results by bringing development projects to his constituency, or risk losing future elections. Because of this, most will cross the floor in order to benefit from the distribution of developmental projects.

This respondent also indicated that MPs in Malawi do not leave their political parties because of differences in ideologies or different leadership style. This, he highlighted in the following statement:

People do not leave their parties due to different ideologies and political values because there are none. In Malawi if one looks at leadership styles of main political party leaders, there is no difference. They all exhibit the same leadership styles (continuation of the interview that took place on 8<sup>th</sup> May with the Danish Church Aid representative).

According to him this is a legacy of the one-party system where all these leaders came from. Because of this, there is lack of intra-party democracy and decisions in these parties are taken by two or three people. However, people do not cross the floor because they are likely to find a different type of leadership or ideology. Only Alliance for Democracy (AFORD) could be considered to have started democratically, and no party could claim that they were democratic. The respondent also argued that there was a cultural link to the leadership syndrome in that culturally, leaders in Malawi do not retire, and are only replaced when they die. Some of the intra-party problems regarding leadership came about because there were no succession plans within most political parties. The founder of the party was the owner as well as the financier; as a result all decisions hover around him and the select few. Dictatorial tendencies become the norm as well as hero worship. This problem therefore manifests itself during primary elections when some candidates within the parties are favoured over the others leading to rifts, factions and splits and contributing considerably to an increase in independents.

The observation about ideologies is supported by Kadima (2006:115) when he states that in Malawi, there are no distinct ideological differences between and among political parties because none of them espouse and advocate clear policy agenda which can offer ideologically different

solutions to the poverty and other social ills in society. He maintains that parties in Malawi are better identified along tribal and elite groupings rather than along ideological lines.

However, according to another respondent in the same category, government is supposed to bring developments to all parts of the country regardless of whether or not these people voted for them. MPs are therefore using development as an excuse for selfishness (Interview with a representative from the Human Rights Consultative Council, Mr. Bamusi, on 11<sup>th</sup> May, 2009). This respondent also indicated that floor crossing was caused by the fluid condition on the independent candidates who moved as and when they wanted without consulting their constituents. Further, Mr. Bamusi emphasized that for the sake of political parties, MPs should not cross the floor.

The findings from this category of respondents also revealed that not all supported floor crossing, while others did, under certain circumstances. For instance, one respondent felt that sometimes floor crossing could be used as a catalyst to remove an underperforming MP. Without Section 64 which deals with the recall provision which was repealed in 1995 in place, the effects of floor crossing would therefore ensure that a by-election would take place, and in the process, the incompetent MP would be replaced. This was summarized as follows:

Floor crossing allows room for by-elections (Interview with a representative from the Netherlands Institute for Multiparty Democracy (NIMD), name withheld, on 12<sup>th</sup> May, 2009).

This respondent described reasons for floor crossing as three fold: These are (i) general, (ii) substantive and (iii) opportunistic. Under general, he indicated that most MPs crossed the floor in order to meet personal needs. Under substantive, the respondent indicated that problems within political parties, and lack of mechanism for resolving conflicts as well as parties not providing room for opposition to be heard, and parties not moving in unison brought frustrations to individuals who then decided to move. Under opportunistic, the respondent indicated that MPs crossed the floor because their parties sometimes did not offer enough for them, and did not have anything of substance to offer to both their members and voters. Under these conditions, it was therefore very easy for an MP to decide to cross the floor to a party which he or she considered to be meeting his or her needs.

In summary, under this category almost all of the respondents did not support floor crossing. Only one respondent justified the act by highlighting certain situations and circumstances that could compel MPs to seek the option of crossing the floor. They all agreed that the main reason for floor crossing was to have access to state resources, lucrative appointments and monetary benefits. However, before judging these MPs, it was necessary to also look at other factors such as lack of mechanisms for resolving conflicts, party ownership and political parties not offering or delivering on their mandate, as contributing towards floor crossing in the National Assembly.

#### **4.2.3.4 Views from Sampled representatives of some Local Institutions**

This category of respondents includes representatives from key institutions such as the National Assembly and legal firms. When they were asked about their views on floor crossing, they sounded non committal and focused on the reason for crossing the floor. This could have been because some of them were employees of the National Assembly and were not at liberty to talk about political issues openly. As already indicated, Malawi still has a culture of silence on political issues, and so this could have contributed to the situation. Further, at the time of the interview, the National Assembly was rocked by unresolved issues regarding floor crossing. Because of this problem, the timing of the interview might not have been appropriate for employees of the National Assembly to comment constructively on a delicate issue such as floor crossing. As for the lawyers, most of their explanations were done in legal terms. However, the following statement illustrates their views why MPs cross the floor in the National Assembly:

MPs cross the floor in order to seek favour from government. They also want visibility for themselves and their constituencies, more funding for projects and for the president to visit their constituencies. Some cross the floor because they are frustrated with their parties especially the way primaries are conducted (Interview with a representative from the National Assembly in April 2009).

Another respondent indicated clearly that MPs crossed the floor due to personal reasons which he was not ready to divulge. He further explained that, it was very difficult for an outsider to know for sure whether someone has crossed the floor or not because of the procedures that have to be followed in the National Assembly. He explained that firstly, the Speaker of the National Assembly was supposed to receive petitions which are confidential, from the offended political



parties stating that one of their members had crossed the floor. Secondly, the defecting MP is supposed to be given an opportunity to defend himself or herself before a Committee. It is only after this procedure has successfully been followed that the Speaker of the National Assembly is able to make a ruling. Most MPs who defected knew about this procedure and decided to abscond from the hearing. Without them being heard, the law cannot take its course.

In a telephone interview with a representative of a Law firm in March 2009, the representative indicated that MPs crossed the floor because of the flaws in the republican Constitution. According to him the court battles regarding floor crossing and the different interpretations of the clause (Section 65) did not guide legislators accordingly. Further, there was lack of enforcement of the law regarding floor crossing. Because of this weakness, MPs continued to cross the floor without fear of any reprisals. When others realized how weak the law enforcement was, they also took advantage of it. This, according to him denigrated the act, and that was why more and more MPs crossed the floor in the National Assembly.

While the respondents in this category agreed that personal needs forced MPs to cross the floor, there were other problems that compounded the situation. These were mainly the procedures in the National Assembly as well as the flaws and gaps in the republican Constitution which contributed considerably to the floor crossing exercise. Furthermore, lack of enforcement of the law also played a significant role in encouraging MPs to cross the floor.

#### **4.2.3.5 Views on the Influence from Traditional and Religious Leaders**

Traditional and Religious leaders play a pivotal role in Malawian politics, and this is cultural. People normally look up to their traditional leaders in the villages for guidance and for the scarce land to settle on. This category of respondents was created after some respondents indicated that they crossed the floor upon the advice of their traditional and religious leaders.

From the outset, it must be mentioned that Malawi's re-democratization journey started with a Pastoral letter from Malawi's Catholic Bishops in 1992. Since then the church has continued to play a very decisive role in Malawi's politics because, first and foremost, Malawians are very religious people and the church is held in high esteem. When there is a stalemate in parliament,

politicians call upon the clergy to mediate, as was the case during the 2007 - 2008 and 2009 budget sessions. In the northern region, the Livingstonia Synod of the Church of Central African Presbyterian continues to steer political parties in the direction it wants its politicians to go. During the formation of the Alliance for Democracy (AFORD) party, the Livingstonia Synod was instrumental in rallying the people behind the party in the 1990's. The church has continued to exert political pressure on the congregations throughout the country. For an MP to survive in his or her political career, he or she needs to listen to the church and traditional leaders accordingly.

Development is therefore so important in these constituencies that church leaders continuously engage their MPs to align themselves to where resources can be made available in order for them to improve their constituencies. This, therefore, pushes MPs to cross the floor as evidenced by responses from some respondents that they crossed the floor because of pressures from their traditional and religious leaders who wanted to benefit from government resources. This was supported in the following statements:

Politicians are guided by religious and traditional leaders and have to tow the traditional leaders' line because they act on behalf of the electorate and are the electorate. Politicians have to listen to their leaders who have the joystick guiding them when, where and what to do politically. For them it is the how and what they can get from government in terms of development projects (Interview with Hon. Vuwa Kaunda on 25<sup>th</sup> June, 2009).

I joined the DPP (the current ruling party) by instruction/advice and compelled by the pressure from the chiefs and religious leaders who felt that Bingu (incumbent president) was a lesser evil than his competitors. In the north especially, chiefs and religious leaders exert a lot of pressure on MPs. There is a lot of pressure from these traditional and religious leaders so that they can benefit from government. Civic education is not extensive, they do not understand political dynamics, they get carried away with government developments and they ask their representatives to cross without an understanding of the repercussions (Interview with former MP, Hon. F. Mzembe, and 2nd July, 2009).

The findings revealed that pressure or influence from traditional and religious leaders forced MPs to change parties, especially moving from the opposition to the government benches. Respondents indicated that these leaders push them to join government benches so that government can bring development projects to their constituencies. From the study, the religious

leaders in the north were more influential than the others in the country, while pressure from traditional leaders' on the MPs who were sampled was the same countrywide.

Regarding the role of the traditional leaders, before any development project is embarked upon in any constituency, politicians need them to mobilize the public through traditional and religious leaders because they are always with the people and they know them by name since they live within the community. They are also greatly revered by the people. Chieftainship is hereditary and is passed from one generation to another. They have authority over the distribution of land, and can, therefore, be very influential in political issues as well.

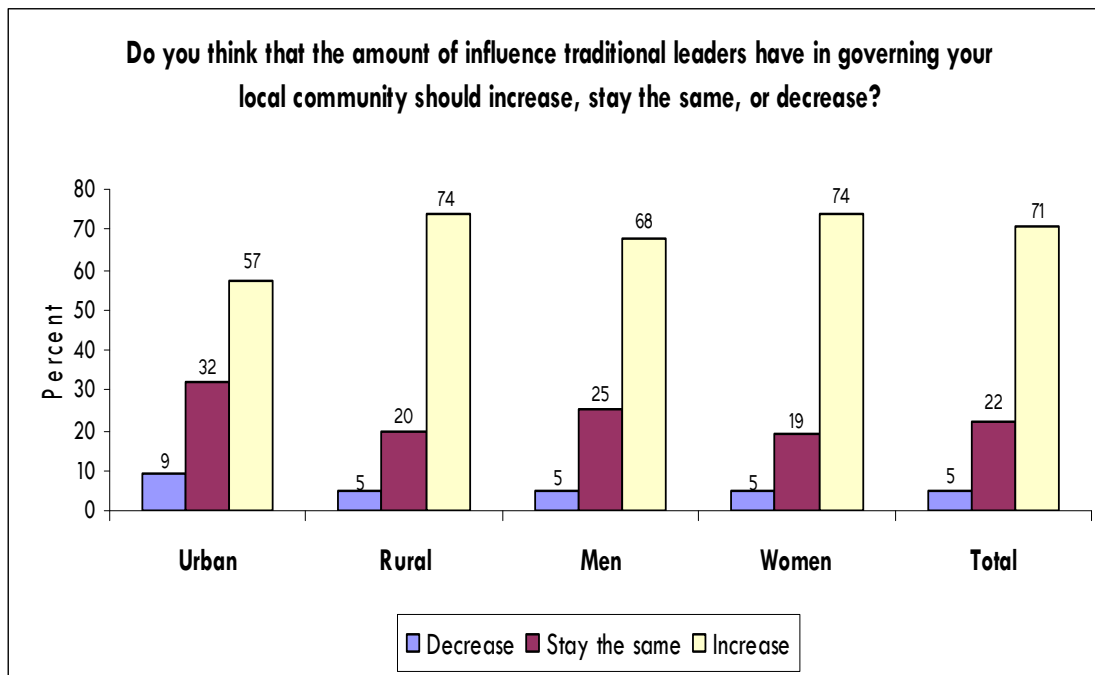
For this category of respondents, it was not necessary to ask them whether they supported floor crossing or not because they were behind MP's movements in the National Assembly. They supported this move for the sole reason of bringing development (chitukuko) to their local areas. However, it must also be mentioned that most of these leaders have no choice but to support the government because of what the government is doing for them. For instance, all traditional leaders are now paid a salary from the government. For one Senior Traditional Authority, Chief Nankumba whom I interviewed, the government has built a modern huge house for him in the village, and has an imposing office structure as well as a special government advisor assigned to him who is paid a government salary. During national ceremonies, these leaders are recognized highly and sit in prominent places. Because of this, it is very hard for traditional chiefs not to influence politicians to move to the government benches. As the saying goes, 'you do not bite the hand that feeds you'. For the leaders, the government knows their importance and the influence that they can exert on the political arena.

The government has also given large monetary donations towards infrastructural work of some very influential churches, like the Roman Catholic Church and the Church of Central African Presbyterian. The president has also been in the forefront of buying vehicles for some of these churches. It is therefore very easy for the church to influence people to vote for the MP whom they think will bring development to the church and the area where the church is located, and also to influence an MP to move to government benches in order to have access to these resources.

When people talk about MPs not consulting their constituencies when moving to the ruling party in the National Assembly, they had better look at the dynamics at play and the relationship between the electorate and the church, the relationship between the church and the government, the relationship between the church and the elected MP, and finally the relationship between the electorate and an MP. When people talk about consulting the electorate, one needs to ask which electorate an MP should consult, the church or the voter? In Malawi, the church and the traditional leaders function as intermediaries between the people, a large number of whom are semi illiterate and poor. The church and traditional leaders are very important because they act as a bridge between an outsider and the people within the village. They also are capable of exerting tremendous pressure on the local people because they own land and are the custodians of traditional values and customs which are supposed to be respected. Logan (2008) was very accurate when she stated that: “regardless of whether one adopts a ‘modernist’ or a ‘traditionalist’ stance, however, it is difficult to deny that traditional leaders have demonstrated remarkable resilience. Their continuing importance in the social and political life of their communities, whether perceived as a positive or a negative, is virtually indisputable.”

An Afrobarometer study that was carried out in Malawi in October of 2008 confirms how highly esteemed, traditional leaders are in Malawi. This is illustrated in the following diagram below:

**Diagram 4: The Influence of Traditional Leaders**



Source: Afrobarometer Survey, October 2008.

From the Afrobarometer Survey of October, 2008, 71 percent felt that traditional leaders' influence should increase. With this kind of support, it is not surprising, therefore, that traditional leaders are capable of exerting so much pressure on Members of Parliament. Another study also carried out by the Afrobarometer revealed that 81 percent of the Malawian population felt that traditional leaders should be paid a salary by government for the service that they render to the people. These results confirm the notion that traditional leaders are very important in the lives of most ordinary Malawians.

MPs are aware of the vital role played by traditional leaders on the informal sector. They also know that without their support, they risk losing votes during elections. It is therefore of utmost importance to consult them on political issues, and to be able to take their advice if politicians are to advance in their political career. It is also the norm in Malawi that before an MP attempts to address a political rally in a village, the traditional leader or chief, in this case, has to be consulted. Without the traditional leader's consent or permission, the politician risks being

removed from the grounds where the function is about to take place, or the people being told to shun the function altogether.

In supporting this argument Brinkerhoff (December, 2002: 1), wrote:

...that all nations have both formal and informal governance systems. While the formal systems embody constitutions, administrative regulations and laws, civil service procedures and judicial structure, the informal systems are based on implicit and unwritten understandings. These reflect socio-cultural norms and routines and underlying patterns of interactions among socioeconomic classes and ethnic groups.

These sentiments are echoed by Erdmann (2007: 50), who adds that:

Ignoring informal politics does not only result in a descriptive impoverishment, but reduces analytical depth as well and thus gives an inadequate understanding of how political parties in Africa actually operate.

The analysis of traditional leaders would be incomplete without including the role that religious leaders play in the lives of both the politicians and ordinary Malawians. Firstly, Malawi is a religious country, with 79.9 percent of its population being Christian, 12 percent Muslim, 3 percent other religions and 4.3 percent having none. These leaders have continued to play a very instrumental role on the Malawi's political landscape. Their influence and voice is both respected and adhered to. In the run up to the 2004 General Elections, religious leaders from prominent churches in Malawi such as the Anglican church, Roman Catholic and Presbyterian churches coordinated the formation of opposition parties called Mgwirizano (Unity) coalition which was aimed at removing the then ruling UDF party from power.

Although the scheme did not entirely succeed, religious leaders were able to mobilize these different opposition parties together towards a common goal, to remove the ruling party from power. The church was also very instrumental in organizing protests and demonstrations with civil society organizations and political parties in 2001 against former President, Bakili Muluzi's bid for third term. It must be mentioned that Muslims did not support the Christians' bid against Muluzi's third term, because Bakili Muluzi is also a Muslim. Religious leaders were also called upon for arbitration during a stand-off in the National Assembly over Section 65 and the national budget. During this period the clergy who teamed up with civil society organizations succeeded

in brokering an understanding between government and opposition and the budget was passed, although in the following year, 2009, they were not as successful because government rejected their offer. Notwithstanding this situation, the influence of religion in Malawi is just as paramount, and the mere fact that the clergy is called upon for arbitration during political stand-offs confirms that their opinion is highly valued and respected.

When religious leaders call upon an MP and advise him to move to another party, it is difficult for MPs not to do so. Most times these requests are made upon MPs because, just like traditional leaders, these religious leaders want to benefit from the resources from government. These may be channeled through development projects, or in certain instances direct benefits, such as a church receiving a vehicle from the president, or a hefty donation towards the construction of a church building. All these favours come when the church seems to be in the good books with the ruling party. However, where there is political dissent in the country, the church in Malawi is usually in the forefront of condemning the government. If MPs want to win an election, they have to start by convincing their traditional and religious leaders.

#### **4.2.4 Respondents' Views on the Relevance of Section 65 in the Malawi Constitution**

Below are the views from respondents on the relevance of section 65 in the Malawi Constitution: In an attempt to establish a link between the reason for crossing the floor and the relevance of Section 65 in the Malawi Constitution, the study interviewed respondents with varied responses. There were those who felt that it was absolutely essential for this provision to be retained in the constitution, while others felt that it was absolutely unnecessary because it impinged on members' freedom of expression, and was contradicting some sections of the Malawi Constitution. The following excerpts from the various respondents illustrate their views:

#### **4.2.5 Respondents' Views on the Inclusion of Section 65 in the 1994 Constitution**

Respondents that supported the inclusion of Section 65 in the Constitution stated that it was relevant and valid, and therefore it should be maintained in the Malawi Constitution because Section 65 is not only one of the main bases of multiparty politics in Malawi, it also protects democracy and, invariably, contributes to the strengthening of the political system. Respondents also maintained that as a matter of principle, all politicians who are voted into parliament either

as independents or on a party ticket should strive to remain in that position for the duration of parliament's five-year period. Their sentiments were quoted in the following verbatim statements:

Floor crossing should be retained because it sustains democracy. If it is removed, presidents with money will buy opposition which would weaken and/or spell the end of opposition and, a return to the old regime of one party-system. Democracy was introduced so that we can see its fruits, and if we take away Section 65 it means reverting to dark ages. However, section 65 should be extended to presidents as well. They should not form another party once elected. At the current situation, presidents are setting precedents which they should not be allowed to do (Interview with former MP of Republican Party on 2<sup>nd</sup> July, 2009).

This respondent felt that barring of MPs from crossing the floor in the National Assembly should extend to presidents too. He was referring to the Bingu wa Mutharika scenario when he left the UDF, the party that sponsored him into power to form his own party. This was the beginning of a mass exodus of MPs from different political parties who joined the president in his new party (DPP). This was the government that never contested seats in the 2004 elections and had six MPs only by December 2005. In order for it to survive, it needed to lure or entice MPs from other political parties. A former cabinet minister, Hon Uladi Mussa, whom I interviewed on 27<sup>th</sup> July, 2010 revealed that he was actually in the Committee that was covertly set up by the ruling party machinery between 2005 and 2008, primarily, to lure MPs from other parties to join the government benches. Covert research was done on several MPs in order to assess their needs before offering them financial and material enticements.

Another respondent echoed these sentiments but with an elaboration. He said the following:

Section 65 is valid, and is the basis of multiparty politics in Malawi. However, the Executive have a lot of power, especially the President who is very powerful. The original framing of section 65 was all right but the amended smaller part which was done in 2001 which was meant to capture MPs outside of the National Assembly should be removed because it contradicts section 32 which is about freedom of association. This amendment is not for the people. Section 65 is also not clear on independents; it needs to be strengthened because politicians use it to join other parties. Section 65 needs further study or research to see how it can be improved so that it does not contradict other sections of the constitution (Interview with former MP and Publicity Secretary of the Malawi Congress Party, Hon. Mrs. N. Tembo on 2<sup>nd</sup> July, 2009).



While this respondent acknowledged the importance of retaining section 65 in order to deter MPs from crossing the floor, she was concerned with the 2001 amendment to the clause which she felt infringed on an individual's freedom of association as enshrined in Section 32 of the constitution. She suggested that Section 65 be reviewed accordingly to ensure that it did not contradict certain parts of the constitution. The original clause and the Amendment to Section 65 have already been discussed in chapter 1.

The respondents felt that amendment to Section 65 infringed on members' freedom of association as enshrined in Section 32 of the Constitution which stipulates that "every person shall have the right to freedom of association, which shall include the freedom to form associations".

Another respondent replied that Section 65 should be retained. However, it should be modified and be more specific and clearer than what it is now on independents. The following was stated:

Retain Section 65, however, explore Uganda's constitution which has no negotiation, including independents even when the party is dissolved, you seek re-election. Uganda's constitution is a bit too rigid and too strict, the UK is a bit liberal (Interview with former Independent MP on 2<sup>nd</sup> July 2009).

Another respondent, however, felt that Section 65 should be retained because it granted flexibility to members, especially independents. This was cited in the following sentence:

Section 65 at the current framing is subject to various interpretations. It enables people to move from party to independent, from independent to party. It is flexible and enhances the freedoms of expression, conscience, unlike Uganda and Zambia whose constitutions on floor crossing are rigid (Interview with Hon. Vuwa Kaunda on 25<sup>th</sup> June, 2009).

#### **4.2.6 Views from those who think Section 65 of the 1994 Constitution is invalid**

Not all respondents, however, agreed to the retention of Section 65. One of the reasons was that the provision was vague and was subject to various interpretations by different people. Some respondents also felt that the silence on independent candidates, made it difficult to follow, and was subject to exploitation by certain groups. An example of exploitation occurred when opposition United Democratic Front (UDF) and the Malawi Congress Party (MCP) used Section

65 as a bargaining chip in 2007 and 2008 financial years when they refused to pass the national budget in the National Assembly in favour of discussing Section 65. One respondent described the actions of opposition MPs as abuse of numerical numbers in the National Assembly (Interview with former MP on 2<sup>nd</sup> July 2009).

This statement suggests that decisions taken by a majority in the Malawi National Assembly may not necessarily represent the views of the people. The National Assembly can sometimes be used or (abused) to further the interests of individuals or party elites whose views and motives might be quite contrary to the will of the people who put them in parliament in the first place.

These sentiments were also echoed by one respondent who indicated that Section 65 was at times used as a bargaining chip for the opposition who were a majority then in the National Assembly. The following statements reinforce these views:

Section 65 is a tool for promoting selfish ambition by political parties. They used the budget to try and bring down the government, and putting national interest secondary (Interview with a leading Human Rights Activist on 28<sup>th</sup> April, 2009)

Between 2007 and 2008 when government was held to ransom for luring opposition MPs, the opposition used Section 65 and the national budget as a weapon to bring down the government. The opposition refused to discuss the budget, preferring instead to discuss Section 65 on floor crossing, and demanding that the Speaker of the National should declare vacant the seats of all those supposed to have defected to the government benches. It took the efforts of the church and some civil society organizations to persuade the opposition to approve the budget for the sake of the ordinary Malawians and to discuss the matter of Section 65 later.

Another respondent was very clear about Section 65. His response was quoted as follows:

I hate Section 65 because it infringes on the rights of an MP. It reduces an MP's movements and plants fear in their minds in that way, make them ineffectual. For example, there may be issues in the National Assembly that members both from government or opposition may wish to contribute to, effectively, but they are afraid of section 65. This is detrimental to the development of the young democracy in Malawi (Interview with former Cabinet Minister and former founding member of the DPP on 27<sup>th</sup> July, 2010).

This respondent moved from the UDF party and was very instrumental in setting up the DPP government in 2005. However, due to internal party problems, he was forced out of the DPP and started his own party. He indicated that Section 65 was not conducive to democracy in the National Assembly because it made MPs inefficient in that they were afraid to raise opposing views against their parties even when it was necessary to do so due to fear of being suspended from the party. He cited the issue of two government MPs from the northern part of Malawi who spoke against the government's policy on the selection of students to the University of Malawi using regional quota system which is not based on merit, but on equal selection of students from each of the three regions of Malawi. This policy means that some students who qualify for a place in the University of Malawi from a specific region which has more meritorious students may be left behind in favour of fulfilling the quota system. This policy has come about because there is limited space in the University of Malawi to accommodate all deserving students. Some government MPs who opposed this policy were suspended from the party (DPP).

This government reaction towards its MPs has planted fear in other MPs who will not be at liberty to raise the concerns of their voters in the National Assembly, if they appear contradictory to government's or party policy. Because of this situation, Section 65, according to him, should be removed to enable people to interact freely and to represent the views of their constituencies as mandated without fear of reprisals from their party leadership. He indicated that removing Section 65 would be conducive to both government and opposition in that people will be able to move to a party that represents the needs of their constituencies better, and in that way, promote democracy within the National Assembly.

Other respondents also concurred with these views and thought Section 65 was irrelevant and ineffective. They felt that this provision gave too much power to the party and the party leadership, to the detriment of party democracy. According to them, Section 65 was a burden and promotes party dictatorship (an interview with a former MP from Peoples Progressive Movement on 26th June, 2009).

This statement is supported by another who felt that Section 65 was created to promote political parties while disadvantaging members. This was expressed in the following:

Section 65 was created to defend and enhance parties. Members are forced to remain in political parties that sponsored them into Parliament until the term ends (Interview with Hon Dausi on 26<sup>th</sup> June, 2009).

These sentiments are valid in that an individual is forced to remain in the party even when he or she feels abused or when they feel the party is running out of constructive ideas, or when an individual does not seem to subscribe to the party ideals anymore. They are forced to remain in the party for the duration of parliament's lifespan of five years. This can indeed be detrimental to the vibrancy of democracy. As one respondent indicated in an interview on 8<sup>th</sup> May, 2009 regarding Section 65, stating that the 'law should be reasonable and practical'. There was need to examine the provision so that it is not exploited by leaders with dictatorial tendencies leading to catastrophic results.

Other respondents also indicated that the clause lacked clarity in terms of where MPs should report, and to whom they were responsible. It was not clear whether they were expected to report to the political party and the constituency or the electorate. (Interview with a representative from an international Civil Society Organization on 8<sup>th</sup> May, 2009).

Respondents also indicated that because of lack of clarity on the Clause, it was sometimes difficult for MPs to really appreciate its importance. They felt that Section 65 was penalizing them by putting the interests of political parties above their fundamental rights. This was expressed in the following quote:

Section 65 protects political parties, but what about a person's freedom of association as enshrined in Section 32 of the Constitution?" (Interview with one former MP on 2<sup>nd</sup> July, 2009).

#### **4.2.7 Summary**

In summary then, the response from all who crossed the floor, including those who lost their parliamentary seats in the 2009 indicated that they were all in support of floor crossing. Their reasons included seeking developments in their constituencies, frustration with internal politics, poor leadership and constitutional flaws. However, those who did not cross the floor felt that their colleagues changed party alliances due to financial and material rewards as well as in search of accessing state resources. The study also established that not all respondents were in

favour Section 65 in the Constitution. For some, the provision interfered with some parts of the Constitution which relates to the rights of individuals which should be protected. Further, the study also established that traditional and religious leaders play a very important role in Malawian politics since they are the custodians of cultural norms and values that influence the political culture of Malawi, and reinforce the use of patronage in politics. Lastly, the study highlighted the weaknesses in enforcement of the law, especially for those who cross the floor to the government benches. This is attributed to the excessive power which is vested in the presidency.

#### **4.2.8 Respondents' views on Section 64 – Recall Mechanism**

When the 1994 Constitution was drafted, it contained a clause under Section 64 on recall of non performing members from the National Assembly. This was done in order to ensure that: first, (a) MPs were held accountable to their constituents. It was argued by the proponents of the recall provision to include this proviso to ensure that people are able to invoke this provision and recall non performing MPs and not wait for the full five year term. Further, it was included to ensure that MPs are held to account for promises made during election campaigns; the second argument was on efficiency on the part of MPs to be able to visit their constituencies in order to spearhead developmental programmes.

However, this Clause was repealed from the Constitution within the first year that the 1994 Constitution was drafted. Several reasons were advanced by MPs which included the abuse of the clause by some unscrupulous people who would use patronage to get the two thirds of the registered voters of the constituency of a member to have him removed. When respondents were asked about Section 64, whether or not it should be reinstated, their views were divergent. Others wanted it reinstated, while others did not.

##### **4.2.8.1 Respondents supporting the reinstating of Section 64 – Recall Mechanism**

The following excerpts are from respondents who wanted Section 64 reinstated:

- Section 64 provision should be brought back (Interview with Hon. F. Nyirongo, 26<sup>th</sup> June);

- Section 64 should come back so that people can be given more power (Interview with Hon. Mzembe, 2<sup>nd</sup> July, 2009);
- There is need to put some kind of legislation on Section 64 and Section 65 (Interview with Dr. G. Chigona, 8<sup>th</sup> May, 2009);
- It should be brought back into the Constitution, through the traditional authorities. However there should be a mechanism to safeguard the process. There is need for consultative process between political parties, civil society and people to devise when an MP can be recalled, for example if he or she is absent from the National Assembly for one year (Interview with Mr. Bamusi, Executive Director of Human Rights Consultative Council on 11<sup>th</sup> May, 2009).

These respondents wanted Section 64 to be reinstated so that MPs could begin to be accountable to the people who voted for them. They also felt that the Clause could be a deterrent to MPs who keep changing party colours without fear of reprisals. However, others were against the idea of reinstating Section 64 into the Constitution outright. The following was stated by them:

#### **4.2.8.2 Respondents against Reinstating Section 64 – Recall mechanism**

As already indicated above, the following respondents did not want Section 64 reinstated in the Malawi Constitution. Their reactions are as follows:

- Section 64 should not be brought back into the Constitution because people who did not vote for you will connive to have you removed with only about 100 signatures. This clause is subject to abuse, because people can forge signatures. When it was brought into Parliament everybody refused. If it has to be brought back at all, there is need for guidelines so that it is not open to abuse (Interview with Spokesperson for MCP, Hon. Mrs. Nancy Tembo on 2<sup>nd</sup> July, 2009);
- It should not be brought back – people are voted in by a minority, due to the electoral system that Malawi uses. It would take one influential business man to convince the semi- illiterate people in the rural areas after giving them handouts that they do not need their MP. With a few signatures, an MP can be removed; the provision should not be brought back (Interview with Hon Uladi Mussa, president of a Republican party, on 27<sup>th</sup> July, 2010);
- No, Malawians are full of envy, the number of people who normally vote for a candidate to win is normally smaller than those who do not vote for the candidate. So it is easy to mobilize the people, who did not vote for the candidate to unseat him through recall provision (Interview with the Deputy Secretary General of the United Democratic Front, Mr. Hophmally Makande on 13<sup>th</sup> May, 2010).

On the reinstatement of Section 64 – recall mechanism, there were mixed reactions from respondents. Some felt that it should be reinstated and guidelines attached to it, while others felt that it should not be reinstated for fear that the Clause could be abused in certain quarters by some politicians who would use patronage to further their political ambitions.

#### **4.2.9 Lack of Separation of Powers**

As already indicated above under ‘Overall Responses on Factors Contributing to Floor Crossing’, respondents stated that lack of separation of powers, especially between the Executive and the Legislature reinforces floor crossing. This comes about because the executive is very powerful in Malawi and power in the executive is concentrated in the presidency. In order to support this, the following statements were made:

There is lack of clear distinction between party and government (interview with Dr. G. Chigona, 8<sup>th</sup> May, 2009);

The way General Elections are conducted, civil servants are used. These are prone to bribes. To ensure that one wins, he or she just has to bribe these civil servants (interview with Hon. F. Nyirongo on 26<sup>th</sup> June, 2009).

In this scenario, because the President is both head of State and Government, the Executive controls the civil service through patronage. As a result, civil servants have to be seen to be towing the party line in order to get the much desired promotions. Secondly, the then Speaker of the National Assembly, Hon Louis Chimango, was not able to invoke section 65 because of the interference of the Executive through court injunctions. This is because political power in Malawi is centred in the presidency. These sentiments are highlighted in the following statements from the respondents:

The Speaker could not invoke section 65 because he is weak. Politicians in Malawi are given more power and so muzzle everybody. The President has too much power (interview with Hon. F. Mzembe on 2<sup>nd</sup> July 2009)

These sentiments are echoed by MCP’s Spokesperson, Hon. Mrs. N. Tembo who made the following statement:

Executive has a lot of power, with the President who is very powerful. All who moved from MCP to UDF never lost in their primaries except during general elections because government never loses by-elections since they have an upper hand (interview with Hon. Mrs. N. Tembo, 2<sup>nd</sup> July, 2009).

Mrs Tembo was emphasizing the fact that because of lack of separation of powers, coupled with the power that is concentrated in the presidency, even if MPs were suspended in the National Assembly and a by-election were held, those who defected to the government benches would always win. The only time they could lose is during a General Election.

Lack of separation of powers did contribute to floor crossing in Malawi during the period under study. This syndrome is still there and enduring because it is historical in nature, starting from the one-party era of Dr Hastings Banda who did not make a difference between official and personal matters. There was a song which stated that ‘everything’ in Malawi belonged to Dr Hastings Kamuzu Banda, which meant the party, government and people are the same in the name of unity. This situation has been compounded by the fact that power resides in one person, the president whose office is the most powerful in the land.

### **4.3 Conclusion**

Chapter four intended to explain the findings of the study that was undertaken to establish why MPs crossed the floor in the National Assembly between 2003 and 2009. The study interviewed members who defected, those who did not, politicians in general, representatives of both local and international civil society organizations, traditional leaders and some representatives from key institutions such as the National Assembly, legal firms and donor community. Divergent views were given and a comparison made on both those who defected and those who did not, and reasons why floor crossing took place during the period under study.

Although the biggest act of floor crossing took place in 2005, there were several political factors that contributed to it even before the defections started taking place. It is important to understand that there were several political events in the run up to the 2004 General Elections that undermined political stability leading to massive floor crossing by MPs in years to come.



The recall mechanism which was repealed from the Constitution by legislators in 1995 also received mixed reactions from the people. Some wanted it reinstated, while others did not. For those that asked for its reinstatement, they wanted the government to put in mechanisms that would guide its operation. These should be laid down procedures on how the recall mechanism could be made more efficient than what it was before. Further, respondents indicated that there was need to ensure that the law is enforced so that those who defect know what consequences awaited them. The legal opinion also highlighted how influential the party in government could be since the lines between the Executive, Judiciary and the Legislature are deliberately blurred. As already indicated, this is because the presidency in Malawi is a very powerful office.

Chapter four outlined the findings of the findings of the study including the verbatim reports from the sampled representatives. Several themes emerged from the various interviews which have been analyzed in Chapter three. The following chapter will draw conclusions and make recommendations.

## CHAPTER FIVE

### 5. CONCLUSION AND RECOMMENDATIONS

#### 5.1 Introduction

As already indicated in previous chapters, this study was undertaken in order to establish and understand political factors that contributed to floor crossing in the Malawi National Assembly by Members of Parliament (MPs), between 2003 and 2009. Some of these MPs were voted into the National Assembly through political parties, while others were independents. Following the findings in chapter four which have been augmented by the analysis in chapter three, it can be concluded that floor crossing in Malawi between 2003 and 2009 was caused by three main factors which can be clustered as follows: (a) institutional; (b) constitutional; and (c) Others.

Below is a summarized discussion of these factors:

#### 5.2 Institutional Factors

The study established that there were several institutional factors impinging on political parties in Malawi which contributed to floor crossing. These included: lack of finances for political parties which are critical in the effective functioning of any political party; poor and lack of intra-party democracy which caused frustrations, splits, factions and contributed to the increase in the number of independent candidates. The study established that the number of independent candidates increased from around twelve (12) in 1994 to four hundred and eighty five (485) at 2009 general elections. This situation was compounded by lack of mechanisms within the parties to resolve party differences amicably. The study also established that political parties in Malawi are usually founded and financed by an individual who eventually becomes its owner. Because of this ownership syndrome, political parties become centralists and are treated as personal entities by founders, leading to poor leadership styles, dictatorial tendencies and lack of corporate ownership. All these contributed to floor crossing as well as the weakening of the party system and the slow progress towards the consolidation of the nascent democracy in the country.

### **5.3 Constitutional Factors**

The study also established that although the Constitution is supposed to be the supreme written law embodying the fundamental principles of the structure of the State, exercise of power and relationship between political entities, people and State, it was at most times ignored by those who were meant to uphold it. Further, there were gaps in Section 65 of the 1994 Malawi Constitution regarding independent candidates crossing the floor which needed addressing. These gaps led to various court interpretations as well as court injunctions by both the incumbent President and government MPs on the Speaker of National Assembly barring him from declaring any seats vacant of all MPs deemed to have crossed the floor, and stopping him from processing party petitions. This Constitutional anomaly contributed significantly to floor crossing.

Further, the removal of Section 64 from the Constitution on Recall mechanism also played a catalytic role in the act of floor crossing because it disempowered the electorate by removing legally instituted mechanisms that could have enabled the electorate to recall non-performing legislators or defectors. Although MPs justified the need to remove the Clause from the Constitution in 1995, it was equally important for them to have considered their responsibility and accountability to the electorate as enshrined in Section 12 of the Malawi 1994 Constitution, and to strive to understand the spirit behind the inclusion of that Clause in the Constitution.

Another identified Constitutional element established in the study was the electoral system which Malawi uses. This is the First Past the Post system which at times, has ushered in a minority government. This situation brings the challenge of the government's legitimacy. In order to circumvent the situation, the minority government usually resorts to luring opposition MPs using patronage as a means to strengthen its power base and bolster its legitimacy. When this happens, more and more opposition MPs move to the government benches, which in the end undermines and weakens the opposition. This was the scenario during the period under study when the DPP-led government was in a minority. In order to survive pressure in the National Assembly, it resorted to luring the opposition with cabinet positions. This situation is exacerbated by the fact that the office of the presidency in Malawi is by nature, very powerful. Because of this excessive power, lines between the three arms of government such as the Executive, Legislature and Judiciary are sometimes blurred, making it difficult at times for the judiciary or the

legislature to operate autonomously. This was witnessed during court battles and debate over Section 65.

#### **5.4 Others**

The study established that socio-economic factors affecting both an MP and the constituencies may have contributed to floor crossing in the country. Malawi is a poor country, and poverty drives people to search for means of improving their living standards. As such, everyone is fighting on a daily basis for basic necessities to survive. Some people join politics for personal gains, material rewards, and to have direct access to government resources. In order to understand the behaviour of MPs and why they cross the floor in the National Assembly, one needs to understand that there is a link between floor crossing and politics, which is like a means to an end. When one is in search of enhancing their personal lives, they are bound to seek to align themselves to the team that will bring the necessary rewards. Winning a seat in the National Assembly is rewarding because it elevates one's personal status and increases his or her prominence in society. However, equally important is to be seen to belong to a team that has better rewards than an ordinary one. This is done so that chances of being re-elected are enhanced and political careers can be appropriately advanced. The need to enhance one's living standards as well as a progressive political career through state resources contributed considerably to floor crossing during the period under study.

The study also established that although the opposition plays a very critical role in the democratic equation by providing the necessary checks and balances to the excesses of government and reminding it of its obligation to the electorate, it was constantly undermined and its image deliberately tarnished making it very unpopular to the public during the 2007 and 2008 budget sessions. It was, therefore, only natural for those in opposition to want to move and position themselves to where there was popularity and where they stood a better chance of being re-elected into the National Assembly during elections.

## **5.5 Theories explaining MPs Behaviour**

The study advanced three theories to explain determinants of MP's behaviour in crossing the floor in the National Assembly. These were patron-clientelism, neo-patrimonialism and rational choice. The study established that using patronage, the party in government was able to entice several opposition MPs to its benches. During the period under study, as many as sixty MPs were enticed by the government, and most of these MPs were rewarded with ministerial positions. The DPP government was a minority, and for it to survive it needed to lure opposition MPs to its benches. This was done by creating patronage networks, with the government being the patron and the opposition MPs, clients.

However, one also has to understand that these MPs did not cross the floor only for the sake of availing themselves to state resources. They too had motives and needed to establish their own survival networks by attempting to redistribute the resources to their clients in order to buy loyalty and support from them. These patron-clientelistic networks were created both at the macro and micro level on the Malawian political landscape. This was done in order to enhance one's political career and one's livelihood. In Malawi, just like elsewhere in Africa, patronage sustains governments. If it were not for patronage, the minority government of Dr Bingu wa Mutharika's government would probably have collapsed, so would Dr Bakili Muluzi's, even Dr Hastings Kamuzu Banda's. Patronage is an enduring legacy which might have started from the one-party era of Dr Hastings Banda, and has been transferred from one political generation to another. Cammack (2009) summarizes this situation as follows: "Although democracy changed Malawi's patronage system from one patron, Dr Banda, it did not end it". Even in the new political dispensation, patronage is enduring. Every political leader tries to bring the peripheral into the centre of politics in order to survive. This situation has nothing to do with how educated or uneducated a person is. The system draws everyone in for the sake of survival.

Patronage and clientelism are said to be attributes of neo-patrimonialism (Patel: 2009). For the system of patronage and clientelism to survive it needs to operate in a neo-patrimonialism context which is like a rail line for a train's movement. African governments create informal systems deliberately which operate side by side with the formal regal systems. This is important for a politician if he or she is to survive. However, what happens on the informal is more

prominent than what is happens on the formal sector for a politician. This is where his clans, kinsmen and traditional people who sustain his beliefs and personhood reside. This sector cannot be ignored. In Malawi the traditional leaders have such influential power on politics. They operate outside the formal system. Although formal systems are set, traditional leaders cannot be contained in these systems. This is the space where patronage flourishes, and in Malawi almost all important political battles take place on the informal sector. The formal just legalizes or confirms what has taken place on the informal. It is, therefore, very important to take this into account when one strives to start a political career in Malawi.

However, it is equally important to note that although patronage is the hallmark of Africa's politics, and the system operates in a neo-patrimonial state, these MPs who cross the floor do not take the decisions without weighing the costs and benefits of the intended purpose. When they are enticed they do have an opportunity to weigh the costs and decide which action to take. Some opposition MPs indicated that although they were approached by the ruling party to join government benches, they declined the offer because they were loyal to their party and its leadership, while others decided to move to another party. The theories of patronage and neo-patrimonialism do describe the political reality of Malawian politics and the engine that drives it. The rational choice explains that decisions made by MPs are taken after they have weighed the costs and benefits of their action. They make a choice, to cross or not to cross based on what benefits them the most in their personal and political career.

Finally, although floor crossing created such political tension in the country during the period under study, it must be mentioned that in certain instances, it was good for the country because it exposed political ills that perhaps, might never have been known had this phenomenon not taken place. The experience exposed inter and intra-party problems, institutional weaknesses of the political system in Malawi as well as Constitutional gaps that desperately needed addressing if the young democracy in Malawi was to be given a chance to blossom. Floor crossing, therefore, has merits and demerits, and one needs to look at both these carefully.

Firstly, floor crossing enables one to exercise their democratic rights, these are freedoms of association, speech and movement, which are all enshrined in the Malawi Constitution which are

necessary and important democratic values in one's life. It also accords one an opportunity to use their judgment and represent the wishes of their constituencies accordingly. Malawi being a young democracy, its political system could be strengthened by some of the events experienced during floor crossing. These experiences should help build a stronger and better democratic order in the areas of introspection and tolerance. Floor crossing enabled political parties to stock-take their activities and begin to realize that members should not be taken for granted. It also made party leaders realize that members in a political party should not be taken for granted. The phenomenon brought the realization that there was need to strengthen both the institutional, constitutional and legal systems in the country to ensure that the political system works properly. Floor crossing also exposed how extensive and deep rooted the system of patronage in Malawi is, and that despite the country being a democratic state, there were cultural elements which have been carried forward from previous regimes which greatly influence the political behaviour and culture of the nation.

Although there were some merits to floor crossing, there were also disadvantages in the process which included political tensions which destabilized deliberations in the National Assembly and affected the populace negatively. These were disagreements over important national bills introduced by government which the opposition refused to pass which affected or delayed much needed service delivery to the populace. Floor crossing brought direct confrontation between the government and the opposition to the detriment of progress in the National Assembly. Further, floor crossing changes the representation in the National Assembly unconstitutionally, a move that could contribute to voter apathy.

## **5.6 Summary**

Chapter 5 summarizes the findings of the study and highlights factors that played a critical role in floor crossing during the period under study. These were institutional, constitutional and other factors. Most MPs crossed the floor as a result of the aforementioned reasons. However, the reason for crossing the floor goes beyond what has been described above. There is a political culture that has traveled through political generations without showing any signs of abating. This culture is influenced by patronage which plays a very instrumental role and contributes considerably to political dynamics witnessed in the National Assembly as well as outside of it.

In order to mitigate against some of these factors, the following recommendations are proposed:

## **5.7 Proposed Recommendations**

### **5.7.1 Institutional Weaknesses**

#### **5.7.1.1 The Political Party Registration and Regulation Act (PPA)**

In order to address the proliferation of political parties in Malawi, the Political Party and Registration Act should be reviewed to ensure that the system is properly controlled, maintained and records are kept up to date; this will assist the government department to know which parties are still operational and which ones are not. These records will be useful during election periods and will deter opportunistic registrations and reduce the Electoral Commission's work during election period;

#### **5.7.1.2 Lack of Internal Democracy**

In order to reduce lack of internal democracy, political parties should inculcate a culture and spirit of tolerance within political parties which will promote dialogue so that conflicts arising from within and outside of political parties are amicably resolved. This will reduce the number of independent candidates and strengthen the political system;

#### **5.7.1.3 Code of Conduct for Political Parties**

Parties should formulate a Code of Conduct which should be popularized and incorporated into the relevant party constitutions and manifestoes so that all members should know what is expected of them, and in the process bring more harmony and unity in the party;

#### **5.7.1.4 Establishing Linkages with Appropriate Organizations**

Organizations such as the Centre for Multiparty Democracy – Malawi, the German GTZ Forum for Peace and Dialogue and the District Multi-liaison Committees should be called upon during party disputes to mediate and diffuse tensions before they escalate into huge violence because they are strategically positioned and well respected by political parties on the national, regional and district levels,.



#### **5.7.1.5 Party Funding**

Regarding party funding, political parties should establish and embark on a clear and transparent party funding mechanism which will ensure party ownership by all, as opposed to a single individual. One way of raising party funds could be through party membership fees or cards. This will assist the party to know who their members are, when parties are owned by all, not just the leader or the financier, it reduces dictatorial tendencies as well as succession problems. Organizations such as the Centre for Multiparty Democracy, Malawi (CMD-M) which works with political parties represented in the National Assembly should increase their efforts in lobbying the Parliamentary Budget and Finance Committee to amend laws pertaining to party funding so that funding can be provided to *ALL* parties that are in the National Assembly, instead of only the select few who meet the government threshold of 10 percent representative in the National Assembly;

#### **5.7.1.6 Equal Distribution of Donor Funding**

The Netherlands Institute for Multiparty Democracy (NIMD) through the Centre for Multiparty Democracy – Malawi, is the only organization so far in Malawi which openly offers bilateral funding to political parties represented in the National Assembly. The CMD–M Board should revise the distribution formula of bilateral funds to favour smaller parties to enable them grow. The current formula favours parties that have higher representation in the National Assembly;

#### **5.7.1.7 The Importance of Opposition Parties**

Deliberate effort should be made by government, donor community, political parties and civil society organization to educate and sensitize the public on the importance of having a strong opposition in the National Assembly and in politics. When MPs are continually being enticed from the opposition by the ruling party, the opposition becomes weak. Opposition's image was tarnished during the 2007/08 budget standoff over Section 65, on floor crossing. There is need, therefore, to project the opposition in a more positive manner than has previously been the case.

#### **5.7.1.8 The role of Civil Society**

Because the National Assembly now comprises more government MPs than the opposition, civil society should take up the challenge and begin to bolster the strength of the opposition by raising

people's levels of awareness so that they can be empowered and begin to voice their concerns and hold government accountable to campaign promises as they also check their excesses. The 2009 General Elections results gave the government a landslide victory of 113 seats against a total of 193 seats in the National Assembly. The number went up when more than twenty independents out of a total of thirty-two, also decided to defect to the government benches. This move has reduced the number of opposition MPs considerably. The main opposition MPs from MCP, UDF and MCP combined totals a mere forty-five (45).

#### **5.7.1.9 Independent Candidates**

There should be legislation regarding independents, as is the case in Zambia, to stop them from joining any political party once they have been voted into parliament for the duration of that parliament's five year term. This will strengthen political parties and discourage opportunistic tendencies.

#### **5.7.1.10 Training of Political Leadership**

Organizations such as the Centre for Multiparty Democracy (CMD) Malawi should continue to train MPs so that they can begin to know, appreciate and value the important role that they play either as opposition or government. Political leaders should be trained in formulating ideologies and writing manifestos, principles of democracy, leadership skills and how to nurture their membership. This will help them to understand political issues better, identify who they are and what they stand for and project themselves accordingly. At voting, the public too would know what belief and values they are voting for;

#### **5.7.1.11 Civic Educating the Populace in between elections**

Civic educating the populations should not only be done during election time. If the public is to internalize the importance of democracy, there is need for civic education to be carried out continuously by government in consultation with civil society organizations. Government should develop interim civic education programmes that will educate the population on the role of an MP and the importance of elections;

#### **5.7.1.12 Constituency Offices**

Government should build constituency offices where MPs should visit in order to maintain their visibility in their constituencies, also for the people to be able to have a reference point, especially in terms of developmental programmes. This office should also establish linkages with Local Assemblies, now District Councils so that together, any developmental programmes can be planned and owned by the people as opposed to attributing it to one MP who belongs to the ruling party.

#### **5.7.1.13 Empowerment of the populace**

Government should set up micro economic empowerment programmes for the marginalized in society who include women, youth and the disabled. This would open up space for them economically and encourage them to raise their voice and gain confidence. In this way, people may begin to be more knowledgeable to be able to comment on issues relating to their welfare. By raising their economic standards, people may begin to be self reliant and not rely on patron-clientelism networks;

#### **5.7.1.13 Creation of a thinking society**

It is also important to create a thinking society that is not dependent on patronage. In order to begin this process of changing people's mindsets, civil society should strive to introduce radio and television programmes that articulate principles of democracy, fundamental human rights and how to exercise their rights. This should be an ongoing process so that people are aware of what steps, procedures and channels to follow if they are to hold their representatives accountable to them. Although some of these subjects may be covered in schools, the adults may have missed out on this. The radio which is the best medium of communication in the country would yield better results than other mediums because almost everyone has a radio in the villages where change in the mindset is really critical

## **5.7.2 Constitutional Weaknesses**

### **5.7.2.1 Amendments to the Republican Constitution**

The Constitution should be entrenched and strengthened so that the executive do not amend it for political expediency. Before effecting any amendments to the constitution, a referendum should take place so that public opinion or views should be sought, and not rely only on the two thirds majority to effect constitutional changes;

### **5.7.2.2 Sealing of identified Constitutional Gaps**

The Constitution should be clear in all sections, especially sections pertaining to floor crossing to avoid misinterpretations. Although this exercise was reviewed by the Special Law Commission which was commissioned by government to review the 1994 Constitution in 2006, the exercise was completed in 2007 and the report was submitted to Cabinet for its input. However, in order to have this report implemented, civil society needs to put pressure on government to have the report adopted by the National Assembly;

### **5.7.2.3 Reinstatement of Section 64 – Recall Mechanism**

After a comprehensive consultative exercise by the Constitutional Review Committee on Section 64, it was widely recommended that Section 64 of the Constitution should be reinstated, and this reinstatement should also bring along guidelines to safeguard against its abuse. It should also have conditions to indicate when an MP might be recalled and for what reasons. Procedures guiding the process should be clear, unbiased and transparent;

### **5.7.2.4 Separation of Power**

The lines between the three arms of government, that is, the Executive, Legislature and Judiciary should be respected. These arms are supposed to complement each other, and not encroach or throttle each other's mandate. This can be achieved if the executive make deliberate effort to recognize the importance of separating these arms and allowing them to operate autonomously.

Finally, it has been established in the study that the office of the presidency in Malawi is very powerful. There have not been any suggestions on how these powers could be curtailed.

Perhaps this could be an area that someone might wish to research on so that the young democracy can begin to consolidate.

**APPENDIX I - FLOOR CROSSING: LIST OF THOSE INTERVIEWED**

<b>Category Interviewed</b>	<b>Person Interviewed</b>	<b>Position/Organization</b>	<b>Date</b>
<b>DONOR REPRESENTATIVE</b>	Ms Charlotte Duncan	Governance Adviser, DFID	5 <sup>th</sup> May, 2009
<b>INTERNATIONAL NGO/CIVIL SOCIETY</b>	Dr G Chigona	Programme Manager, Social theorist, Norwegian Church Aid	8 <sup>th</sup> May, 2009
	Dr A Magolowondo	Coordinator Africa Region, Netherlands Institute for Multiparty Democracy	12 <sup>th</sup> May, 2009
<b>LOCAL CSO</b>	Mr M Bamusi	Executive Director, Human Rights Consultative Council	February, 2009
<b>MPS WHO DEFECTED</b>	Hon V Kaunda, MP & Minister of Information and Civic Education	Independent/Democratic Progressive Party	25 <sup>th</sup> June 2009
	Hon N Dausi, Deputy Minister in the President's Office	Malawi Congress Party/Democratic Progressive Party	26 <sup>th</sup> June 2009
	Hon F Nyirongo, former MP	Republican Party/Democratic Progressive Party	26 <sup>th</sup> June, 2009
	Hon P Nkhwazi, former MP	Republican Party/Democratic Progressive Party	2 <sup>nd</sup> July, 2009
	Hon F Mzembe, former MP	Alliance for Democracy/Democratic Progressive Party	2nd July, 2009
	Hon G Mkandawire, former MP	Peoples Transformation Party/Democratic Progressive Party	April, 2009
	Hon C Chapola-Chimombo, former Minister of Tourism (current first lady Mutharika)	United Democratic Front/Democratic Progressive Party	5 <sup>th</sup> June, 2010
	Hon Uladi Mussa, MP	United Democratic Front/Democratic Progressive Party/President, Malawi Peoples Party	27 <sup>th</sup> July, 2010
<b>MPs WHO DID NOT DEFECT</b>	Hon N Tembo, former MP	Malawi Congress Party	2nd July, 2009
	Hon J Sendeza, MP	Malawi Congress Party	2 <sup>nd</sup> July, 2009
	Hon L Belekanyama, MP	Director of Research, Malawi Congress Party	August, 2009
	Hon S Chimphonda, former MP	Malawi Congress Party	August, 2009
	Hon G Zulu, former MP	Regional Treasurer, Malawi Congress Party	26 <sup>th</sup> March, 2009

	Hon Khwauli Msiska, MP	Secretary General, Alliance for Democracy	July, 2009
<b>POLITICIANS</b>	Mr K Chibambo	President, Peoples Transformation Party	February 2010
	Mr R Jamieson	Director of Publicity, United Democratic Front	11 <sup>th</sup> May, 2010
	Mr L Ganiza	Secretary General, Malawi Forum for Unity Party	11 <sup>th</sup> May, 2010
	Mr H. Makande	Deputy Secretary General, United Democratic Front	11 <sup>th</sup> May, 2010
	Hon. Loveness Gondwe, former MP	President, National Rainbow Coalition	July, 2009
	Late Hon R Dzanjalimodzi	Administrative Secretary, Malawi Congress Party	January, 2009
	Hon J K Langa, former MP	Publicity Secretary, Alliance for Democracy	21 <sup>st</sup> Jan 2010
	Mr T Mkandawire, Former member of Malawi's Diplomatic mission to Germany	Shadow Secretary to the President and Cabinet, Alliance for Democracy	21 <sup>st</sup> January, 2010
	Mr K Ndanga	Director of Youth, United Democratic Front	21 <sup>st</sup> January, 2010
	Mr L Chasowa, former Mayor of Blantyre city	Treasurer General, Republican Party	May, 2009
<b>Traditional Leaders</b>	Senior Traditional Authority	STA Nankumba, Mangochi	November, 2009
<b>Malawi National Assembly</b>	Mr R Moyo	Director of Finance and Administration	April, 2009
	Mr Njolomole	Assistant clerk in Parliament	April, 2009
	Mr Mwenyeheri	Principal Clerk Assistant, Malawi National Assembly	June, 2009
	Mr Chisanu, F	Former Deputy Clerk of Parliament	March 2010

## **APPENDIX II (a): QUESTIONNAIRE ON MP'S DEFECTIONS (UN-TESTED)**

1. What are your views on floor crossing in the Malawi National Assembly?
2. How has this affected your party?
3. Why do people join politics?
4. How many MPs defected from your party, or started their own between 2003 and 2009?
5. What would you say are factors contributing to MPs' defections?
6. Are there rules on internal discipline in your party?
7. What is the party's policy on MPs who accept ministerial positions without its blessing?
8. What mechanisms has the party put in place to check this practice?
9. How is your party funded?
10. How does your party identify its candidates for Primaries, General and Local Government Elections?
11. What do you see as the role of an opposition?
12. Does your party have internal discipline? If so, how is it carried out?
13. How can Malawian political parties be strengthened?



**APPENDIX II (b) – QUESTIONNAIRE ON MP’S DEFECTIONS (PRE-TESTED)**

**This questionnaire is about MPs’ defections. Information requested is intended for academic purposes only, and will be treated in strictest confidence.**

1. What are your views on MPs crossing the floor in the Malawi National Assembly?

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2. How does floor crossing affect political parties?

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3. What would you say are factors contributing to MPs’ defections?

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4. How is party discipline carried out in the UDF party?

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5. How many MPs defected from your party between 2005 and 2009?

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6. What did they say was their reason for leaving the party?

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7. What is the party's policy on MPs accepting ministerial positions without its blessing?

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8. When is an MP considered to have crossed the floor?

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9. How is your party funded?

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10. How does your party identify its candidates for Primaries, General and Local Government Elections?

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11. What would you say is the role of an opposition in parliament?

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12. How can Malawian political parties be strengthened?

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13. Should Section 64 – Recall mechanism be brought back? (if yes why, and if no, why not?)

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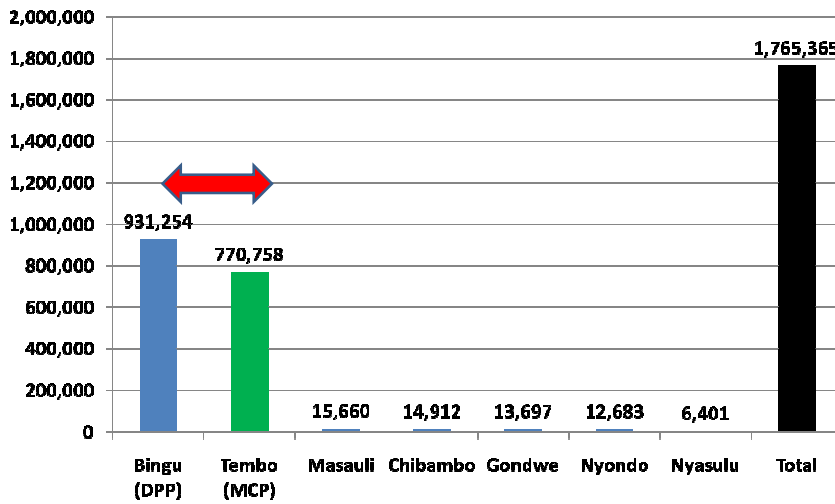
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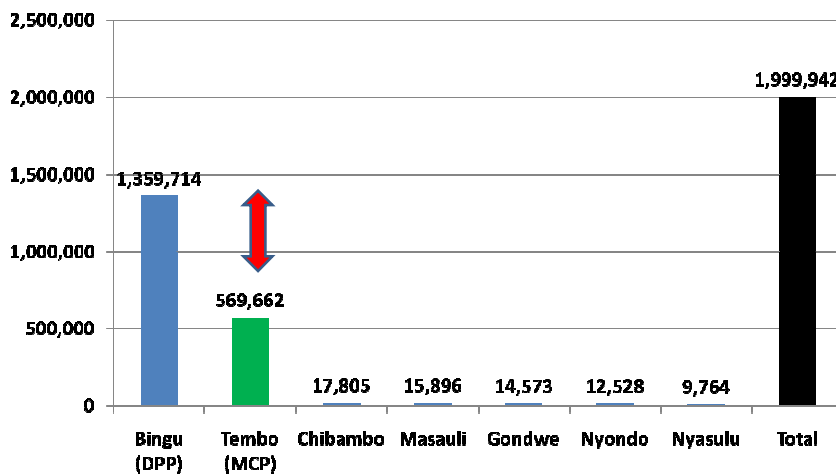
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**APPENDIX III – 2009 PRESIDENTIAL REGIONAL VOTING**

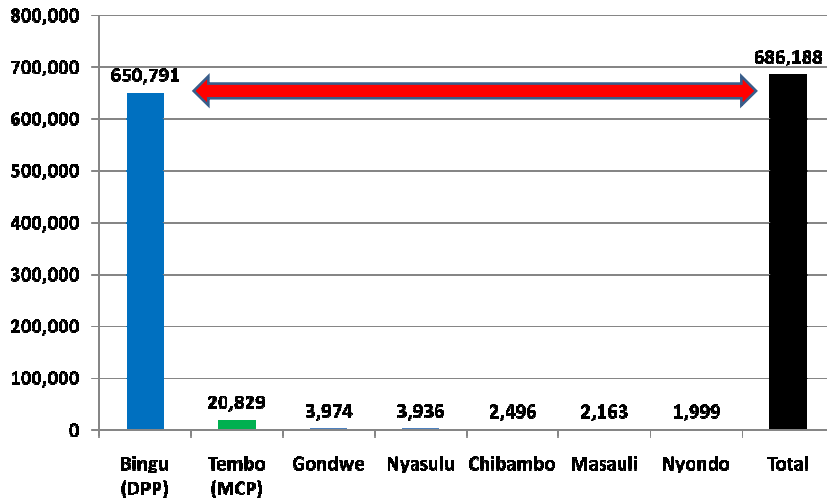
**Central Region presidential votes**



**Southern Region presidential votes**



## Northern Region presidential votes



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