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Understanding Corruption in Malawi: Sources of Corruption and Constraints on Anti-Corruption Programmes (1994-2004)

A thesis submitted to the Faculty of Humanities, University of the Witwatersrand, in fulfilment of the requirements for the degree of Doctor of Philosophy

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Professor Daryl Glaser

Johannesburg, February 2013

Abstract

The main objective of this thesis was to disaggregate the dynamics of political corruption during periods of transformation. Using Malawi's transitional period from autocracy to liberal-democratic rule (1994-2004) as a case study, the thesis aimed to identify the reasons why public perceptions suggested a proliferation of corruption during the first few years of institutional transformation. The research sought to isolate the characteristics of corrupt transactions and the constraints on anti-corruption regimes in order to draw lessons for political systems in developing countries in general and Malawi in particular.

The dissertation applies leading theories on the conceptualisation, causes, consequences and the control of corruption to evaluate Malawi's experience. The findings illustrate that democratic reforms in themselves are not enough to instil positive values if the political will is absent. There is an association between the exploitation of institutional weaknesses by elites for political expediency and compromised anti-corruption measures. In addition to this, the wholesale importation of exogenous institutions into a context that lacks resources, political stability and context specific strategies contribute to the challenges that confront anti-corruption efforts and hamper their success.

The thesis finally presents a number of observations which include a call for the shift in the anti-corruption strategy that largely perceives corruption as acts of opportunism. It argues that in order for effective countermeasures to exist, conceptualisations of corruption should take into account public sentiments and opinions and not on "transplanted" legal frameworks. Corrective measures should be approached from a position where they are driven by input from a variety of sources inherent in the political system than merely as an institutional concern. At the macro level, an integrated approach that solidifies democratic institutions is more appropriate than the popular overreliance on criminal prosecutions. Further, there is need to have more coordination and communication amongst the management level of individual government departments and ministries to control it.

Declaration

I hereby declare that this thesis is my original work and has been submitted to the University of Witwatersrand for the examination of the Degree of Doctor of Philosophy in Political Studies. No part of this thesis, or in its entirety, has been submitted in the past to any other university or examining body for obtaining any qualification.

_____

Peter Thokozani John Phiri

_____ day of_____ 2013

University of the Witwatersrand

Department of Politics

Johannesburg

Dedication

To my parents, the late Alexander Sr. and Bernadette, whose life's lessons and guidance still inspire me to dare to dream. I also dedicate this thesis to the people of Malawi who, despite enduring many hardships caused by the hands of those who rule, persevere.

Acknowledgements

This thesis is a product of a journey of self-awareness as much as it is of academic insight. It would not have been possible without the assistance of a number of individuals and institutions. Primarily I owe a substantial amount of sincere gratitude to my supervisor, Professor Daryl Glaser whose guidance, patients and recommendations made it possible for me to articulate my argument and present the results the best way possible. I would also like to acknowledge the support from the members and staff of Department of Politics, especially Professor Sheila Meintjes and Professor Antony Butler, for making my stay within the department very pleasant.

I would like to express my tremendous appreciation to the Witwatersrand Institute for Social and Economic Research (WISER), for the assistance provided by Professor Belinda Bozzoli, Dr Pamilla Gupta and Professor Jonathan Hyslop. The research would not have been possible were it not for the invaluable administrative support provided by Adila and Najhiba Deshmukh.

My profound gratitude goes to the staff of the Anti-corruption Bureau, specifically the Director Mr Alexius Nampota, the Assistant Director Mr Victor Banda and the Head of the Corruption Prevention Unit Mrs Mary Mphombeya and her staff. The valuable contribution by the Malawi Police Service members namely the Inspector General, Mr Loti Dzonzi, and his officers and the Officer in Charge for Lilongwe Police, Mr Medi and his officers is also acknowledged. This research would not be complete without the timely assistance provided by Dr Esther Price, Judith Phiri and Mr Jack Titsworth of the World Bank and the information acquired from the University of Malawi library (Chancellor College) and National Archives staff who were instrumental in guiding my access to documents.

Finally, I wish to express my special thanks to Dr Godfrey Chesang and Sandy Hazel for their insights and proof reading. Frederick K. Mokobodi, Gordon and Martia Glass, Clement, Mable, Judith, Alex, Patrick and Joyce are acknowledged for their moral support and input without which this dissertation would not have been possible.

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Abbreviations

ACB	Anti-corruption Bureau
ACC	Anti-Corruption Commission
ADB	African Development Fund
ADMARC	Agricultural Marketing Corporation
AG	Auditor General
AFORD	Alliance for Democracy
AU	African Union
CABS	Common Approach to Budget Support group
CARER	Centre for Advice, Research and Education on Rights
Dfid	UK Department for International Development
DPP	Director of Public Prosecutions
ESAF	Enhanced Structural Adjustment Facilities
GOM	Government of Malawi
HIPC	Highly Indebted Poor Countries Initiative
IFI	International Financial Institutions
IMF	International Monetary Fund
MAGODE	Movement for Genuine Democracy
MASAF	Malawi Social Action Fund
MBC	Malawi Broadcasting Corporation
MCHHR	Malawi Centre for Human Rights Resources
MCP	Malawi Congress Party
MDG	Millennium Development Goals
MISA	Media Institute of Southern Africa (Malawi Chapter)
MP	Members of parliament/National Assembly
MYP	Malawi Young Pioneers
NAC	Nyasaland African Congress
NCT	Malawi's National Compensation Tribunal
NDA	National Democratic Alliance
NEPAD	New Partnership for Africa's Development
NICE	National Institute for Civic Education
NIS	National Integrity System
NORAD	Norwegian Agency for Development Cooperation
OECD	Organisation for Economic Development
OPC	Office of the President and Cabinet
PAC	Public Affairs Committee
PAP	Poverty Alleviation Programme
PRSP	Poverty Reduction Strategy Paper
SADC	Southern Africa Development Community
SAP	Structural Adjustment programme
SSA	Sub-Saharan Africa
TI	Transparency International
TIP	Targeted Inputs Programme (Starter Packs Programme)
TVM	Television Malawi
UDF	United Democratic Front
UNDP	UN Development Programme
USAID	United States Agency for International Development
WB	World Bank

Preface

Having worked for the Anti-corruption Bureau first as a Civic Education Officer and then as the supervising officer for the Corruption Prevention Research and Intelligence Division from 1998 to 2006, I had been part of the original team of officers that developed and implemented some of its strategies and policy objectives from the time it commenced its operations in 1998.

My experiences at the Bureau were mixed. I observed how the institution grew from its infancy of the initial three operational officers, three senior managers and a technical adviser, to a professional organisation with three regional offices and over a hundred officers. The budget grew to accommodate the expansion of offices, the recruitment of staff and the training needs of the organisation that borrowed from international best practices. The institution had been in constant consultation with other similar institutions on the continent and abroad for mutual operational assistance and had been, as a country, party to international conventions and legal frameworks.

Despite all of these efforts, the Malawian positions on Transparency International's Corruption Perception Index and other international surveys on corruption were declining annually. The favourable newspaper articles that had been the staple during the first years of operations had gradually turned against the organisation as public confidence deteriorated when incidents of corruption were frequently exposed in the media. It is mainly for this reason that I made the decision to pursue the analysis of corruption as an academic endeavour. My assumptions were that results drawn from the study of corruption approached from an academic perspective might offer better insights that are more qualitatively oriented than those reached from a law enforcement perspective. As I had assumed, the scholarly pursuit would offer information derived from divergent research methods and a myriad of theoretical tools. The research confirmed these preliminary assumptions and established that political corruption in Malawi is a multi-faceted socio-political phenomenon that cannot be dealt with a singular approach. The public perception of proliferation of elite corruption that occurred after the elections of 1994 can be traced to specific political factors. These factors are imbedded in the evolution of Malawi as a modern state. The factors had provided the precedents for structural weaknesses and corrupt political mobilisation that had a tremendous impact on the efficiency and effectiveness institutions to contain corruption.

The future success of anti-corruption regimes in their current form as independent, impartial and professional institutions in Malawi is questionable in such a political environment. Doubts on their efficacy are created in this regard when common perceptions are that anti-corruption efforts are not achieving the desired goals. This raises questions on the legitimacy of their mandates, viability of their strategies and capacity to undertake ambitious operations necessitating an urgent review of methods and strategies to fit local context.

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Part I-The Corruption Complex

Chapter One

Research Context and Outline

1.0 Introduction

The interest in the subject of corruption and the anti-corruption mechanisms established to mitigate its effects has steadily become a popular research area in recent years. This interest is prompted by the realisation that corruption occurs in all states regardless of their position on the modernisation continuum. According to Alatas (1990), the multifarious nature of corruption is such that:

> [it] inheres in all social systems-feudalism, capitalism, communism and socialism. It affects all classes of society; all state organisations, monarchies and republics; all situations, in peace and war; all age groups; both sexes; and all times, ancient, medieval and modern (Alatas, 1990: 3-4).

While Alatas makes a valid observation, corruption however affects states in the early stages of development more negatively than those that have had a long history of modernisation. It has been associated with economic and political underdevelopment, dysfunctional administrative and political institutions and unstable societies.

The scholarly study of corruption is a relatively new enterprise that can be traced to early efforts in 1950s and 1960s. Prior to the period concise research data in this area was non-existent and the subject hardly featured in international discourse. Heidenheimer (2002) for example, explains that "the arguments about corruption are scattered throughout the western political tradition but a coherent theory...has never been fully articulated" (Heidenheimer, 2002:5). Colin Leys on the other hand observes that "the systematic investigation [of] corruption [is] long overdue...no general study in English has appeared" (Leys, 1965: 59).

Myrdal (cited in Heidenheimer, 2002) once pointed out that the subject of corruption has a history of being taboo. Inevitably, we may ask why there has been mounting concern and sudden interest in analysing and controlling corruption if this has been a perennial problem. There is a compelling argument that this interest was largely influenced by a paradigm shift by international bodies that, in their quest to be perceived as apolitical, had previously regarded the phenomenon as an internal matter of sovereign states. The theory states that the

war of attrition between the West and the East during the Cold War created alliances and strategic interests that were at times in conflict with democratic principles. Dictators, tyrants and kleptocrats were all left unhindered, and even supported, to loot and plunder as long as they aligned themselves with the West or the East in the bipolar world. After the dissolution of the Soviet Union and the end of the Cold War, world entities identified corruption as a source of the many social-economic ills and impediments to development (Doig and Riley, 1998:47-49). The demise of the Soviet Union and dismantling of communism allowed Western capitalist nations to persuade states to open up their markets to Western investment. These markets would only become viable if state institutions were functional and aligned with international standards of good governance and democratic political systems.

International organisations pursued this interest unambiguously. Citing the *UN Declaration against Corruption and Bribery in International Commercial Transactions* (1996), De Maria (2007) supports this view by stating that the main reason that corruption and its remedies has become major topics for discussion recently is that it is inimical to a stable and transparent environment for international commerce (De Maria, 2007: 18-19). These international role players prescribe the development of institutions of good governance that advocate for the reform political and economic structures. The control of corruption falls within the ambit of this good governance agenda.

Much as this has been the popular approach toward corruption and maladministration, there are glaring shortfalls in this approach. The assumptions driving this strategy do not adequately take into account the existent political and social imperatives that contribute to the inadequacies of state organs. There is often an implicit assumption that corruption is more or less spontaneous and associated with acts of desperation, poverty, greed and/or opportunism (Amundsen, 2000: 6). These are often its symptoms. The discourse on its causes and the evaluation of anti-corruption regimes often leaves out discussions on the historical and political imperatives. These have influenced the nature of socio-political interactions that are evident in the developing state and that contribute to the existence of corruption. This fact is often ignored when designing and institutionalising anti-corruption reforms. The anti-corruption programmes are mistakenly viewed as objective, independent and professionally established institutions that operate in a stable environment and should therefore counter the effects of corruption without “fear or favour”. The reality is that politics in Africa is often characterised by clientelistic exchanges and relationships of patronage that form part of

interactions for political mobilisation. Anti-corruption agencies operate within this context. De Maria (2007) in his observations notes that anti-corruption agencies (ACAs) are creatures of officialdom. He observes that:

> [t]his is often overlooked point needs to be re-visited because ACA legitimacy, moral authority and technical competency flows from, indeed is dependent on, the cultural relevance of African state apparatus (De Maria, 2007: 16).

In other words, De Maria observes that these cannot be disassociated from the realities of the socio-political context, bureaucratic traditions, economic and historical legacies. Indeed much criticism has been directed at the viability of these interventions in the African context. This *dysfunctional* argument advances the notion that the genesis and development of the state itself was a defective process that now manifests in divergences of norms and values between African and Western ideological platforms. The so-called Africanist academics advance this argument and explain why governments are disorderly, corrupt and unsystematic due to this fact that the state has an "absence of imbeddedness" with "transplanted institutions devoid of legitimacy" (Bayart, 1993; Dia, 1996; Ekeh, 1975).

Much as these neo-colonial arguments have found a large sympathetic audience amongst students of politics, other scholars on the other hand assert that although the questions on the exogenous nature of state institutions stimulate debates on the challenges associated with their adoption and implementation, the African state is not necessarily a passive actor at the mercy of external forces. Knowledge and expertise are adapted to correspond with local contexts and demands and therefore create workable solutions to problems. Bauer and Taylor (2005) for example point out that external knowledge and practices are not always simply imposed but are:

> endogenised" when they encounter "local" African norms and traditions (Magnusson, 2002). Hence the influences on southern Africa are broadly international (for example, neo-liberalism, globalization, democratization), domestic (local norms and traditions, including those of both democracy and authoritarianism), as well as regional (states, their leaders, and societies observe and are affected by one another in the regional context) (Bauer and Taylor, 2005: 10-11).

The above position appeals to *functionalism*. The state adopts and adapts externally developed knowledge systems to operate in the African environment. In essence, corruption is a by-product of political realities and should be considered without value judgements. It is a

practical and indispensable tool for advancing political agendas that stabilise precarious political systems (Chabal and Daloz, 1999). In other words, "Africa works".

Both of these positions contribute to the main arguments of this thesis. For the purpose of the discussion, I assess clientelism through the evolution of the Malawian political economy and historicity of the state by evaluating three overlapping epochs that have, in one way or another, contributed to the *status quo*. The processes of power acquisition and utilisation within these three periods had entrenched illicit resource accumulation and redistribution to finance patronage as a clientelistic system of neopatrimonial governance.

The first epoch begins with the establishment of the colonial government in 1891 and ends with the attainment of independence in 1964. The colonial government had developed the precedents for misuse of power for particularistic ends and bequeathed a legacy of elite dominance for the partial dispensing of patronage. Legislative and judicial branches of government were inferior to the executive in regard to the monopolisation of power that served the ruling elite. The period is also characterised by the inclusion of informal modes of social organisation that, through indirect rule, had incorporated traditional authority into the modern legal-rational bureaucracy. Although the intention was to introduce systems of administration of a Weberian-tyoe state, the subsequent political effect was the development of the regional demarcations that consequently created factional contestations and asymmetrical development, further creating the preconditions for political corruption (Doig and Riley, 1998:45).

The second epoch begins with independence and ends with the downfall of the dictatorial Kamuzu Banda and the one-party state. This era was characterised by the consolidation and perpetuation of executive supremacy and presidentialism that solidified neopatrimonial rule for the benefit of his Chewa ruling elite. The oligarchy utilised methods from the colonial precedents of manipulating traditional norms and values and legislatively blended cultural practices with legal-rational precepts of the modern state to influence people's consciousness and actions in support of a philosophy known as *Kamuzuism*. a form of puritanical neopatrimonial politics that enabled the ruling clique to privately benefit from formal office.

Finally, the third epoch begins with the re-introduction of multi-party politics in 1994 after a hiatus of thirty years from the first elections in 1963. The period for the reestablishment of multi-party politics under the banner of good governance and neo-liberal reforms ends in

2004. This period was characterised by the acceleration of strategies to revitalise the political economy through the implementation of political reforms. These interventions were configured as mechanisms for securing an effective accountable government that advanced the principles of popular participation, transparency and adherence to the rule of law. The anti-corruption agenda grew out of these initiatives but paradoxically this was the period that political corruption had been perceived to have been at its worst (Brown, 2008).

The anti-corruption programmes have to be taken in this political context. When President Bakili Muluzi's United Democratic Front (UDF) government replaced the 30-year dictatorship of Dr Kamuzu Banda's Malawi Congress Party (MCP), the creation of a viable anti-corruption regime was one of the main policy issues that the then government in waiting had presented to the electorate in its manifesto. Once in power, the UDF adopted a new constitution that challenged the state to introduce measures that guaranteed accountability, transparency, personal integrity and financial probity (Malawi Constitution, 2002). The state also aligned itself with international conventions and institutions that promoted good governance.

One of the laws the new government enacted was the Corrupt Practices Act No. 18 of 1995. This Act mandated the government to establish an Anti-corruption Bureau as a mechanism for the reduction of wasteful public expenditure and mismanagement. The public initially welcomed creation of this body with great optimism and high expectations. Contrary to the public expectations, in a matter of years the institution was criticised for its ineffective control of the perceived high rates of corruption.

In general, research on corruption in Malawi has mainly concentrated on issues that have been concerned with its effects without delving much into the specifics of how these relate to the effectiveness of anti-corruption measures. A number of surveys and studies by institutions such as Transparency International (1998-2004), Afrobarometer (1999) and the World Bank (Malawi Governance and Corruption Baseline Survey, 2006) have shown that corruption in the period under review was a major problem with regard to the effective management of public resources. This dissertation examines why corruption existed in post-1994 Malawi and why anti-corruption policies failed to achieve the desired outcomes in the transitional period.

Therefore, this study seeks to add to the knowledge on the existence of corruption in states undergoing transitions and why anti-corruption systems are often not effective. The assumption is that if we can study the preconditions that predispose certain environments to corruption, what causes it and what its consequences have been on institutions developed to tackle the problem, only then can we understand the nature of the phenomenon and offer knowledge that can assist in its control.

1.1 Political Context

The political economy of Malawi is similar to that of other former colonies of the British Empire in Africa. In 1891, the British government established the British Central Africa Protectorate in the area that it later named Nyasaland in 1907 (Chigawa, 2006). The first years of consolidating the state organs were experiences in integrating indigenous social organisations and traditional models of administration into the formal state. The political status of the settlement changed again in 1964 when the protectorate attained its independence from British rule and became the Republic of Malawi under the leadership of President Dr Hastings Kamuzu Banda (Williams, 1978).

Malawi is a landlocked country situated on the South Eastern part of Africa. It has a population of 16,323,044 and is regarded as one of the poorest countries in the world, ranking 171 out of 192 countries on the United Nations' UNDP Human Development Index (HDI). Classified as a country in the Low Human Development stratum, the economy is heavily dependent on agriculture with nearly 90% of the working population engaged in subsistence farming. It had a per capita of US$ 900 in 2012 and a life expectancy of 52 years. Malawi's 65.3% of the population is classified as poor (UNDP Human Development Report, 2011; CIA World Fact Book Website, 2012).

Administratively, the country is divided into 27 districts situated in three regions, namely the Northern Region, the Central Region and Southern Region. Blantyre, with a population of 350,000, is the business and administrative centre for the Southern Region. Mzuzu (80,000) is the economic hub of the Northern Region and Lilongwe (250,000) is the capital city, the seat of government and administrative centre of the Central Region. The country's regions also reflect the ethnic composition of the country. There are nine indigenous groups namely the Chewa, Nyanja, Tumbuka, Yao, Lomwe, Sena, Tonga, Ngoni and Ngonde (CIA-World

Fact Book Website, 2012; Cammack *et al*, 2009). The Tumbuka are the major ethnic group in the Northern Region, the Yao and similar groups in the Southern Region and the Chewa, by comparison the largest ethnic group in Malawi, dominate the Central Region (Malawi Country Strategic Paper, 2006: 7-8).

From 1964 to 1994, Malawi was ruled by Dr Kamuzu Hastings Banda's administration, described in some quarters as one of the most repressive of neopatrimonial regimes in Africa. Following the trend of other British colonies, Banda's government was initially modelled on the Westminster parliamentary system. After a rebellion by some younger MCP Cabinet ministers, a new Constitution in 1966 abolished the system and Banda's Malawi Congress Party (MCP) adopted an authoritarian model of a one party state (Carver, 1990). Dr Banda, a Chewa from Kasungu district in central Malawi, relied on his ethnic base to manage the country through an extensive patron-client system which he dispensed or withdrew patronage as was politically expedient (Meinhardt and Patel, 2003). Corruption existed in this hierarchical structure but was confined to the upper echelons of a stratified system that relied on a wide security apparatus comprising of Military Intelligence, the Security Intelligence Service, the Malawi Young Pioneers, the Criminal Investigations Department, the Youth League and other party and government organs. Banda had absolute control of all aspects of Malawian life and opposition to his party was literally a matter of life and death. Extra-judicial executions were commonplace and through the Public Security Act, security agents detained opponents without trial. Once regarded by the West as an example of a "good" African state for maintaining peace and stability and for its anti-communist stance during the Cold War, Malawi was in the late 1980s and early 1990s maligned by international institutions due to its poor human rights record and neopatrimonial system of governance. This system was challenged by internal and external pressures demanding administrative reforms for good governance and the rule of law.

1.1.1 Political and Institutional Reforms

International and domestic pressure finally coerced Dr Banda to accept multi-party elections and on May 17, 1994 the country had its second multi-party and democratic elections in 30 years. Bakili Muluzi's United Democratic Front won the election and formed the first

democratically elected government since the transfer of power from colonial rule to a nationalist government in 1963.

Politically, the prominent feature of Malawi's political milieu in the period under review is how the parties had ethno-regional foundations. In the 1994 presidential race, Tom Chakufwa Chihana a Tumbuka from the north, and leading AFORD, gained over 85 % of the votes from his region in comparison to 8 % from the centre and 7 % from the south. Dr Hastings Kamuzu Banda, the incumbent president, received 70 % of the votes from his region of origin as opposed to 16 % from the south, and 9 % from the north. Elson Bakili Muluzi, a Yao from the south, standing for the UDF, had 75 % of the votes from the Southern Region, compared to 23 % in the centre and 7 % in the north (Ferre and Horowits, 2006, Chirwa, 1994). The 1999 and 2004 Presidential and Parliamentary results followed a similar ethno-regional pattern, although with less demarcations due to the fragmentation of political parties within their regional bases. Although the UDF won the elections of 2004, President Bingu wa Mutharika, the incumbent, resigned from the party that brought him to power, citing policy differences. He formed the Democratic Progressive Party (DPP) that initially relied on defectors from other parties in national assembly in his first term. In 2009, Bingu was re-elected as the president and served until his sudden death while in office in April 2012.

Economically, Malawi is one of the most aid-reliant states. Despite the positive gains that occurred from the first 15 years of independence, the country has experienced mixed fortunes since the early 1980s due to both internal and external shocks. Citing a World Bank report, Cammack (2006) explains that aid as a percentage of GDP averaged more than 26% from 1994/95 to 2004/05. "Economic growth in Malawi was highly erratic for the next 10 years (1998-2004), averaging only 0.7% growth in GDP per capita per annum" (Cammack, 2006: 14). The devastating effects of drought of 1998-2002 also placed huge pressures on the financial system causing the budget deficit (including grants) to almost treble to 15.1% of GDP (*Ibid*).

Apart from general mismanagement and waste, this heavy financial burden on the nation is also attributable to corruption. The Banda regime inherited a system of governance from colonial rule that had a very strong executive that monopolised power. Banda's government itself abused this monopoly for the private benefit of a small clique. The years under Bakili Muluzi (1994-2004) are identified as a period of unprecedented illicit accumulation.

Politicians, entrepreneurs and ordinary public servants engaged in fiscal indiscipline, maladministration (Brown, 2008).

1.2 The Observations of Corruption in Malawi's Transitional Period

1.2.1 Indices and Surveys

For something that occurs in secrecy, how can we confidently study its occurrence? One of the most cited and utilised indicators for the prevalence of corruption is the global reference of the Transparency International Corruption Perception Index.

Transparency International (TI) defines corruption as the abuse of entrusted power for private gain (Transparency International, 2012). The Corruption Perceptions Index (CPI) ranks countries according to perception of corruption in the public sector. It is an aggregate of different sources of data on corruption to form a comparative perception indicator. The methodology involves engaging business opinion surveys from at least three sources. Thus, the "score" relates to the perceptions of the degree of corruption by those surveyed-usually businesspersons and country analysts. The index rates countries on a scale from 0 to 10 where a score of 10 shows a corrupt free country and a score of 0 denotes a highly corrupt state.

The progressive increase of perceived corruption in Malawi is reflected in the results of the Corruption Perception Index captured from the years 1998 to 2004.[1] Malawi's CPI score regressed from 4.1 in 1998 to a low score of 2.8 in 2004, indicating a significant increase of the perceived corruption in the country. These elevated perceptions of incidents of corruption subsequently lowered the country's ranking from number 45 in 1998 to 90 in 2004 in the global comparative scale. Table 1 below illustrates this.

The Transparency International yearly rating corresponds with the results of the Malawi Government Governance and Corruption Baseline Survey (MGCBS). Interviewees were of the belief that corruption had grown worse in the ten years of the UDF administration. Of those that believed corruption had worsened, over 71% thought the problem had become much worse over the ten years as compared to 24% who believed the problem of corruption has stayed at the same level in the same years (MGCBS, 2006: 20).

[1] It should be noted that Malawi was not ranked before 1998.

Other highly regarded measures are the International Country Risk Guide (ICRG) corruption index, the Global Competitive Report (GCR) corruption index, the Business Environment and Enterprise Performance Surveys (BEEPS) and the Worldwide Governance Indicators by the World Bank (Cheung *et al*, 2011:1).

In reference to the World Bank Governance Indicator, data on the incidents of corruption in Malawi provides insight into the magnitude of the phenomenon as observed in the years in question. An aggregate of results from data compiled by the World Bank illustrates the perceived escalation of incidents of corruption in Malawi as observed in the country's *control of corruption* dimension between 1996 and 2005.[2] The *control of corruption* dimension measures the extent by which public power is abused for private gain. This includes petty and grand forms of corruption, as well as "capture" of the state by private interests. With regard to this dimension, the percentile ranking decreased from 32.5 points in 1996 to 22.8 points in 2005 (Kaufmann *et al*, 2009). [3]

The Afrobarometer Values surveys have also been used to identify the levels of governance in African countries. A majority of respondents (54.5%) in a sample size of 1118 respondents in 1999 believed that incidents of corruption were more or much more during Bakili Muluzi's administration than that of Dr Kamuzu Banda. Those that believed it was less or much less were 31.7%. Only 13.8 % believed the levels were the same (Afrobarometer Values Surveys Databank, 1999).

[2]The World Bank Governance Indicators for Malawi has utilised data from the following Institutions: African Development Bank Country Policy and Institutional Assessments, Afrobarometer, Asian Development Bank Country Policy and Institutional Assessments, Business Enterprise Environment Survey, Business Environment Risk Intelligence Business Risk Service, Bertelsmann Transformation Index, Freedom House Countries at the Crossroads, Global Insight Global Risk Service, Economist Intelligence Unit, Freedom House, Cerberus Corporate Intelligence Gray Area Dynamics, Transparency International Global Corruption Barometer Survey, World Economic Forum Global Competitiveness Survey, Global Integrity Index, Gallup World Poll, IFAD Rural Sector Performance Assessments, Institutional Profiles Database, Latinobarometro, Merchant International Group Gray Area Dynamics, World Bank Country Policy and Institutional Assessments, Political Economic Risk Consultancy Corruption in Asia, Political Risk Services International Country Risk Guide, vanderbilt University Americas Barometer Survey, Institute for management& development World Competitiveness Yearbook, Global Insight Business Conditions and Risk Indicators.

[3]The six dimensions are: Voice and Accountability, Political Stability and Absence of Violence/Terrorism, Government Effectiveness, Regulatory Quality, Rule of Law, Control of Corruption.

Table 1: Comparative analysis of Transparency International Scores (1995-2004)

COUNTRIES	1995	1998	2001	2002	2003	2004
Botswana	n.a	6.1	6.0	6.4	5.7	6.0
South Africa	**5.6**	**5.2**	**4.8**	**4.8**	**4.4**	**4.6**
Egypt	2.7	2.9	3.6	3.4	3.3	3.2
Uganda	n.a.	2.6	1.9	2.1	2.2	2.6
Cameroon	n.a.	1.4	2.0	2.2	1.8	2.1
Kenya	-	2.5	2.0	1.9	1.9	2.1
Tanzania	-	1.9	2.2	2.7	2.5	2.8
Nigeria	-	1.9	1.0	1.6	1.4	1.6
Ivory Cost	-	3.1	2.4	2.7	2.1	2.0
Senegal	-	3.3	2.9	3.1	3.2	3.0
Morocco	-	3.7	n.a	3.7	3.3	3.2
Malawi	-	4.1	3.2	2.9	2.8	2.8
Tunisia	-	5.0	5.3	4.8	4.9	5.0
Mauritius	-	5.0	4.5	4.5	4.4	4.1
Namibia	-	5.3	5.4	5.7	4.7	4.1
Zimbabwe	-	4.2	2.9	2.7	2.3	2.3
Ghana	-	n.a	3.4	3.9	3.3	3.6
Zambia	-	n.a	2.6	2.6	2.5	2.6
Ethiopia	-	-	-	3.5	2.5	2.3
Angola	-	-	-	1.7	1.8	2.0
Madagascar	-	-	-	1.7	2.6	3.1
Mali	-	-	-	-	3.0	3.2
Mozambique	-	-	-	-	2.7	2.8
Algeria	-	-	-	-	2.6	2.7
Gambia	-	-	-	-	2.5	2.8
Sudan	-	-	-	-	2.3	2.2
Congo (DRC)	-	-	-	-	2.2	2.0
Sierra Leone	-	-	-	-	2.2	2.3
Libya	-	-	-	-	2.1	2.5

Source: *Gaston, (2005:35), Transparency International, (1995-2004)*

With regard to experiences of actual incidents of corruption, the first ever National Crime Victimisation Survey conducted in 2003, noted that the public experience of corruption constituted the third most reported crime after the theft of crops and livestock theft (*n*=332). The three highest types of corrupt acts were related to employment (29.2%) followed by corruption associated with the distribution of food subsidies (18.4%) and policing services (15.1%) (Pelser *et al*, 2005: 46).

1.2.2 The Media

The media had been instrumental and persistent in exposing the various corrupt activities in government by politicians. The newfound freedom of expression was aggressively pursued to inform the nation of the transgressions of the ruling elite.

In 1996 alone, the newspapers reported allegations that President Muluzi had illegally appropriated land worth MK 500,000 (US $44,440) from a late friend. Another allegation by the Chronicle, exposed the involvement of a wealthy Blantyre businessman and politician in the ruling party United Democratic Party, James Makhumula for having grabbed land from a poor man in Zomba (The Malawi News Online 6 September 1996).

The response from the government to these allegations was that of belligerence. Newspapers recorded the president's threats that he would instruct the police to arrest anyone who reported corruption without offering evidence (The News Day, August 24-28, 1996; The Daily Times, June 17, 1994). He repeated this threat throughout his presidency and at times, it was acted upon. Opposition reporters were regularly harassed and arrested by the administration for exposing corruption.

1.3 Scope of Research

The scope of research is the transition period from 1994 to 2004. The reason being the newly elected administration had advocated for the introduction of democratic principles of transparency, legitimacy and accountability. The public had high expectations for the government to control the abuse of power for private gain. Bakili Muluzi was elected to a second term in the national elections of 1999, a position that he relin
quished in 2004 after serving his full second and final term of office. Although this period is the primary focus of the research, the study will contextualise this with reference to the political and institutional dynamics and relationships prior to this period and beyond.

1.4 Research Problem

From 1994 to 2004, Malawi was confronted with allegations of incidents of corruption scandals. The damaging social, economic and political repercussions that this had on government processes caused distortions in financial and administrative systems that have had long lasting effects on economic and social development (MGCBS, 2006; Devereux, 2002).

A survey by Klynveld Peat Marwick Goerdeler (KPMG) in 2006 rated Malawi as the second most fraudulent country on the continent after Swaziland (The Nation Newspaper, May 6, 2006). The insidious effects of the problem had led to calls by the country's major

cooperating partners for the government to follow through with its undertakings for political, structural and financial reforms.

In this environment, democratic reforms did not produce the desired outcomes. Politically, democracy had exposed deep-seated structural deficiencies in the fabric of society that associated power with economic disparities, misdirected opportunities for political and social advancement and that facilitated factional competition, all of which exacerbated corruption and contributed to institutional instability. Despite the establishment of institutions legally mandated to control it and programmes aimed at its eradication, corruption had persistently endured under democracy.

1.5 Research Objectives

The reforms of post-1994 established institutions for good governance and the rule of law in concordance with internationally acceptable standards and practices. The project commenced with the adoption of a new constitution in 1995 and the subsequent establishment of the anti-corruption regimes that aimed to create accountable governance that was transparent, credible and legitimate. The new Constitution transferred the authority to govern in the hands of the population "as expressed through universal and equal suffrage" (Malawi Constitution, 2002: 8). The transition processes from the despotism of Banda's political machinery to democratic systems had focused on curtailing the excesses of the deposed regime that had misused the public sector for the benefit of a few individuals.

The study traced corruption through the historical progression of the political economy in order to recognise the institutional, political and socio-economic deficiencies of the state that led to the perceived increase of corruption in the post-1994 government and how this situation affected anti-corruption measures. The study primarily sought to identify the role that bureaucratic, political, social and economic institutions played in this perception and why efforts to contain it were generally ineffective.

This analysis of political dynamics assisted in identifying the suggested reasons of why institutions that were established to contain it were not successful. The knowledge generated in this study is fundamental in identifying why anti-corruption measures seem to have failed Malawi specifically and Africa in general. From understanding the reasons for this, better

countervailing procedures can be designed to tackle the problem in countries undergoing transformation.

1.6 Research Questions

The main questions in this study were "what characteristics did corruption manifest in Malawi from 1994 to 2004 and what insights can a study of the sources of corruption in Malawi throw in understanding the failure of initiatives to suppress it?" My research therefore sought to find answers to the following:

- What preconditions and precedents existed in Malawi prior to the election of the democratic government in 1994 that permitted the prolific existence of corruption?
- How did these "coalesce" with the political environment of post-dictatorship Malawi to create an enabling environment?
- How did these forces undermine anti-corruption efforts instituted by the government?

In addressing these questions, the researcher specifically tried to find answers to the following questions:

- What were the characteristics of corruption in Malawi during the period under review?
- What political, economic and social processes contributed to high levels of corruption in Malawi?
- What overall strategies did the government institute to curb corruption and how effective were these?
- How successful was the Anti-Corruption Bureau in achieving its goals of curbing corruption?
- What role did politics play in the operations of the Anti-Corruption Bureau?
- What were the structural/institutional and legal impediments to the anti-corruption initiatives?

1.7 Research Justification

Corruption is inimical to development according to dominant contemporary theories. Its existence is associated with the retardation of economic progress, administrative inefficiency and the distortion of public good distribution (Rose-Ackerman, 2006; Gray and Kaufmann, 1998). It leads to political instability, poverty and other socio-economic ills (Shleifer and Vishny, 1993). Corruption erodes the activities of government and facilitates the perpetration of other criminal activities (Kaufmann *et al*, 2005). These problems are extremely acute in African countries which rely on aid and grants from donors for a diverse number of activities

such as to making balance of payments, attracting capital investment and implementing developmental programmes. Its pervasiveness has weakened some states to the point that it contributes to the burdensome perpetual indebtedness (Szeftel, 2000). The low production output and diminishing ability by governments to collect revenue in turn creates an environment that breeds more corruption. Studies correlate the pervasiveness of corruption with misrule. A recent research by the African Institute of Corporate Citizenship (AICC) entitled *Benchmarking Anti-Corruption Initiatives in Africa* (2008: 6) referred to "the continent's dark history of autocratic and unaccountable governments, as well as conflicts and crises in many parts of the continent [which] have posed particular challenges to governance and the fight against corruption in Africa".

This research is therefore justified in that it is a necessary endeavour to identify causes of corruption within the context of transitional states in order to improve on strategies that minimise its effects. The second justification is to contribute to literature on the subject of anti-corruption measures owing to the scarcity of research on the subject. According to the OECD/DAC "there is little synthesis or analytical work done and very little documented evaluative material on work related to anti-corruption institutions" (OECD, 2003: 54). This study therefore presents insights into the causes of corruption and the constraints on the anti-corruption programmes in general, and the Malawi Anti-corruption Bureau in particular, that exist during periods of political transformation.

1.8 Hypothesis

This study tests the hypothesis that the quality of political leadership matters in delineating the causes of corruption and in identifying the constraints placed on anti-corruption measures during transitional periods. The rise of political "elite" corruption from 1994 to 2004 in Malawi and the ineffectiveness of anti-corruption regimes to contain it were due to the manipulation of the political economy by political leaders with the intention of replacing old patron-client configurations that had been established by the previous regime of Kamuzu Banda with new clientelistic networks.

These new "patrons" were identifiable by their political affiliations that were based on the development of ethno-regional factions. They exhibited material wealth and opulent consumption lifestyles acquired through their connection with authority figures. In an impoverished socio-economic environment where status and personal power are synonymous

with affluence, the creation of this group of individuals who possessed (and were able to re-distribute to a certain extent) material wealth was a method of maintaining and consolidating political power. Corruption prevailed when this patron-client network had utilised illegal means of resource accumulation and relied on the misuse of public office to maintain it.

The adoption and institutionalisation of the principles of good governance disguised a clientelistic and neopatrimonial leadership. In this state of affairs, corruption existed in all organs of the state. In turn, the government suppressed anti-corruption programmes to protect individuals that relied on the abuse of public office to maintain their positions of power.

1.9 Contribution to Research

There is a lack of a body of research literature on corruption and the functioning of anti-corruption systems in Africa (Heidenheimer, 2002). Coincidentally, this also applies to the paucity of data in general on how corruption intersects with the political economy in periods of transformation and the effectiveness of how anti-corruption measures interact with institutions of the state in attempting to mitigate its effects.

After independence in 1964, the dictatorial administration of Banda's Malawi Congress Party (MCP) violently suppressed academic discourse that contradicted or criticised any official policy position of the government. Academics were closely monitored by security agents with the aim of controlling the infiltration of "unfamiliar foreign ideologies" (namely communism and socialism) which, according to the regime, were inimical to the development of a well-functioning capitalist state. For this reason literature on corruption within the Malawian political economy is scarce.

This thesis therefore contributes to existing knowledge on corruption by showing how historical influences embedded in political, economic and social processes contributed to its existence during the period of political transformation. It analysed Malawi's experience of developing anti-corruption strategies in the post-1994 government to countervail the perceived growth of corruption in a democratic dispensation. Therefore, the study of corruption and anti-corruption measures in Malawi may offer country specific information that, on a generic scale, adds to the examination of relationships between formal authority, informal influences and state institutions in development countries that cause corruption and restrict anti-corruption programmes.

1.10 Methodology

The methodology in this study is based on qualitative data collection methods. Qualitative research aims to draw inferences for the assessment of social phenomenon by interpreting real issues as they occur (De Vos, 1998: 240-241). The value of qualitative research lies in the fact that a significant number of studies on the subject attempt to assess corruption indirectly by relying on questionnaires and survey evidence. This is beneficial in some cases but is often problematic considering that corruption is a secret act (Cheung *et al*, 2011:1).

Some descriptive statistics have been used to emphasise some points. Using the case study approach the study drew from a wide array of sources. This included the analysis of the relationships amongst individuals, institutions and events and the series of actions that led to the *status quo* to draw conclusions. The starting point was the reintroduction of multi-party politics in 1994 and it followed the dynamics between the different actors, operations and processes until 2004. However so, the research referred to essential events before 1994 and after 2004 to place the scope of research into context.

For primary data, the research incorporated the results from the document analyses of government records, court documents, a review of authorised complaints from the investigation database of the Anti-corruption Bureau, and a review of news articles. An examination of secondary literature offered insights into the type of social, economic, political and cultural legacies that were bequeathed by the colonial and Banda governments to the democratic regime that facilitated the existence corruption. Specific cases were highlighted to offer insights into the operations of the Anti-corruption Bureau and the government in the fight against corruption. The study also included information obtained through semi-structured elite interviews with individuals who were involved in specific events and processes during the decade or who had professional insights into the topic.

1.10.1 Field Research

1.10.1.1 Primary Data

The field research consisted of two phases. The first phase involved elite interviews that commenced from March 2009 and ended in September 2009. These consisted of face-to-face interviews, emails and telephone interviews mainly with employees of the Malawi Police Service National Police Headquarters and the Anti-Corruption Bureau head office in

Lilongwe. In all, there were 34 interviews. The researcher interviewed politicians, persons from non-governmental organisations, as well as government employees from various ministries and departments. The interview used non-probability purposive sampling and the interviewees were identified through the following four criteria: 1) particular role they played in specific events 2) extensive knowledge and understanding of corruption in general and Malawi in particular 3) experience of working in the specialised field of corruption in Malawi and 4) extensive interaction with and knowledge of government agencies and departments. The interviews were open-ended semi-structured discussions guided by constructivist paradigm to explore the opinions, perceptions and observations of those interviewed on the subject matter. A qualitative method of inquiry was deemed as the best method for data assessment.

The general guide was to solicit answers to questions on the reasons why corruption existed after 1994. The research also sought to identify who was involved and what constraints existed that limited the efficiency of anti-corruption regimes. The interviews contained two main areas of inquiry. The first part dealt with complexities of conceptualising corruption, the configuration and the consequences of corrupt acts including precedents of the past governments. The second part dealt with the institutions aimed at curbing corruption and the challenges that these institutions have experienced in containing it.

The research followed the necessary protocols in the handling of privileged information entrusted to the researcher from the Anti-corruption Bureau, National Police Service Headquarters, and from the other government institutions. Owing to the sensitivity of the subject matter, there was great effort made to ensure that the anonymity of informants was maintained when they so desired to guarantee confidentiality**.** The researcher fulfilled these requirements by signing an oath of secrecy at the Anti-corruption Bureau and obtaining a letter of authorisation from the National Police Headquarters to conduct the research unhindered within the institution. All interviewees were informed of their right to request for the termination of the interview at any given time. These measures were necessary to ensure the non-disclosure of sensitive information that would compromise on-going investigations or the security of persons involved.

The second phase of the research consisted of reviewing 2545 authorised complaints from the Anti-Corruption Bureau National Headquarters data base in Lilongwe that were approved for

investigation and prevention operations. This was not an attempt to observe a quantitative measure on the extent of corruption, but rather to discern the intricacies of corrupt transactions in a qualitative way. The research explains the methodology in detail in chapter seven that presents the results of the empirical data collection.

1.10.1.2 Secondary Data

The examination of secondary data offered insights into the social, economic and political dynamics of the Malawi's political economy and gave the researcher discernments into the identities of the various actors and the political motivations for their actions.

Secondary data included Anti-Corruption Bureau annual reports, government documents, World Bank and IMF reports and Surveys, Afrobarometer surveys, Transparency International reports and surveys, Governance and Corruption Baseline Survey, books, previous research reports and academic journals and articles.

1.11 Strengths/Limitations

Political corruption is an activity that often involves powerful persons. For this reason, the culture in the public sector is one of concealment and silence (Haarhuis and Leeuw, 2000; Kaufmann, 1998; 2000). The subject matter is usually shrouded in political interplays that have prompted De Maria (2007) to concede that:

> [a]s a general observation African governance is beset with high levels of secrecy and low levels of accountability. This climate clearly impinges on information gathering choices and rules many data collection protocols inappropriate. The challenge is to add to the near empty vessel of [anti-corruption Institutional] knowledge in ways that respond to this prevailing information climate (De Maria, 2007: 6).

In this way, corruption is an extremely difficult subject area for research. The researcher anticipated some reservations from public servants in taking part in the interviews during the data collection stage. In addition, the researcher also anticipated that some public sector employees would be reluctant to divulge sensitive information for fear of their jobs or security. The research overcame this by explaining in detail the nature of the study and by seeking consent from the heads of the institutions (where applicable). All interviews were

consensual and the interviewees had the right to terminate it at any time. Those that wished to remain anonymous had the right to do so.

Secondly, as the researcher had anticipated, some of the elite interviewees were not easily accessible for face-to-face interviews. When this did occur, electronic correspondence (email and telephones) was used for ease of access the interviewees.

Lastly, since corruption is a secret act, it is often difficult to verify the information. Anticipated questions on the accuracy, neutrality and validity of the information gathered was a genuine concern that existed. This limitation was overcome by comparing and collaborating information from different sources.

1.12 Ethical Considerations

The main area of concern on corruption is how to treat potential informers (Blundo and Oliver de Sardan, 2006). As this is an academic exercise in the search for the causes and consequences of corruption and the viability of anti-corruption efforts in Malawi, primary data was obtained from potential whistleblowers and those that were involved with the anti-corruption effort in specific cases. These interviewees provided valuable information with regard on the nature of corruption in Malawi in particular organisations. For ethical reasons, confidentially was respected and maintained. The researcher also obtained an ethics clearance certificate from the University of Witwatersrand to commence the research. Due diligence was carried out in handling sensitive or confidential documentation, especially from the Anti-corruption Bureau. For this reason, the researcher secured prior consent from the Director of the Anti-corruption Bureau to conduct research at the institution.

Chapter Two

Approaches toward the Study of Corruption

2.0 Introduction

Studies on corruption mainly revolve around the misuse of public office and other forms of power by agents of the state. Approaches in its study generally focus on the maladministration committed by officers in the execution of policies and the implementation of state programmes for private gain. The implication is that the exercising of public power occurs at the social-political, personal and institutional levels that lead to the deviation from formal responsibilities for private gain.

2.1 Approaches Toward Corruption

Research on political corruption is often approached from three broad categories of *institutional, personalistic/individualistic* and *systemic* perspectives that provide insights on the nature of corrupt exchanges. The *institutional* approach views corruption as emanating from weaknesses within institutions of government that create opportunities for exploitation (World Bank, 2012). Corruption is therefore a consequence of a variety of factors that have collectively contributed to dysfunctional state organs. For example, at the national level the procedures of government institutions may contribute to its existence. The nature of the political environment (pluralistic *versus* autocratic), economic environment (controlled *versus* liberal/market oriented) and the social environment (rapid/open *versus* measured) are all variables that have been associated with the quality of institutions which in turn may determine whether public institutions are corrupted (Gould and Amar-Reyes, 1985).

The *institutional* approach advocates for mechanisms of control that include a change or restructuring of organisational processes and procedures that facilitate corruption, the decentralisation and devolution of power and the restructuring of legal frameworks that are antiquated to allow for the replacement of excessive regulations and facilities. This approach therefore views corruption as a consequence of inefficiencies within institutions that provide opportunities for rent seeking. The structural adjustment programmes of the 1980s and 1990s fit into this category.

Another view of corruption is from the *individual* or *personalistic* perspective. Commentators have tried to analyse this by attempting to understand corruption in relation to the incentives accessible to the corrupted/the corrupter and the mode of interaction between the two (Goudie and Strange, 1997). The "corrupted" is viewed as a self-serving public servant who is driven by greed and the desire to gain privately at the expense of the state. Corruption is mainly conceptualised from the perspective that in a well-functioning system, public servants follow a legal-rational model of administrative responsibilities in the execution of their mandates. This approach assumes that an individual will conduct him/herself in a formal, professional, impartial and procedural manner in accordance with established standards. The conduct of public servants is determined by the quality of the relationship that exists between them as agents of the state and the government that they work for. The propensity to act corruptly is a rational calculation that the individual makes when he/she concludes that the benefits of being corrupt outweigh the punishment (Mbaku, 1996).

This approach is strongly influenced by the works of Max Weber and his conceptualisation of the ideal bureaucracy. According to Weber's contribution, the ideal public service has a separation between the private and public spheres. In this setting, the recruitment of professional public servants is through a merit based formal process (Chabal and Daloz, 1999). Whether this is the electoral process for a politician, or through the interview and examination of a prospective bureaucrat, the criteria should be standard and objective. These public officers are to be committed to the goals of the organisation without interference or influence from their private lives. Decisions are impersonal, rational and objective with a reliance on information received according to established rules and procedures. Therefore, "individual performances are allocated to functionaries who have specialised training and who by constant practice gain experience and skills" to function competently (Weber, 1946: 215).

Corruption within the public sector is often referred to as a dysfunctional principal-agent-client relationship. The principal-agent-client model has been favoured for many years to unravel this relationship by such eminent scholars such as Rose-Ackerman (1978) and Klitgaard (1988:69). The model proposes that the principal will employ an agent to interact on his/her behalf and ensure that they are loyal by providing them with incentives (e.g. salary). In this relationship, the principal expresses a set of preferences that specify a desired outcome from the agent. The genesis of corruption is the asymmetrical information transfer

between the actors involved. The principal's dilemma occurs when he has limited information either about the type of agent's, i.e. whether he is honest or dishonest, or poor information about the agent's (and the client's) activities, i.e. whether they are productive or not. The first type of problem is called the problem of adverse selection and the second is called the problem of moral hazard (Andvig *et al*, 2001:90). Monitoring of agents is very costly, and since agents enjoy a certain degree of discretion, they often place their interests above those of the principal. Corruption also occurs when the client, who wants a decision to be made in his favour, "buys" this influence from the agent with a secret payment (Rose-Ackerman, 1978:6). This can be summarised as the monopoly of power plus discretion by public officials minus the accountability (Klitgaard, 1988).

Although the principal-agent-client analysis is helpful in understanding corruption, it struggles to provide an effective analysis of the source in the first place. The applicability of the model is less practical in cases where the relationship between the principal and his/her agent is unclear. Andvig *et al* (2000:116) give an example where a parliament is the principal of the bureaucracy, but members of the bureaucracy as voters can also be the principal of the parliament, therefore blurring lines of responsibility and accountability. In cases where multiple principals exist, the ambiguity increases. When a public institution as the principal competes with a number of informal ones who have profound influence on a public servant, such as traditional systems, the principal-agent-client model is not a practical model to use.

The principal-agent-client model is generally useful though in identifying areas where the state can intervene to minimise corruption. In well-functioning systems, the creation of measures such as incentive schemes and capacity building exercises may ameliorate some of the ill effects of corruption that emanate from the breakdown of the communication link between the state and its agents.

Finally, the *systemic* model disaggregates corruption along power relations in society by analysing the interactions between economic, social and political institutions. In this regard, corruption is the product of constant competition between and within groups such as political parties (Cartier-Bresson, 1997: 466) and the approach recommends for a set of policy priorities and reforms to be simultaneously followed. This goes beyond the traditional focus of *individual* or *institutional* perspectives and takes a more holistic approach (Khan, 2006:4). The model acknowledges that corruption is a phenomenon that is highly complex with

multiple causes that often feedback from its effects (Lambsdorff, 2006:4). These may include cultural, social and traditional influences in the political system that renders it corrupted or prone to corruption. As Kaufmann *et al* (2009) have observed, the analysis and fight against corruption needs to have a broader approach and should incorporate the rule of law, protection of property rights, freedom of the press, political competition and disclosure of campaign financing amongst other measures. This model therefore advocates for the interdependency of activities with the participation of multiple stakeholders that are coordinated by specialised agencies for the control of corruption. The main argument is that the integration of social, legal, financial and political organisations is essential for the development of an environment conducive to good governance. This in turn is supposed to translate to administrative efficiency, high levels of economic growth and reduction of poverty (World Bank, 2012). The model has gained traction from its adoption by major multi-lateral agencies. One of these strategies is the National Integrity System that is favoured by the World Bank and Transparency International (Doig and Riley, 1998; Woods, 2000: 824).

The challenge that most developing countries face is whether the transplanted definitions, frameworks and institutions are applicable to the local political and economic contexts and to what extent these have to be operationalised or adapted within prevailing norms. For example, *personalistic* approaches have economic and policy dimensions. States have to consider how much employees should receive in order to incentivise them not to be corrupt, whether the state can afford it and what the effects would be on the overall public service. Likewise, the capacity of the state to implement *institutional* and *systemic* measures is to a certain extent determined by other local realities such as staff capacity, socio-political customs and traditions and the existence of complementary systems for the government to implement institutional changes for them to be effective.

This dissertation examines intersection between the personal behaviour of individuals, the characteristics of state institutions and nature of social organisations to seek answers on corruption in Malawi during the transitional period. This will be assessed through the neopatrimonial theory of leadership as explained below.

2.2 Neopatrimonial Rule and Power Relationships

Amongst the more recent analytical tools in the study of elite political corruption in developing states is the neopatrimonial theory. In neopatrimonial political systems, patrimonial characteristics pervade the organs of the state and confound the formal legal-rational process by unifying traditional institutions with the modern. Neopatrimonialism as described by Bratton and van de Walle (1997) is a system in which an individual:

> [r]ules by dint of prestige and power; ordinary folks are treated as extensions of the "big man's" household, with no rights or privileges other than those bestowed by the rules. Authority is entirely personalised, shaped by the ruler's preferences rather than any codified system of laws. The ruler ensures the political stability of the regime and personal political survival by providing a zone of security in an uncertain environment and by selectively distributing favours and material benefits to loyal followers who are not citizens of the polity so much as the ruler's clients (Bratton and van de Walle 1997: 61).

Politics is viewed as the struggle for the exercise of sovereignty by groups who have to use the distribution of patronage as a way of consolidating their grasp on the powers of the state (Diamond, 1987: 578-579, Johnson, 1998; Szeftel, 2000). As the argument goes, political mobilisation in developing countries is dependent on the effective utilisation of resources to for the benefit of specific persons and particular groups. These resources may be utilised in illegal ways, such as corruption, to gain ethno-regional support such as ethno-regional foundations (Myrdal, 1968).

Although the concept of ethnicity has been utilised liberally in political sciences, there is no definitive meaning of what an ethnic group is. For example, James Coleman (1958: 423-424) places it within the realms of "nationality" and "tribe". He refers to a tribe, which is the elemental unit of an ethnic entity, as a group of individuals who share common traditions and can trace their pedigree to a common origin. He associates tribes with a "nation" defined as a collection of tribal groups with similar cultural genesis. Chazan *et al*, (1992) define ethnic groups in terms of shared historical memories, values and expectations. This is in congruence with Donald Horowitz's (1985) position who posits that group members derive cognitive satisfaction from belonging to a collective which they identify as an extension of their existence. This relationship manifests both physically and emotively in that members associate their obligations toward the group as an act of self-preservation (Banton, 2007: 26).

Ethnicity therefore tends to be instrumentalised by politicians to gain support from affiliated groups or to demarcate society along distinctions that may be manipulated for political gains. In the case of Malawi, the thesis explains in Part II how ethnicity (ethno-regional politics) was used by successive regimes in legitimating both the country and its policy orientations and how it shaped the ideological paradigm within which policy formation took place to create an environment conducive to corruption (Segal, 2008).

Ethno-regional politics occurs as a form of clientelism when a dominant individual sustains political support through the manipulation of his beneficiaries with patronage. Clientelism is defined as "a system of political organisation where vertical links across class lines are based on unequal reciprocal relations between patrons and clients" (Szeftel, 2000: 435). At the top of this patron-client political organisation is the "big man". This refers to an individual or group of individuals who have the resources and power to provide patronage to their followers in general and their relatives in particular. These clientelistic "networks of reciprocities" or "nets of interaction" are used by patrons to build support through the extraction and redistribution of wealth (Amundsen, 1999). In the Weberian sense, the big men and those close to authority are status groups, with all the attendant power and prestige, that control the stratified (and socially differentiated) patron-client system that transverses the political landscape from the top to the bottom. The dysfunctional and under resourced public service institutions only contribute to this *status quo* by creating the environment where this becomes the norm. As van de Walle (1994) elucidates, "the ruler depends on the state apparatus to control and channel political participation. Just as important, state resources are used to reward political loyalty, to forge the regional, ethnic and religious alliances necessary for national unity, and to obviate the need for coercion" (van de Walle, 1994:133). In his contribution, Gellner (1975) describes the characteristics of this patron-client type relationship. It is a relationship that is:

> ....unsymmetrical involving inequality of power, it tends to form an extended system; to be long term, or at least not restricted to a single isolated transaction; to possess a distinctive ethos; and whilst not always immoral, to stand outside the officially proclaimed formal morality of society in question (Gellner, 1975: 4).

According to Cartier-Bresson, it is based on the hierarchical organisation of power within groups that develop on the foundation of solidarity, trust and reciprocity to sustain their

existence (Cartier-Bresson, 1997: 467). The World Bank has noted that the prevalence of corrupt patronage and clientelism is what has contributed to the deterioration of the state; particularly the "crisis" that is observed of African governments (World Bank, 1989:60). In Szeftel's (2000) contribution, the "crisis" of the developing state is associated with, in part, the abuse of patron-client relations in order to meet factional demands. Although clientelism in its purest form is benign, it becomes problematic when illegally sourced financing forms part of the political objective. For instance, he notes that clientelism as a control mechanism of factional conflict has intensified in the context of the competitive politics of liberal-democratic societies (*Ibid*: 432-433). It is in the interest of the political leadership, therefore, to maintain predominantly vertical patron-client relationships based on ascriptive characteristics to consolidate political power. "This makes it imperative for both patron and clients to maintain their relationships: for patrons because of their need to maintain their position and support base; and for clients because of the absence of reliable and universal public services and safety nets" (O'Neil, 2007:3). In summation of the argument, political mobilisation in this environment is associated with clientelistic politics where electoral support is exchanged with access to resources. The leader provides patronage such as the redistribution of illicit wealth in its extreme cases, and the subjects offer support. When corrupted, clientelism is associated with favouritism, nepotism, bribery and other forms of transactions that are at the centre of political relationships.

For this reason, the acquisition of unbridled power and the ability to manipulate the political system for wealth accumulation (and redistribution) are linked. It is at this convergence that political corruption manifests as a function of political power.

2.2.1 Institutional Hybridity and Horizontal Relationships

In African polities, there is usually a disjuncture between the perception of corruption as insidious when viewed from a legal-rational perspective and as a social phenomenon that is widely practiced at all levels of society (Oliver de Sardan, 1999: 33-34). Corrupt systems are generally characterised by a duality of conduct by public employees that emanates from informal and formal influences. Informal traditional institutions that exert a significant influence upon the public servant still exist as a social system. These include traditional organisations that serve as socialisation agents for the majority of the population and more especially those that reside in the rural areas. This influence is so considerable that they

usually dictate the collective mores and values of individuals in public institutions. Ekeh's (1975:108) seminal description of two specific obligations on the African public service presents the existence on two "moral levels" of the "primordial public" and the "civic public". The primordial public has strong socialisation mechanisms, i.e. "primordial groupings, ties, and sentiments," that transmit informal traditions to emphasise the obligations and duties of individuals based on reciprocity.

The "civic public" on the other hand emerges out of the historical process of colonialism. It relates to official conduct that is in line with organisational goals and processes. The public servant interacts with formal institutions within the realm of the civic public when he bases his decisions on opportunism for private benefit. The nature of the civic public necessitates the need for individuals to extract desired resources from public office to promote their social standing in the primordial public, without regard to the need for investing their effort in a an impersonal institution.

For this reason, the state is very vulnerable to the influence of patronage networks that manipulate this duality for personal or political reasons. The practices that promote communal relationships and traditions are horizontal in nature. They manifest as pressures that play a part in the decision-making and discretionary use of authority in favour of social interests to further socio-political goals. In this regard, ascriptive identities and patterns of reciprocity such as ethnic and kinship loyalties, friendships or tribal identities are significant and often override a public servant's requisites for impersonal transactions (Scott 1996; Klitgaard, 1988: 62). Africans are known for their deference to the leadership and authority and the subordination of individual rights to those of that promote collective obligations. This creates conducive environments for corruption to occur when established procedures of formal institutions are ignored (Médard, 1998:308).

The existence of formal and informal influences within state organs has been described as the "hybridity of the state" (Leftwich, 2006). The emergence of the hybrid administrative system can be traced to the development of the "Africanised bureaucracy". The public service emerged from the co-optation process of traditional/informal organs into those of a modern state. Its foundation in the system of indirect rule in much of the British colonies institutionalised what Mamdani calls a "janus-faced bifurcated state" (Mamdani, 1996:18). The hybrid state in colonial Africa brought dichotomies mainly based on economic systems.

Independent Africa had consolidated these systems into new configurations: education and illiteracy, the skilled and unskilled labourers, the urban public servant and the peasant farmers who were (and still are) in the majority of the population. Others centre on modern *versus* traditional values, rich *versus* poor, ethnic *versus* national, rural *versus* urban and exogenous *versus* endogenous knowledge systems.

2.3 Corruption and Morality

The *personalistic/individualistic, systemic* and *institutional* views in relation to the concept of corruption are based on a collection of prevailing beliefs and norms that inform the political, economic, social and legal perceptions in a polity. These standards form a moral code that determines how corruption is perceived in terms of the levels of severity, acceptability of behaviour or tolerance toward it by the population (Kunicova, 2006: 142, Theobald, 1990:1; Leys, 1965).

There have been persistent arguments in the recent past that corruption in developing states is rooted in the moral ineptitude of the public servant who has not fully adopted the value systems of a modern bureaucracy. This perception places corruption as one of the vestiges of traditional systems of social organisation that manifests in an incomplete modernisation process (Myrdal 1968). Simpkins and Wraith (1963) for example were some of the earliest scholars who emphasised on the role that an "unsophisticated" value system in developing countries that contributed to corruption in the public sector. Their analysis placed western-centric ideas of morality as superior and suggested that if developing countries were to rid themselves of corruption, they would have to seek in British history the features that led to the development of Britain. Klitgaard (1988:9) expands on the argument to note, "Early writers including Max Weber (1904), Talcott Parsons (1958) or P.J. Marshal and Glyndwyr Williams (1983), had viewed corruption as a moral weakness of the inferior "natives". Thus, corruption is perceived as an immoral and unethical phenomenon that contains a set of aberrations that contradict the values and norms of a Weberian legal-rational logic (Johnston, 2005: 198, 208; Gould, 1991:468; Myrdal 1968).

Thus said, the argument is Western traditions and the value systems they contain within provide positive attributes that minimise incidents of corruption. In his research, Handelman (1981) has argued that organisational principles of Western culture had predisposed the society to develop the bureaucratic mode of organisation. He notes that in the Western social

system "one is predisposed to feel and think in particular ways, perhaps in terms of different logics, when one is within particular locales or settings which are relevant to the [bureaucratic] frame" (Handelman , 1981: 6). The explanation given is that the public service as it is known today has evolved to its present professional form from a time in western history where prebendalism, patrimonialism and clientelism were the norm. These methods were discarded as obsolete. As the argument goes, in the formerly colonised countries of Africa and South Asia, political and bureaucratic systems did not have the benefit of the experiences in the evolution of the bureaucracy similar to modernised countries. The entire legal and administrative framework was transplanted during the colonial era into a setting that perceived it as illegitimate and foreign (Andvig *et al*, 2000: 64).

Although the moral argument has been a driving force for the decades of research on corruption and the guiding principle for most anti-corruption measures in Africa and the rest of the developing world, it has recently been questioned due to the exposure of corruption scandals in developed countries in recent years. According to the latest European Commission Press Release (2012), two out of three Europeans in the 27 countries studied believed that corruption had become part of the business culture. Almost half of those surveyed (47%) believed that corruption had risen in their country in past three years and national politicians (57%) and public servants (47%) awarding tenders were the most likely to commit acts of corruption.

Infamous recent cases in Western states have exposed weaknesses in the morality thesis. Through the 1990s and 2000s, Western countries have had their fair share of exposures of political corruption. For example, former President Jacques Chirac of France was convicted of corruption in 2011. The Elf saga in France is another case in point. Elf Aquitaine, the largest company in France, had established an internal financial network that provided illicit funding to corrupt politicians. The investment board which consisted of relatives and friends of the chairperson systematically bribed politicians in Europe and Africa to control natural resources. In one instance, Elf paid the equivalent of US $ 46 million as a bribe to a prominent member of Germany's ruling Christian Democratic Party (CDU) in order to acquire oil refinery assets at Leuna from the Treuhandanstalt (the German government agency that handled the privatization of East German state-owned assets following Germany's re-unification) (Cheung *et al*, 2011:2).

In a study of illicit capital flows by Global Financial Integrity (2008), Dev Kar and Devon Cartwright-Smith illustrated that corruption, with regard to the movement of illicit finances, was a global problem and not a problem isolated to development countries alone. Asia accounted for around 50% of average illicit financial flows from the Newly Industrialising Countries, followed by Europe (17%) and the Western Hemisphere (15%). The huge volume of illicit flows that accounts for Asia's primacy is attributed to China (mainland) which was behind the highest overall flight capital from developing countries. The results showed that the offending countries were dispersed across all global regions and therefore negated the argument of cultural determinants characteristic to specific regions.

In the United Kingdom, scandals involving politicians as well as businesses have also occurred in copious quantities. Examples include the BEA systems corruption scandal as well as the Honours incident that culminated in the arrest of Lord Levy in July 2006 for offences under the Honours (Prevention of Abuses) Act 1925 and the Political Parties, Elections and Referendums Act 2000 for receiving political funding in exchange of honours (BBC, 2007).

The World Bank has not been spared either. Former President Paul Wolfowitz was forced to resign after an embarrassing incident where he had promoted his girlfriend and increased her salary under a cloud of impropriety and favouritism (BBC, 2007).

2.4 Relativity *versus* Universality of Perceptions of Corruption

There has been a lot of debate as to whether a contentious subject matter such as corruption can be subjected to the rigours research. What can be judged as morally repugnant and corrupt by public opinion, may, in some cases be legally acceptable. Likewise, acts deemed corrupt by a statutory provision may be socially tolerable by cultural conventions. For instance, lobbying members of Congress in the United States is legal but is an offence in Malawi under the Corrupt Practices Act. As Blundo concedes, "it is not possible to dissociate corruption analytically from a regime of favours, preferential treatment, recommendations, string-pulling, nepotism and the various and myriad advantages bestowed in the name of family, neighbourly relations, friendships, school, university and professional relationships and professional protectionism" (Blundo and Oliver de Sardan, 2006: 12).

Corruption can be defined and redefined across space and time considering that societies develop and evolve. What is perceived as corruption today may be accepted as normal

tomorrow. The relativistic viewpoint argues that a standard conceptualisation is an impossible endeavour to pursue and is beleaguered with ambiguity and complexity. However so, we must also be cognisant of the fact that there are certain common principles, approaches and conceptualisations that permit comparative academic studies. There is a valid argument to make for collective and universal certainties on similarities in the origins and adverse consequences on public institutions that would permit academic research. It is possible to identify certain elemental aspects that validate the classification of definitions and categorisation of incidents across different societies, histories and diverse legal frameworks. This has also been the rationale in trying to achieve a consensus in developing concerted regional and global efforts for its control, such as the United Nations Convention Against Corruption (UNCAC), the Southern Africa Development Cooperation (SADC) protocol against corruption and the Africa Union Convention for Combating Corruption.

Chapter Three

What is Corruption? Definitions and Characterisations

3.0 Introduction

There are considerations that have to be taken into account when we observe how corruption is conceptualised and how this affects the methods employed to control it. The understanding of corruption, its definitions and the design of mitigating measures are a balancing act between what is socially acceptable, legally unacceptable and what is universally promoted as the best practice amongst state institutions. This chapter therefore acknowledges the various theoretical insights on its manifestations, conceptualisations and definitions that this thesis borrows from to analyse the Malawian transitional period and understand the interactions between state entities, political actors and anti-corruption institutions.

3.1 Categories of Definitions

So what is corruption? You can define corruption in an infinite number of ways (Andvig *et al,* 2000). Historically, there has not been a universal definition that is applicable in all contexts (Collier, 1999:2). Johnston (1994) has coined the term "definitional quagmire" to describe the bewildering attempts at its conceptualisation.

Some definitional clusters have been developed according to bureaucratic processes in relation to weak formal procedures that lead to the corrupt transaction, while others focus on the personal weaknesses that facilitate the transaction itself. Answers to questions such as whether the law itself is inadequate to meet the criteria for proper conduct, whether institutions are properly supervised or whether traditions and cultural practices override formal processes have a bearing on how corruption is perceived, conceptualised and defined in reference to the individualistic, systemic or institutional dimensions.

There is an underlying position in a majority of the definitions that some impropriety against established standards has occurred (Philp 1997). These standards, whether they are as explicit as established regulations or are based on customs and traditions, all imply that some transgression has occurred against some measure of what is deemed as proper. There are problems with this approach. "Proper" conduct is relative to both the political context and time in terms of the interests, opinions or intent of individuals involved in the transaction. As

an illustration, Johnston (1996) differentiates corruption by two sets of classifications: the first set focuses on the behaviour of people with regard to the abuse of public office and/or formal power or authority for self-serving. The second approach relies on identifying the relationships of actors involved in a corrupt exchange and the institutional causes that influence corrupt behaviour. Arora (1993), on the other hand, places corruption into the three categories of collusive, coercive and non-conjunctive. Collusive corruption indicates that those engaged in the transaction are active actors. In coercive corruption, corruptees are forced through extortion or undue influence to engage in corruption. Non-conjunctive is when the transaction is at the expense of someone who is unaware of their victimisation.

Perhaps the most accepted consideration is clustering the definitional categories into five distinct groups. These groups are public office centred definitions, market centred definitions, public interest centred definitions, the legalistic approach and public opinion centred definitions (Heidenheimer, 2002; Collier, 1999; Gardiner, 1993).

Heidenheimer (2002:7) observes that the largest group of social science writers relate their definitions of corruption essentially to concepts concerning the duties of the public office and deviations from norms and regulations that bind office holders. For *Public office centred definitions,* the main emphasis is on the individual transgressions. If employees of state agencies (i.e. the public servants, functionaries, bureaucrats and politicians, or anyone who holds a position of authority to allocate public resources on behalf of the state or government) misuse their power or authority for private benefit, they are regarded as having acted corruptly (Heidenheimer, 2002; Kpundeh, 1995; Amundsen, 1999:2). One of the most influential definitions of this cluster is Nye's definition that explains corruption as:

> [b]ehaviour that deviates from the normal duties of a public role because of private regarding (family, close private cliques), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behaviour s bribery (use of a reward to pervert the judgement of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses (Nye, 1967: 416).

Nye's definition, although it attempts to be concise, exemplifies the typical problems that are associated with public office definitions. Nye supposes that deviation from standard rules is the outcome of rational calculation of the individual in question. Corruption may be part of

the "rules" within an institution. Individuals will contravene rules if the organisational culture permits it. In this regard, rules may be perceived as out-dated inconveniences that are not realistic. Secondly, this approach is too dependent on the conduct of officers with regard to the execution of their duties of formal office. The problem with this is that although duties are regarded as fixed, they actually shift in response to environmental pressures and the exigencies of the situation. As an illustration, "bending the rules" of office to assist someone in great distress outside the remit of formal duties may be "private-regarding" behaviour, but would hardly be viewed as corruption within certain contexts. Thirdly, rules change and country comparisons, or trying to understand trends across time even within the same county, would be difficult. Gardiner notes that the definitional ambiguity of public office definitions does not take into account behaviour that is unethical and is not classified as corruption (Gardiner, 1993:27). Variances across countries with regard to regulations restrict the universal applicability of this approach.

This leads us to the next collection of explanations. The *legalistic approach*, as the term implies, classifies definitions of corruption from the "statutory" perspective (Scott, 1972). Corruption is defined within the parameters of the violation of established laws that proscribe undesirable behaviour. Therefore, if established laws condemn certain conduct as "corruption", this behaviour is an offence under the law, and must be treated as an offence regardless of public opinion or interpretation. Conversely, if the conduct is not criminalised in the statutes, then it is not corruption.

There are similarities between the legalistic approach and the public office centred set of definitions in that both refer to the deviation from normal rules and regulations in their assumptions of corrupt exchanges with regard to the involvement of public officers. However, the main differences are that the legalistic approach makes reference to the statutory provisions within the legal framework and established laws of a state, where as public office definitions are more focused and mainly refer to state institutions and the formal rules that govern them. Since both share the involvement of public officers in their definitions, they are often used interchangeably.

The legalistic perspective is inadequate in some cases in that it often tends to reduce acts to bribery. It has been deemed "too narrow and excessively concerned with the illegality of such practices, defined from a modern, Western point of view" (Oliver de Sardan, 1999:27). The

problem with this is that laws are subject to interpretation. Even though conduct might be determined as scandalous, unsatisfactory, depraved and perceived as corruption by the population, it may not necessarily be against the law. Conversely, behaviour viewed as normal and thus deemed as "uncorrupted" by the public, might pass the criteria for the legal-rational standard of corruption. In addition to this, the danger that established laws can be created or used selectively by vested interests to persecute political opponents is very real. To paraphrase Hester and Eglin (1992), though the law may control interests, it is created by them in the first place. It incorporates the value interests of specific persons and groups and is seldom the product of efforts by the whole society (Hester and Eglin, 1992: 30). The partial penetration by state institutions in the rural areas has also rendered legal definitions limited and incomprehensible to the majority of the population who base their perceptions on norms and values prescribed by social criteria of traditional systems. It is for this reason that some scholars have tried to explain corruption through motivations behind the exchange itself, than the incident (Migdal, 1988:33).

This leads us to the third set of definitions of corruption that fall into the *market centred* category. These definitions have been developed mainly by those scholars who make comparisons in the development of the state between western and non-western societies. Corruption is related to differences in norms and values governing the use of public office (Ades and De La Terra, 1999; Heidenheimer, 2002: 8). Corruption in this set is defined as private rent-seeking by public officers in contravention of their official duties as established by set regulations. The assumption in the definition above is that office bearers regard the office as a business through which they maximize their income (van Klaveren, 1970:39). The market approach views corruption as an inefficient system where huge hidden costs are incurred in the quest to keep the transaction secret. Total transaction costs arise with the total number of potential actors sought. This increase is a result of the efforts required in the search for potential participants in the corruption exchange that are willing to take part (Lambsdorff, 2005).

Critiques of this approach include references to its very basic and oversimplified features. For example, Philp, (1997) says although it may explain the conditions under which corruption may exist, it does not demonstrate in what manner corrupt behaviour may be distinguished from non-corrupt behaviour. As Andvig *et al,* (2000) point out, the approach does not take

into account the social aspects of the corrupt transaction that are rooted in cultural and moral underpinnings.

Corruption may also be analysed from a *public interest centred* conceptualisation. This perception focuses on the reasons that lead to the consequences of a behaviour rather than the "corrupt" behaviour in itself. These definitions aim to escape from the constraints of relying on rules, laws and regulations in the clarifying processes. Advocates of this submit to the principle that an act that is contrary to the public interest is "corrupt" regardless of its legal interpretation. Likewise, if the behaviour is beneficial for the public, then it cannot be construed as corruption even if it violates established laws and regulations (Gardiner, 2001: 27; Rogow and Laswell, 1970:53-54). The main point of criticism against the public interest approach is that it is too ambiguous and therefore it does not assist much in research when making objective inquiries. As Heidenheimer asks rhetorically, "should undue influence become labelled as corruption when the means are used by a group that is seen as working less in the public interest than others?" (Heidenheimer, 2002: 9). It is also challenging to know whose interests the definition should take into account. Clearly if one person benefits more than another in the transaction, there would be differences of opinion. This lack of clarity compromises the applicability on the analysis of complex issues.

Lastly *public opinion centred definitions* classify corrupt acts through opinions of the general public (Leys, 1970:31-37). Inclination toward these set of ideas presupposes that local cultural norms and values guide the conduct of public officers more than established laws and regulations. To paraphrase John Gardiner (1933), public officers will more likely act according to what they believe is right within the available context although this may be in inconsistent with provisions contained in the statutes (Gardiner, 1993: 33). Hence, corruption should then be defined according to the situation and how this is regarded by the public. Any effective study or interventions for its mitigation would be difficult or impossible if the statutory definitions of corruption do not correspond with those of public opinion. Empirically, this has been supported by Montias and Rose-Ackerman (1981) who established that the standards that are well regarded in capitalist economies, such as private accumulation of resources, are regarded as corrupt in other polities such as a communist system.

One of the draw backs of the public opinion centred definitions has been the problem associated with the process of analysing public opinion. It has been observed that public

opinion fluctuates over time because perceptions are dependent on social context and circumstances (Kjellberg 1995: 243-44). Secondly, the question of "who the public is" is a contested issue, and as such, variations in the interpretations of the corrupt phenomena are dependent on the individual judgements by the observer (Johnston, 1982:7). In this way, it would be extremely difficult to arrive at an objective conceptualisation of the behaviour.

It is also common in most states for elites to minimise public scrutiny of political corruption by incapacitating the ability of the citizenry to form adverse opinions of the regime (Heywood, 1997). These corrupt administrations place a tremendous amount of resources and effort in limiting or diverting public examination of politicians. This was the situation in Banda's Malawi where any questions on political misadventures by elites was deemed "seditious".

It can be seen from the foregoing discussion that the study of corruption can be approached from many angles and with a myriad of approaches to explain its divergent characteristics. Due to this complexity, it is essential that any study should draw on the varied sets of conceptualisations to acquire coherence in the analysis of its various forms and elements. The public office/legal approaches remain the most influential in the contemporary discourse because corrupt transactions have increasingly become criminal offences across the globe. Other approaches that are not related to this very narrow approach must also be considered (Heidenheimer, 2002:5).

3.2 Working Definition

The Malawi Corrupt Practices Act of Malawi No. 18 of 1995 and as revised by Act 18 of 2004, under section 3, defines what constitutes corrupt behaviour. Although there is no direct definition, it explains that acting "corruptly" is doing or the engaging in, any corrupt practice. "Corrupt practice" means "the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person" (CPA No. 18, 2004). Included in the definition is the behaviour of influence peddling as well as the extortion of any advantage. The Act further explains an advantage as:

> "advantage" means any benefit, service, enjoyment or gratification, whether direct or indirect, and includes a payment, whether in cash or in kind, or any rebate, deduction, concession or loan, and any condition or circumstance that

> puts one person or class of persons in a favourable position over another (CPA No. 18, 2004).

Since the thesis assesses corrupt transactions between individuals within and without formal institutions of the state to disaggregate the dynamics in the use and abuse of power, it mainly draws upon the legally/public office inclined approaches. Therefore, the accepted working definition of corruption employed in this thesis follows that adopted by the various institutions such as the World Bank, Transparency International and the IMF and is presented as the "misuse of public office for private gain" (Gray and Kaufmann, 1998:7).

However so, the study will employ other definitions that seek to explain corrupt transactions in its manifestation as a social and economic activity. This includes those that identify it as a market interaction where the public office is abused as a maximising unit. The public opinion approach also features prominently to explain why corruption existed in the post-1994 public service in Malawi with the complicity of public servants. In this way, explanations of corrupt activities include public interest approaches that determine whether certain acts were viewed as beneficial to the public and therefore condoned or even promoted.

3.3 Typology of Corrupt Acts

As indicated in section 3.1, corruption manifests in many ways. Perhaps one of the most comprehensive evaluations of typologies of corrupt transactions emanates from Blundo and Oliver de Sardan's (2006) comparative assessment of three African countries (Benin, Niger and Senegal). They observe seven forms that are common: The first is the *commission* which is paid by users of administrative services to officials who provide access to illicit advantages. The commission may take the form of kickbacks in government contracts as a percentage of the contracted amount. Commissions usually cost governments more than the value of services rendered as the contractors add the additional fees to cover for overheads. The second form is of *unwarranted fees* paid to an official for an act that is associated with his normal office duties. This is mainly for bureaucratic forms of corruption between the public and low levels of administrative personnel. Obviously, in most cases it alludes to bribery in one form or another. The *gratuity* is different from the above two in that it is *ex-post* and it appears as a genuine gesture of good will by the service user. Although this is so, most governments require that public servants should declare any amount or material that they receive in relation to their duties. In some cases this is outright forbidden. *String-pulling* manifests itself through "being connected" or patronage networks. Favouritism is valued at

the expense of competence and efficiency. In developing countries, these transactions are usually expected and promoted as they appeal to social obligations that are expected of the public servant. The *"levy"* or toll is any amount that is collected without any service being supplied. The levy is usually associated with fraud as records have to be falsified to cover the illicit transaction. *Petty white collar theft* "is when the perpetrator utilises company materials for private projects. Any form of embezzlement of government funds or materials would fit into this category. Finally, *misappropriation* involves the appropriation of public property for private gain by concealing its origin. Although the researchers concede that the above mentioned forms of corruption transactions have different legal classifications in different contexts, they all occupy a specific place on the scale of legitimacy/illegitimacy of actions (Blundo and Oliver de Sardan, 2006:73-81). Amundsen (2000) has compiled the following list as a general guide on the various forms of corrupt transactions:

> *Bribery* involves an exchange that improperly affects the actions or decisions of a public official.
>
> *Embezzlement* is the theft of resources by persons entrusted with authority and control over anything of value.
>
> *Fraud* denotes any behaviour designed to trick another person or entity for one's own or a third party's benefit.
>
> *Extortion* involves the forcing of a person to pay money or other valuables. This coercion can be under the threat of physical harm, violence or restraint.
>
> *Abuse of Power*s illustrated by using vested authority to give undue preferential treatment to any group or individual or to discriminate against any group or individual.
>
> *Conflict of Interest*ing transactions or the acquisition of a position or commercial interest that is incompatible with one's official role and duties is also seen as corruption.
>
> Receiving an *unlawful gratuity*, favour or illegal commission by a public official from others wishing to do business with the government is corrupt behaviour.
>
> *Favouritism* takes the form of the assignment of services or resources according to family ties, party affiliation, tribe, religion, sect and other preferential groupings.
>
> *Nepotism*, similar to favouritism, occurs when an office holder with the authority to make appointments, prefers to nominate his/her relatives for

> positions within the public administration. This sort of corruption undermines the stability and integrity of the government.
>
> *Illegal Contributions* occurs when political parties or the government in power receives money in exchange for non-interference with the entity or group making the contribution. It is closely related to bribery (Amundsen, 2000:1).

Favouritism and nepotism are ubiquitous forms of political corruption in states undergoing rapid transformation. When these two types are considered against the criteria of public office definitions, they are often collectively known as clientelism, or patron-client politics (Szeftel, 2000).

Other academics such as Alatas, as cited in Heywood (1997), have grouped incidents of corruption in terms of the nature of the transaction process itself. In transactive corruption, the transaction is agreed upon by the both parties-thus both parties are cognisant of the mutual benefit and type of gratification from the activity. Extortive corruption is typically impulsive and manifests as the abuse of office by one party and the other engages to avoid some imminent or perceived threat or harm. The opposite of extortive corruption is defensive corruption. Investive corruption entails a transaction where an incentive is offered or given with the expectation of future reciprocity of the favour. The appointment or favouring of a colleague, family or affiliate is termed as nepotistic corruption while autogenic corruption is in reference to a person benefiting for example, from privileged information for his or her personal profit. Undertaking a contract assessment on behalf of the government without declaring a conflict of interest for a company one owns and is competing is a good example. Finally, supportive corruption refers to the behaviour of those that are not engaged in the act but manipulate the process to keep it hidden (Heywood, 1997: 426). This may include junior officers who falsify financial records to cover the acts of their superiors.

3.4 Conclusions

This thesis employs a multi-dimensional approach that incorporates different definitions to analyse the political, economic and social environment of post-1994 Malawi. It has been illustrated from the foregoing discussion that the study of corruption can be approached from many angles to explain its divergent characteristics. Attempting to comprehend the nature of the multiplicity of behaviours that have been grouped into the word "corruption" illustrates the problems that academic research faces in the attempt to evaluate it as a socio-political phenomenon. Due to this complexity, it is essential that any study of corruption should draw

on the varied sets of conceptualisations to acquire coherence in the analysis of its various forms and elements. It may not be contradictory to observe that corruption can be socially, culturally and traditionally acceptable, but concomitantly be unlawful, adding to the confusion upon its examination.

Chapter Four

Drivers and Causes of Corruption

4.0 Introduction

Since we have established that corruption as it exists cannot be perceived through one universal category of definitions that incorporates its many manifestations, it is imperative to understand that its occurrence in all its forms is also attributable to the presence of divergent features within the polity. It is difficult to isolate specific causative elements of corruption because these are embedded within an individual country's economic, political, social and historical realities as well as its bureaucratic and private sector traditions (Bailey, 2000: 75). These determine how institutions, individuals or policies interact. Secondly, the preconditions that converge to develop an environment conducive to the breakdown of the principal-agent-client relationships or that of systems and institutions create feedback loops that operate between different variables (Lambsdorff, 2006:4). The discussion below, though not exhaustive, features drivers and causes that have had prominence in contemporary literature and illustrates how they relate to the three approaches of *personalistic*, *systemic* and *institutional* perspectives toward corruption.

4.1 Bureaucratic Drivers of Corruption

Bureaucratic corruption, also known as "public sector", "petty" (in reference to both the amount and those involved) or "survival" corruption usually manifests as a one off payment. This is a small amount (in money or in kind) presented as "speed money" or "tips" to people low in the hierarchy of the bureaucratic and political machinery. These transactions are unsophisticated such as the incidental bribe paid to the traffic police, customs and excise agent at the border or an immigration officer. Although the amounts involved in bureaucratic corruption are usually modest, they may be considerable in particular cases and in aggregated terms (Andvig *et al*, 2001: 11). This form of corruption may also exist as a by-product of transactions between private and public sector actors through which goods are illegitimately converted into private ownership (Heidenheimer *et al*, 2002:6).

The motivation and propensity for public servants to engage in corrupt acts is perceived by some scholars as driven by self-serving intentions to maximise gains at the expense of the public office (Kpundeh, 2000:4). This often relates to *individualistic/personalistic* drivers,

but also refers to institutional shortfalls as well. In reference to African bureaucratic systems, Gning (2006) notes that most administrative organisations have excessively closed organisational boundaries when it comes to interactions with the public and as such actors outside of the organisation have almost no choice but to seek out informal means of dealing with administrative organisations. The argument says that public servants are strongly socialised into their professional role, but it remains quite unlikely that they will be able to resist pressures of social obligations. The need to assist family and friends through the mechanisms that the public service offers is a way of life. The analysis of bureaucratic corruption is therefore based on the notion that the discretion accorded to public servants for the fulfilment of their duties in allocating public goods is the weak link (della Porta and Vanucci 1999). Klitgaard (1988) concurs with this by adding that if a public servant has enough authority, and exercises enough discretion to conduct business on behalf of the institution he works for, then the opportunity for him/her to be corrupt increases if there are no measures for him/her to be accountable for his/her actions. There are certain specific structural determinants that have been consistently identified as contributing to the existence of corruption. These are outlined below.

The Size of the Public Sector: Some scholars have identified the size of the public sector as a causative factor for corruption to exist. The argument advanced is that the size of the public sector increases the likelihood of corrupt acts because of the existence of a multitude of "grabbing hands". Therefore the reduction of "grabbing hands" would decrease wasteful expenditure and the number the opportunities for corruption (Shleifer and Vishny 1998). There have been contrary opinions on this position. Lambsdorff (2006) cites research studies in the Nordic countries that have shown that despite having a large public sector, these countries have relatively low incidents of corruption while Blundo and Oliver de Sardan (2006: 61) explain that in reality, the ratio of public servants in relation to the population in Africa of 1.5 is the lowest in the developing world as compared with 3 % in Latin America and 2.6 % in Asia. This offers evidence that the size of the public sector does not necessarily predict the amount of corruption practiced (Elliot, 1997: 182-3; Gerring *et al*, 2005). However so, some studies on the African experience also suggest that the size of the public service indeed has some causative associations with corruption (Anders, 2005), especially if the character of decision makers in relation to the adherence of rules is taken into account (Kotera *et al*, 2010). This makes sense considering that the public service is often utilised as

a welfare institution where largesse and patronage in terms of employment are a main feature of clientelism.

Quality of Regulations: Studies have consistently presented a positive correlation between the type and quality of regulatory regime and corruption (Treisman, 2000; Gupta, 1995). The details of programmes and their methods of implementation are viewed as more instrumental in determining the level of corruption than, for instance, the size of the bureaucracy. In a study of 26 African countries, Lambsdorff and Cornelius (2002) have shown that where regulation is vague and lax, corruption is rampant.

State capture: In other cases, the elite may utilise the legal process to build a framework that would facilitate and/or protect their conduct and illicit gains in the form of state (Stigler, 1974). State capture ensues when business interests intersect with those of individual public employees at the private level for mutual benefit. Public officials knowingly subvert government procedures and processes to exploit weaknesses in the administrative system. Known as state capture, this type of political behaviour is more than a deviation from formal and written legal frameworks and includes the tailoring of laws and regulations specifically to facilitate illicit extraction, favouritism and nepotism (Amundsen, 1999: 3).

These regimes counter probes of corruption by establishing institutions of the state that suppress any form of opposition or dissent or by undermining the processes for the rule of law that would expose corruption (Kaufmann, 2008). Therefore regulation may be utilised as an offensive instrument for pre-emptive action against contending competitors.

This type of behaviour, if left unchecked, leads to systemic and overt exertion of influence by private actors on government processes. There are two types of state capture. In *ex-ante* corruption, the interest group's objective is to influence the design of regulation or laws. For example, an incumbent firm may attempt to block a reform that would introduce competition. *Ex-post* state capture on the other hand happens within the existing legal framework - for example, the distortion of cost information to gain a better rate from government institutions in state contracts (Estache and Wren-Lewis, 2010: 7). State capture is a prominent feature of transitional countries where government institutions serve the interests of a neopatrimonial system of leadership who collude with the business sector in the formation of a new class of entrepreneurial individuals (Pradhan, *et al*, 2000; De Maria, 2007).

Finally, *the development of the administrative structures* of the state has been placed amongst these driving features. The asymmetrical development of the state according to geographical characteristics during colonialism formatted the process of administrative development at dissimilar paces. The colonial political economy had been expediently selective in the provision of public goods to different regions according to their resource contributions to the economy. For instance, the Zambian copper belt, Malawi's industrial belt and Mozambique's ports had their lion's share of budget. This led to uneven incorporation of various factions into the market and therefore aggravated the asymmetry in the development of the bureaucracy. Indirect rule exacerbated this problem through the distribution of largesse when areas which were complicit in colonial rule were given preferential treatment (Davis, 1969).

4.2 Political Drivers of Corruption

Literature on the political drivers of corruption mainly provides support for institutional, systemic and personalistic challenges inherent in political systems. Since politicians create policies, the monopoly of formal power that they possess is also vulnerable to abuse. According to LeVine (1975), political corruption is caused by an "informal polity" that is created by political networks that entrench themselves in a political system and influence government institutions (LeVine, 1975:8).

Political corruption is associated with "grand corruption" and it occurs at the highest levels of administrative authority.[4] It is characterised by the involvement of politicians and eminent decision-makers. These would include members of the cabinet, heads of state, ministers, bureaucratic managers and other persons of repute that hold the levers of power through formal office (Andvig *et al*, 2001, 10). In most cases this type involves two basic processes; the first includes the exploitation of positions of power and authority to extraction of public resources (Doig and Theobald 2000: 3). The second phase is the utilisation of these illicit proceeds for power preservation and expansion (Amundsen, 2006: 5).

It would suffice to say that the determining factor of how political corruption presents depends on the perceptions within the polity of what constitutes the "rules of the game" that

[4] The term "grand corruption" was coined by George Moody-Stuart in *The Good Business Guide to Bribery* (Berlin, Transparency International, 1994). His definition was "the misuse of public power by heads of state, ministers, and top officials for private pecuniary profit". Therefore, it can be surmised that it refers to both the amounts involved in the corruption transaction and the persons included.

are applied as guiding principles for conduct (Mbaku, 1996). The intersection between political, social and economic power relations has a particular significance in African politics considering that the political history of the continent is of factional intrigues and contestations for economic and political dominance in the face of scarcity.

The following features, although not exhaustive, offer insights into the political causes of corruption:

Government Structure: Several studies have established an association between the type of government structure and corruption. The hypothesis is that democracy as opposed to autocracy reduces corruption opportunities through increased competition for mandates by political players (Lambsdorff, 2006:10). By assumption, those that perform poorly in terms of financial probity and ethical behaviour are voted out and those that promise to improve upon the *status quo* may win the elections based on the strength and the viability of their manifestos (Rose-Ackerman, 1978: 28).

Empirical evidence suggests that democracy in itself does not reduce corruption. It is endemic in new or medium "term" democratised countries as Montinola and Jackman (2002) have determined. This can be explained in terms of political competitors vying for positions of power and influence at all costs, including indulgence in corrupt practices to fund parties and individuals (Amundsen, 2006). However so, studies also have shown that corruption cases eventually subside after the initial upsurge when political and economic systems are newly liberalised. As institutions of good governance and accountability are consolidated, efficiency in political, bureaucratic and economic systems renders them more effective in identifying and repairing flaws that would otherwise have been utilised for corruption (Treisman, 2000; Rose-Ackerman, 1978: 28).

Forms of Governance: Some scholars believe that forms governance systems facilitate the existence of corruption. It has been argued that countries where presidentialism i.e. the systems of government which have a strong executive branch with an authoritarian president exhibit more incidents of corruption than those that have a parliamentary system (Gerring *et al*, 2005; Kunicova, 2004). In Kunicova's study, the levels of corruption were seen to increase when presidentialism was coupled with term limits. The results were contestable however when the quality of the political leadership was placed as a variable (Lambsdorff, 2006: 12). In other words, if the political party and its leadership are committed to the welfare

of the population instead of their own self-serving actions then presidentialism and term limits do not feature as a determining factor of corruption.

The length of time that a government has been in office has also been identified as a determining factor. The longevity of persons in positions of power enables the establishment of political networks that use the position of authority for the maintenance and consolidation of favourable arrangements. If the political leadership feel that their position is unchallenged, power is often abused in the absence of accountability mechanisms (Heywood, 1997:431).

Decentralisation: Decentralisation has provided many opportunities for clientelism and corruption. The idea behind decentralisation is to increase efficiency and improve effectiveness of local government. Thus, the reduction of layers of bureaucracy should effectively reduce corruption by cutting down on red tape and improving the response times on decisions and thus the need for "speed money". However as Lambsdorff (2006) suggests, decentralisation itself "does not unequivocally ameliorate the problems of corruption" (Lambsdorff, 2006: 17). In some cases a weak local government is captured by strong local influences for self-serving outcomes (*Ibid:* 15). Bardan (2002) argues that local governments create avenues for corrupt behaviour by among other things misrepresenting crucial information to the central government and restricting financial access to a select group of individuals.

4.3 Economic Processes as a Determining Factor

Most economic theories of corruption are based on developmental theories. Corruption is perceived as a manifestation of underdeveloped economic institutions that are in the early stages of modernisation. Economic causes appeal to the structural/institutional observations of corruption. The following paragraphs present some of the most influential economic causes of corruption that have featured recently in literature.

Degree of Economic Competition: The argument is that controlled economies have more corruption due to the discretion accorded to public servants who in turn create artificial rents. When competition is restricted, the value of "goods" also increases, thereby increasing the incentives for self-seeking behaviour (Henderson, 1999). The converse hypothesis, that economic competition increases the likelihood of corruption, has also been observed since the restructuring of developing economies in the 1990s. The net effect has been increased

inflation, unemployment, salary erosion and increased poverty levels. The reason is that the intensification of the struggle for limited resources motivates political actors to commit acts of corruption to maintain the system of clientelism (Treisman 2000; Oliver de Sardan (1999). In some cases, people engage in corrupt acts to access increasingly scarce government services. Most vulnerable areas have been privatisation where economic competition renders the system open to nepotism and favouritism and open markets which, upon transformation from command economies, do not change their archaic systems fast enough. In such incidents, the monopoly of power by public servants creates avenues for illegal rent seeking (Mauro, 1990: 10). Two prominent models have been devised to elucidate how the economy interacts with corruption.

The *structuralist thesis* proposes that the causes of the inefficiency of developing economies and the origins of corruption and maladministration are attributable to a set of inadequacies inherent in an inherited government administration. For example, Mutahaba *et al* (1993) posit that the post-colonial public sector had suffered systemic anomalies inherited from the colonial administrative apparatus that inhibited the growth of the system into a development oriented apparatus (Doig *et al*, 2007). These inadequacies created structural bottlenecks that consequentially led to chronic financial mismanagement and inefficient markets. The situation was exacerbated by the inadequate penetration of state institutions into all areas in the post-colonial states (Migdal, 1988: 33, Baeur, 2005:1).

The *Neoclassical Model* judges state interventions in markets as a cause of corruption. Excessive regulation and ineffective policies impede economic growth by transferring the inefficiencies of the public service into the market. These create conditions for the extraction of illegal rents from a dysfunctional formal economy (Mkandawire, 1989:5). Evans (1997) elucidates on this relationship through the "predatory state theory" which states that dysfunctional economies create an environment that artificially distorts resource allocations within the market and diverts public goods unproductively from one group to another. From this standpoint, neoclassical theorists recognise that inadequacies of policies limit the pace of capitalist transformation to modernity (Carothers 2003). Therefore, political networks become "rent-seeking" (Evans, 1997:70). Efficiency can only be achieved through fundamental changes to political and economic structures.

It is noteworthy to point out that the financial institutional reforms of Structural Adjustment Programmes that had been instituted since the early 1980s to accelerate economic development have also had a contributory effect to the existence of corruption. For example, the liberalisation of the economy creates new avenues for abuse of office and Public Private Partnerships are often susceptible to cronyism. The privatisation process in particular has led to increased corruption in countries dominated by monopolies (Ades and Di Tella, 1999). Kikeri and Nellis (2004), observe that in most cases the presented level of success of these privatised firms is often narrow and relates to the profitability of the privatised company, with disregard to higher prices of services for consumers and the reduced net welfare effect on the population.

Poverty and the Low Salary of Public Servants: Poverty and the low salaries (especially in developing countries) have been identified as factors that determine the levels of corruption (Frisch, 1994:4). It is argued that the motivation for earning an extra income is strong especially in countries with a high rate of inflation. The difference in living standards and wide income gap between the private and public sector provides an impetus for corruption when public office employees compare themselves with their clients. Given the nature of government work, and that the discretion of many public officials is broad in developing countries, opportunities for corruption are many. In this case, corruption is a viable alternative for augmenting poor income (Lambsdorff, 2006: 33).

4.4 Traditions and Culture as Causative Factors

Traditions, culture and social values play a role in determining how public servants interact with social and formal institutions. In support of the above statement Grief (1994: 913) has identified two distinct types of societal dynamics that differentiate power relationships that predispose certain political relationships to corruption. He notes that:

1. In *collectivist* societies the social structure is "segregated" in the sense that each individual socially and economically interacts mainly with members of a specific religious, ethnic, or familial group in which contract enforcement is achieved through "informal" economic and social institutions, and members of collectivist societies feel involved in the lives of other members of their group. At the same time, non-cooperation characterizes the relations between members of different groups.

2. In *individualist* societies the social structure is "integrated" in the sense that economic transactions are conducted among people from different groups and

> individuals shift frequently from one group to another. Contract enforcement is achieved mainly through *special*ised organisations such as the court, and self-reliance is highly valued (Grief 1994: 913).

In collectivistic societies, state administration becomes particularistic and highly intertwined with political mobilisation. In this way, strong vertical patron-client relationships emerge that are tied to the personal power of the leadership which translates to the dependency of social groups on the largesse offered by the political elites. Some empirical studies have supported the role that culture and tradition play as determinants of corruption. Sandholtz and Taagepera (2005) for example inform that societies that nurture secular-rational attitudes towards social identities (where impersonal values are more important as opposed to particularistic or family values) have less corruption than those where traditional values favour family bonds. In addition, Lambsdorff (2006: 17) for example has been illustrated that where loyalty to one's ethnic group is high-there are more chances that nepotism will emerge than in cases where this is not the case.

The effect of culture on the state structures has been summarised into five "cultural logics" by Olivier Oliver de Sardan (1999: 36). These are of gift-giving, negotiation, solidarity networks, predatory authority, and redistributive accumulation. The existence of these logics informs the direction and strength of relationships and sets the parameters between the formal/legal-rational and informal transactions that contributes to the occurrence of corruption.

Gift-giving The connection between gift-giving and corruption is blamed on the ambiguous and blurred lines between propriety and social etiquette on one hand and procedures and norms of formal institutions that govern interactions between individuals on the other. The practice of gift-giving can be traced to a number of indigenous conventions of tribute (Lodge, 2001: 405-406). The unadulterated form of this traditional practice of offering an unsolicited token of appreciation is highly symbolic and embedded in cultural norms throughout Malawi.

With the adoption of public institutions as formal structures that exist parallel to the "informal" traditional systems, cultural practices do compromise the Weberian legal-rational regime. Oliver de Sardan, (1999:35) has elucidated on this point. He says that:

> [t]here is a continuum rather than a gulf between bribing someone and thanking someone for services rendered. Between obtaining a favour from a friend in the civil service, which favour will be "returned" later on, and slipping a bank note

> in return for the same favour to a civil servant whom one does not know, there is only a difference of form, be it monetary or not, in the exchange (Oliver de Sardan, 1999:35).

The observation that the existence of corruption has an association with the persistence of traditional structures is testimony to the divergence of norms between the impersonal legal-rational model of a modern bureaucratic system and traditional structures which value social cohesion through informal relationships. Gift-giving is especially significant in understanding neopatrimonial machinations in patron-client relationships that occur outside the legal framework of good governance.

Negotiation is a form of bargaining between the one who "assists" and the one who is "assisted" to reach some form of consensus on the amount of reward that should be paid. Oliver de Sardan's views *predatory authority and redistributive accumulation* as the accumulation of resources as capital that allows politicians to invest in "social legitimacy". The redistribution of resources performs the function of diverting public scrutiny from financial mismanagement and political transgressions so long as the benefits are shared (Oliver de Sardan, 1999:37). He argues that illicit capital accumulation and nepotism are supported by positive values and social acceptance that regards sharing as a symbol of gratitude to those who "in the past assisted you when you were unimportant, weak, in need of help, encouragement and support" (*Ibid*, 1999:43).

Finally, *solidarity networks* are allegiances based on horizontal reciprocal relationships within society. These may or may not be tied to ethnicity. Thus people that meet at church gatherings, neighbours, business partners or even school mates form relationships for mutual assistance (*Ibid).*

The argument presented above illustrates that there are two features of corruption that are prominently presented in literature especially in relation to in developing countries. That of the pressure on the public servant from the expectations of informal networks to assist with financial and material advantages to those who are less fortunate, and secondly, the prestige and honour based on cultural norms that is received by the office holder in return. Both these elements place a huge burden on the public servant to meet the social demands that are placed on him.

4.5 The Consequences of Corruption

Does corruption "grease the wheels" of rigid political and administrative systems or does it "sand" its cogs? In other words, does corruption have a functional purpose in improving the speed of government transactions or does it hinder the smooth operation of the public service? Empirical studies on corruption provide two alternative viewpoints. Some scholars argue for its positive effects such as the integration of diverse and contesting power centres (Leff, 1964; Nye, 1967; Huntington, 1968). Proponents of this line of thinking cite examples of middle income countries such as Russia and China where the economy has advanced despite the existence of widespread corruption (Bergstein *et al*, 2007; Lui, 1985; Branguinsky, 1996).

It has been argued that corruption bridges the gap between incongruent values emanating from the conversion of traditional modes of conduct to the modern. Corruption therefore facilitates the creation of an assemblage of goals and objectives for the common good. As Diamond (1987) has suggested, corruption is less a breach of ethics than a mechanism that serves public order by organising competition into networks of clients and patrons (Diamond, 1987:579). This use of patronage has entrenched the clientelistic system of political mobilisation in traditional systems of governance where networks operate within the frameworks of formal administrative and political institutions of liberal-democratic states. Wealth acquired and redistributed to the custodians of cultures, such as traditional leaders, earns the "patron" social recognition and legitimacy which in turn can be reinvested into the formal political office. This is a form of political insurance by way of building prestige and honour amongst the rural population. Political elites deliberately create, develop or encourage corrupt opportunities for the existence of circumstances that they exploit for the preservation of political and social stability.

With regard to state institutions, corruption is said to increase the efficiency of bureaucratic systems by "greasing the wheels". It is functional in this case in that lethargic and inflexible public administration systems are bypassed for the positive outcome of public service efficiency in the provision of public goods. Corruption therefore is desirable for being an emollient, softening the outcomes of and reducing friction (Heidenheimer, 2002). It improves bureaucratic inefficiency by removing "red tape", facilitates foreign investment blocked by national protectionism, promoted national integration and increased citizen participation in

public affairs (Nye 1967:419-420). Thus, it improves efficiency by avoiding undue economic costs caused by cumbersome public regulations (Blundo 2006: 18-19).

Leff (1964) sees the benefits of corruption in a number of scenarios. For example, he contends that if there is an absence of effective popular pressure for economic development or if there is no effective participation of business interests in the policy making process, then corruption is understandable as a measure that stimulates economic growth. Bribery in this case may stimulate the creation of policies that are favourable for the penetration of public enterprise. Secondly, corruption may be beneficial when it people engage in it to frustrate efforts by the incumbent government in its pursuit of interests that are contrary to or divergent from popular demands and needs (Leff, 1964: 312). Media exposes obtained from bribing public officers may be acceptable for example when incumbent elites are involved in resource misallocation and fraud to the detriment of the population. Leff further argues that it may also spur growth through the revitalisation of a lethargic bureaucracy, aiding in the timely assistance on procedural matters such as licenses, loans and foreign exchange allocations. In addition to this, the bribery of public officials in exchange for "insider" information reduces uncertainty in an unpredictable market caused by arbitrary policies. This consequently creates incentives for further investment. Corruption can also insure against bad policy decisions by assisting in the circumvention of the harmful effects of the policy through the disregard of ill-advised laws and regulations (*ibid*: 314).

Klitgaard (1988) presents three arguments that corruption may on occasion be beneficial to socio-political interactions. He calls them the economist's reminder, the political scientist's reminder and the managerial reminder. In the economist's reminder, corruption is viewed as the hidden hand in the market that allocates goods according to the willingness and ability to pay for services. Those that have the capacity to make illicit payments for goods and services are deemed efficient actors who are able to utilise the acquired goods and services effectively (Klitgaard, 1988: 31).

In the political scientist's reminder, we are informed that corruption serves the integrative function that co-opts fragmented and marginalised factions, regions, parties or elites into mainstream politics. Corruption manifests as a redistribute mechanism for public goods which merges political fissures for the benefit of the nation-state (*ibid:* 32). In the manager's reminder, Klitgaard presents the notion that in an organisation, corruption may serve the

purpose of containing demands for higher wages. It may also be beneficial to allow a certain amount of maladministration because the opposite, total eradication, would not be cost effective. He notes that if corruption assists in the efficient implementation of policy, then it is beneficial (*ibid*: 33). This view is supported by Leys (1970) who poses "moral" dilemmas to contribute to the debate. He is of the opinion that in some instances, legitimate policies on public expenditure do not guarantee beneficial aspects to the poor. In these cases, it might be prudent to engage in corruption as a more effective redistributive mechanism if the benefits outweigh the costs when the moral position for this action is perceived in more benevolent than detrimental terms. Therefore, corruption sometimes serves practical political, social and economic advantages.

One of the major criticisms against functionalist thought is that there is little consideration for the origins of corruption in the first place in relation to social, economic or political institutions (Lo, 1993:3). The above position has been countered by a more conventional view that provides hypotheses on its deleterious and dysfunctional effects. Recent studies have argued that corruption has negative effects on economic growth, social development and political instability (Mauro, 1995; Rose-Ackerman, 2006).

The prevailing consensus amongst leading academics and theorists is that corruption is detrimental to the political, social and economic environment. Empirical evidence suggests that corruption has adverse effects on the institutions of the state. The UNDP estimates that US $1,000 billion in bribes or corrupt deals is paid per year, and may cost a country up to 17% of its GDP (UNDP website, 2012). In Africa, US$ 1.8 trillion is the volume of illicit financial outflows from Africa between 1970 and 2008 (Global Financial Integrity Report, 2010).

Gupta (1995) has shown that countries with high levels of corruption are associated with inefficiencies in government services. This has been attributed to reduced levels of productivity by public servants.

In the economic sphere corruption distorts functions of the market, creates an underground economy and encourages tax cheating amongst other problems. Other studies have observed that corruption increases the size of the unofficial economy-suggesting that it has a negative effect on public service processes (Fisman and Gatti, 2006: 127; Johnson *et al*, 1998: 391), the misdirection of public investments and the reduction in quality of public goods (Rose-

Ackermann 2006). Johnson *et al* (1998) present the argument that countries with high levels of corruption will have lower tax revenues. This is supported by Mauro (1995) who explains that corruption lowers domestic tax revenue as well as total government revenue as a ratio of the GDP. Its effects are therefore negative and deleterious on investment and economic growth. The economic growth is retarded in the presence of high levels of corruption and therefore developing countries show more undesirable consequences. Businesses are forced to add hidden costs to projects for transactions in "grey areas" where corruption is not obvious. Areas such as the issuance of commission payments, "signature bonuses" or facilitation payments and donations to humanitarian causes that is particularly vulnerable to political control. Others have analysed the associations between bribe payment, management time wasted with bureaucrats and cost of capital (Langseth, 2001:9; Svenson, 2003). Cheung (2011: 2-4) has noted that institutions that pay more bribes spend more management time with bureaucrats by negotiating regulations than being productive. Therefore, corruption is not the "grease" but the "sand" that hinders efficiency. It creates artificial rents, produces delays in order for corrupt officials to extort speed money and contributes to the bad quality of work by weighing tenders in favour of those who can pay bribes against those capable of producing quality services and products but are incapable or unwilling to pay (Lambsdorff, 2006: 33).

Political corruption has been associated with instability when the population perceives the state as illegitimate due to social and political inequalities brought on by corruption. The argument by Michael Natch (1981) that "corruption" by an incumbent government is a good indicator for a likely "regime change" has been notated in recent years. The notion that it serves as an integrative mechanism in the political process has also been disputed (Kaufmann *et al*, 1998: 391). It stifles democracy and hinders national integration (Theobald, 1990). Seligsson (2002) has observed that corruption tends to diminish citizens' trust and faith in democratic governance while Johnston (1998) questions the politically integrative role of corruption.

The general focus of this thesis is on the deleterious effects of corruption but also considers the functional aspects where appropriate. The positive effects of corruption however are almost negligible when compared to its negative effects. Empirical evidence suggests that corruption negatively affects the bureaucracy, political and economic institutions as well as social structures. Corruption incapacitates the state through rendering the political process

illegitimate. Confidence in public services is eroded; the state's ability to formulate coherent policies as well as its ability to transform policies into tangible social, political and economic development activities is compromised. Essential public services like schools, health, social services are rendered inefficient. Furthermore, corruption particularly hurts the poor because resources redistributed according to the ability of groups to influence policies through unlawful pressure and bribes. In the economic sphere, corruption distorts the market, creates an underground economy that undermines government services by adding hidden costs to projects that developing countries can ill afford. It has been also associated with political and social instability.

4.6 Experiences of Political Corruption in Africa

The general perception that Sub-Sahara Africa is the most corrupt region of the world has dominated academic research since the generation of interest in corruption studies (Bissessar, 2009). The African state has been described in various negative connotations by academics and politicians alike in reference to the occurrence of corruption. Bayart *et al* (1999) present the scenario where the African state is kleptocratic in nature with connections to global organised crime. Chabal and Daloz (1999) report on African institutional chaos and disorder based on patron-client relationships. This perception is also noted by Blundo *et al* (2004) who write that Transparency Internationals Corruption Perception Index data has presented the corruption problem in Africa in such a way that one can conclude that "*hic sunt corruptos".*

The pervasiveness of corruption is thought to constitute one of the most harmful problems facing third world governments today (Klitgaard, 1988: 6). The most recent data from the Transparency International Report (2012) attests to perception that although corruption exists everywhere, relatively, it is most pervasive in developing countries. A regional comparison between a selection of some of the most and least corrupt countries illustrates that some of the most situated in developing countries, especially in Africa, with Somalia (shared with North Korea) being the most corrupt country in the world. The countries with the least perceived corruption, including those that have been consistently highly placed such as Denmark and Sweden are in Europe.

The history of corruption in African states almost follows a similar pattern. Ghana was the first state to gain independence from colonial rule in Africa. As the state evolved, Prime Minister Kwame Nkrumah increasingly became autocratic and patrimonial in his method of

administration. Known as *Osagyefo* (redeemer or messiah) by the population, his leadership position slowly degenerated into a personality cult that incorporated and concentrated formal authority into his personage. The unchecked authority created avenues for elite abuse of national resources for private gain until increasing social inequalities, ethnic tensions and despondency with the government culminated in a military coup in 1966 due to the excessive nature of its illegitimate rule, lack of democratic leadership and corruption. The Ghana experience set the scene for subsequent post-colonial governments who followed the same pattern of illicit accumulation by political elites after independence. Perhaps one of the most noted cases in contemporary African politics with regard to post-colonial abuse of national resources has been Mobutu Sese Seko's regime in the Congo. The highly resource rich Congo gained independence from Belgian rule in 1960 as a deeply fragmented country along ethnic and political lines. The leadership of the Sese Seko administration for the next 30 decades had gained notoriety for its kleptocratic characteristics and institutionalised impunity in its abuse of power and embezzlement of public resources for private gain. Mobutu personally stripped government coffers of billions of dollars with disregard for the rule of law (McNulty (1999: 60-62). Successive governments that emerged after the first republic had similar stories of maladministration and corruption which have plagued the Democratic Republic of Congo to the present.

Corruption has also been associated with political instability on the continent. Kaplan (1994) has prophesied the "coming anarchy" where social crises and armed conflict are the resultant effect of disillusionment with government (Kaplan, 1994). Indeed countries on the continent are plagued by coups and countercoups, mutinies, and violent civil disobedience campaigns which have been attributed as resistance from corrupt practices perpetrated by the ruling elite. In line with Kaplan's view, the overthrow of the governments in Sierra Leone, Mobutu's Zaire, Liberia and Sierra Leone are a few of the most recent cases. Countries such as Nigeria have had a long history of both bureaucratic and political corruption since independence which has contributed to political, economic and social instability.

As the selected above examples of many cases illustrate, the post-independence experience of African governments has been of unbridled kleptocracies, political instability and neopatrimonial rule. Kenya, Ivory Coast, Zambia, Zimbabwe and many more countries have had their fair share of the existence of "big men" who have ruled with an iron fist and looted their governments of the much needed public resources. The similarities in the acquisition,

consolidation and maintaining of power and authority indicate that colonialism had a profound effect on the evolution of the African political realities and the development of the state.

Political ties are still dependent on familial and ethnic bonds as insurance against political opposition and the use of public office for illicit capital accumulation and redistribution has become an acceptable norm. For instance, Amundsen (1997) cites the examples of Côte d'Ivoire and Cameroon where studies have revealed that the state is ruled by an elite composed of some 50 families, or approximately 1000 individuals, who control most of the public as well as the private sector, a situation that is common throughout the continent.

4.7 Conclusions

In conclusion, this chapter has provided a multiplicity of causes of corruption. It has highlighted how this complex phenomenon has political, economic, social and structural origins. It exists in any and all state formations. The dynamics involved in the evolution of the state have created an experience of politics that, with emphasis on developing states, is exacerbated by the overlapping of political, economic and socio-cultural features.

These features, in reference to personal, systemic and institutional deficits that are extant in both agencies and agents of the state create an environment that is conducive to corruption (van de Walle, 1994: 132). Maintaining personal power and political stability in a context of limited resources remains one of the biggest challenges for a majority of developing states. In this way may exist as both the problem in patron-client based redistribution of resources and as a solution to stabilise the balance of an asymmetrical political economy. As Khan (2006) posits, if resources have to be provided to specific and critical constituencies that may not be provided to all deserving groups because of resource constraints, then redistribution can be arranged through patron-client networks to maintain a balance of power. If these resources are not available in the budget, governments have to raise the requisite off-budget resources through processes that are likely to involve corruption. In addition, the ethno-regional characteristic of the state as well as the availability and abundance (or lack thereof) of resources has exacerbated contestations amongst different factions (and individuals) for control of public resources for private gain. This renders corruption systemic and often serves as a functional patronage system to maintain state integrity and minimise political friction.

Other drivers related to political and structural imperatives such as weak accountability mechanisms, non-existent political will, state capture; economic causes such as excessive regulations and bad policies, income discrepancies and traditional/cultural causes all contribute to its existence. Although most research usually places a distinction between bureaucratic and political corruption, for practical and analytical purposes, any reference to political corruption in this study is made to evaluate the processes that occur at the policy formulation stage while reference to bureaucratic corruption are made with regard to the policy implementation stage (Amundsen, 2006: 8). Political corruption may occur at the public service level and likewise bureaucratic corruption may exist because of the condoning or connivance by/with the political elites. In a corrupt political system, the machinations of politicians blur the boundaries between resources that belong to the state, the political party and the individual. To quote Advig *et al* (2001):

> Political corruption is usually supported by widespread bureaucratic or petty corruption, in a pyramid of upward extraction. And corruption in high places is contagious to lower level officials, as these will follow the predatory examples of, or even take instructions from, their principals (Andvig *et al*, 2001: 11).

Even so, the power differentials between politicians and bureaucrats illustrate notable characteristics in the nature of the differences between the two. Politicians have the power to develop policies. In an ideal system, these policies are aimed at the processes that would provide the most optimal way in which public goods may be distributed. However, this is not always the case as politicians are influenced by the motivation to remain in power. Corruption in this way is sometimes for group and not necessarily for personal gain.

In light of these acknowledgements, the position of this dissertation is that there are a variety of characteristics inherent within the state some which are universally accepted and some which are applicable to the developing world that create the necessary conditions for corrupt transactions. The dissertation acknowledges that features such as strong communal bonds, economic weaknesses and institutional deficiencies lead to corruption institutionally, individualistically and systemically at all levels of the state.

Chapter Five

The Historicity of the Economic, Social and Political Nexus of Corruption

5.1 Introduction

When state authority was transferred from colonial administrators to the national movements at independence in the 1960s the African state was hastily fashioned from an unpopular administrative system to one that could accommodate the expectations of an expectant population. This was a period of rapid political and social transformation that is evident in all societies undergoing modernisation. The integration of independent African states into the global market had very significant influences on the state as the newly formed governments were seriously ill equipped to meet the demands of the population. The investment and development in indigenously owned industries and enterprises by colonialists was negligible and thus the indigenous population did not have the capacity to compete fully in the global capitalist markets in post-colonial Africa. Colonial interventions in the economy had mainly centred on sectors that were related to primary production such as the cultivation of agricultural produce, mining and oil extraction in some of fortunate cases such as those of Zambia, South Africa, Angola and Botswana. The low levels of investment in education and skills development deeply affected the capacity for African states to effectively govern the population after independence. Rand Richards Cooper (2001:17) writes in *History as Tragedy: Lumumba* that as the Belgian government retreated at the time of independence from the Congo, there were only seventeen African university graduates with no professionals amongst them. African elites could not count journalists, doctors, lawyers and magistrates among their number. The church there was the first, and until the Second World War, the only Western institution in which Africans hoped to gain influence and status (Power, 1992: 317-347).

As the post-colonial state progressed, there were inconsistencies in the implementation of institutional mandates in reference to the distribution of public goods. The newly established nation-states found themselves responsible for huge demands that literally grew overnight in terms of public services. In comparison with the colonial administration, the state was suddenly confronted with requirements for health, education, security, investment in infrastructure and other essential public goods and services that had previously been

sufficiently offered only to the colonial settlers and were negligibly developed for the consumption of the local population.

Since the only sectors that had any significance for a majority of countries were related to the exportation of primary products, the role of the government as a catalyst for economic progress was indispensable. This statist model meant that these newly acquired responsibilities in the first few years of self-governance increased the significance and value of public office. The state became the primary financier in banking, financial markets, exportation, transportation and other major investments. As a result of government control of the economy, the political elites also controlled the distribution of income. Group competitions ensued in the absence of the required resources to meet the demands of a fractured and rapidly growing population. Bureaucratic and political corruption soon flourished when individuals and groups took advantage of the discrepancies between the supply and demand of goods.

Preceding chapters presented corruption as a universal problem that had drivers in structural, institutional and personal dynamics. The following discussion explains the interconnection between economic, social and political processes and how these interact to develop the conditions that allow political corruption to exist.

5.1 Social Institutions, State Structures and Political Mobilisation

The existence of social groups with a common purpose that are politically distinct from other actors is nothing new in the African context. Pre-colonial African societies were organised along communal affiliations that had well established goals and aspirations. Whether these goals were oriented toward trade, agriculture or other forms of economic activities, the members of these groups pursued them with the strict adherence to shared values. Social stratification was based on an individuals' proximity to the leadership than that derived from economic situations. Pike (1968) traces the origins of this to traditional societies that illustrated an aversion for self-enrichment for its own sake and that favoured collective behaviour over individual enterprise. He observes that:

> The political circumstances of pre-colonial Africa...discouraged the accumulation of wealth by small groups who had not the means to defend themselves against the envy of others...the social organisation within the communities also curbed any attempts to accumulate wealth...the egalitarianism

> of the communal society in which he lived demanded that he fulfil his obligations towards members of his extended family, or suffer the consequences of being deprived of subsistence by the community once he ceased to work for cash in his old age...(Pike, 1968:132).

After cash economy was established, the paradigm shift that followed had fundamentally transformed the nature of relationships within these societies. Economic and social stratification were created along the criteria that appraised individuals according to economic qualifiers such as property ownership which was non-existent in the past. With individual property ownership, the notion of legal rights to acquire, accumulate or dispose of personal property was subsequently adopted.

In these circumstances, the neopatrimonial characteristics of African politics may be a reflection of status group construction. Status groups-through which the polity regard as reference points in the economic, political and social spheres-centre on wealth accumulation and the domination of specific power centres over others. Weber's position on the formation of status groups acknowledges that:

> [t]he firm appropriation of opportunities, especially of opportunities for domination, always tends to result in the formation of status groups. The formation of status groups in turn always results in monopolistic appropriation of powers of domination and sources of income (Weber, 1958: 177-180).

Another aspect of this dynamic that should be considered is that the authority to rule in African political systems is validated by two processes that legitimise the authoritative use of power. Firstly, official power is derived from the legal-rational processes that place an individual into formal office. Under the direction of persuasions such as those that occur in liberal-democratic regimes, this often appeals to the sentiments of the educated and professional groups that form the emergent petit bourgeoisie. These individuals often subscribe to exogenous information with regard to conduct and behaviour toward the state and its institutions. But power is equally validated by another dimension that is based on informal institutions. This emanates from traditional logics that appeal mostly to the rural demographic of the population who are associated with illiteracy, poverty, political simplicity and the endogenous order. This source of legitimacy is often obtained from the manipulation of customary institutions that combine authority with the personage of the leadership. African leaders have been portrayed as charismatic, wise, beyond reproach and with the "gift of grace" that sets them apart from the rest of the population. This quality is

what Weber explains as "the absolute personal devotion and personal confidence in revelation, heroism, or other qualities of individual leadership. This is "charismatic" domination, as exercised by the prophet or-in the field of politics-by the elected war lord, the plebiscitarian ruler, the great demagogue, or the political party leader.[5] This is very different from official authority in that it is personal to the one who possesses it (Le Vine, 1980). It is not directed by rules or procedures and may transcend formal hierarchical structures that determine formal power and responsibility.

By engaging sentiments that appeal to traditions and cultural practices, the ruling class consolidates and perpetuates its power by influencing the masses to adopt its interpretation of moral, political, and cultural values (Gramsci, 1971). This has been the African political tradition since independence as noted by Schatzberg (2001) in his argument that the leadership appropriates culture for the sake of power. To cite a few post-colonial leaders as examples, Malawi's Kamuzu Banda evoked Chewa traditions that were incorporated into the national political discourse. He was the *Ngwazi* (the wise conqueror) who promoted his brand of patron-client politics known as *Kamuzuism*. Jomo Kenyatta was the *Mzee* (the great elder) who promoted *harambee*, community based mutual assistance. Julius Nyerere was *Mwalimu* (the teacher) that professed *ujamaa* (togetherness), and Kwame Nkrumah was known as *Osagyefo* (redeemer or messiah) that had virtues of a divine benefactor. These titles merged charismatic qualities and the attendant cultural practices with the practicalities of formal office.

When we consider the state as an imposition, a mesh of institutional layers that has been transplanted on an already existing socio-political organisation, social legitimacy survives the institutional change and is fundamental in the validation of authority and its actions. The utilisation of public office for private gain is not only a positive career move, but becomes a resource that is used to bind collective identities for political action and mass mobilisation in the creation of new situations that are exploited for group development in the political sphere (Andvig *et al*, 2000: 64).

[5]See Weber, Politics as Vocation, http://socialpolicy.ucc.ie/Weber_Politics_as_Vocation.htm.

5.1.2 Asymmetrical Resource Allocations

The rise of corruption during periods of transformation-such as those caused by radical changes in the system of governance-is associated with the dramatic shift in the political fortunes of one group over another. A change of power relations in a society is accompanied or followed by changes in the social estimation of honour attached to the leadership first and then the associated group (Montague, 1951: 134). Collectively, groups develop a new direction from a previously existing power situation or create a new one. In other words, the dominant group that has acquired the authority of formal office moves to a level of power where it has the facilities to galvanise the polity to accept its social legitimation through the use of that office.

As the new political elites emerge to replace the old, expectations and demands exist for the creation of new status groups which are affiliated to the incumbent political leadership. The group that has come into power strives to gain the advantage through creating situations that are beneficial for its members. This ability to mobilise the masses is thus connected to the offices which members of the group now occupy in a newly created power situations (*Ibid*). These have, or aspire to have, the property/material wealth and the honour and prestige that are attached. Therefore, this internal impetus to consciously develop status groups that possess common traits and that aspire to replace the previous ruling groups in situations of advantage provides the motivation for resource accumulation as a form of legitimising the use of power (Lipset, 1983: 65). In this state, incidents of corruption rise occur due to the fact that the new leadership has to create opportunities for acquisition of wealth and property for the new status groups. If the demand for the resources is greater than the legitimate supply, which has been the case in post-colonial countries, corruption manifests as patrons result to misusing public finances to meet the ever increasing demands for property and wealth from their clients.

This theory has been supported by empirical studies such as Lambsdorff (2006) who has noted that changes in a political system such as the introduction of democracy increases levels of corruption. Henderson, (1999) also attests to the perception that political and economic changes are correlated with high incidents of corruption in transitional democratic governments.

Although power thus acquired may denote the expansion of authority in informal institutions, this is then subsequently applied to the formal political environment and *vice versa*. In this way the resilience of corruption is based on the fact that it serves as a method of advancing particularistic interests by an individual or groups of individuals relative to other competing groups for social and official positions. The capacity to accumulate and redistribute resources determines one's position in this contest to control the levers of power. As Weber has observed: "all party struggles are struggles for the patronage of office" (Weber, 1970). Politics thus involves factional competition for public resources by diverse groups.

5.1.3 Ethnic Group Identities and Collectivistic Politics

Colonial rule exploited group identities and subsequently created differentials with regard to access to economic and political opportunities. The asymmetrical dispensing of patronage to different areas survived post-colonialism and has had an influence on government resource allocations. This is very significant when we note that the "spoils of victory" are distributed disproportionately to members of one's political party and/or members of one's nuclear family. In this way, clientelism is insurance for support and protection. Likewise, patronage may be utilised to co-opt opposing factions as a measure of consolidating one's political position in areas that are deemed impregnable due to their ethnic composition. The 1999 presidential election campaign in Malawi was one characterised by the use of patronage, or the threat of its withdrawal, by the incumbent President Bakili Muluzi for political mobilisation. Muluzi (a southerner) in one such incident explicitly warned at a campaign rally in the North that he would only develop areas that supported his party (The Nation, 22 March, 1999).

It has been empirically observed that "citizens identify with their ethnic group and give tremendous loyalty to such groups rather than to their country" (Agbango, 2003: 74). Mozaffar, Scarritt, and Galaich (2003) have presented results from the evaluation of electoral data from 34 African countries between 1980 to 2000, that concluded that colonial institutions, and in particular the policy of divide and rule, provided the initial incentives for politicising ethnic divisions and the rise of ethnic party competition in the quest for dominance. Studies that have shown that in states where there is ethnic heterogeneity, corruption exists more than where there is homogeneity (De LaPorta *et al,* 1999).

5.2 Conclusions

In conclusion, the chapter has placed corruption within the boundaries of political and social relationships with regard to the utilisation of power. The question that comes to mind is why have corrupt systems of neopatrimony been entrenched in political processes in Africa despite the various interventions aimed at creating efficient state administrations? The above discussion indicates that corruption exists as part of the transformation process of systems of governance with regard to the evolution of the state from traditional systems to those of modernity. State development is a process that is replete with adapted and adopted technologies that are both exogenous and endogenous. Political elites respond to the pressures emanating from these multiple demands by developing techniques for political mobilisation in shifting periods of rapid socio-political changes.

Patronage, usually funded by illicit wealth, is the most utilised form of legitimising power. The role that corruption plays in the hierarchical patron-client mode of state administration and political mobilisation is emphasised. Power dynamics help us to delineate the processes of power acquisition and utilisation by different groups in society in their attempt to control state resources.

The persistence and prevalence of illicit capital accumulation is attributable in part to the role that informal pressures play in cultivating both legal-rational (formal) and social legitimacy (informal) to establish systems of patronage. In the absence of legitimate means for the accumulation of property, or with constraints existing in the access to opportunities for the accumulation of property, individuals resort to the abuse of office to acquire the necessary resources. Therefore, formal power and corruption feed off each other in cyclic patterns that facilitate the plunder state resources. In some African states, the "hegemonic elites" or ruling dictate political and economic activity to the extent that some, like Mobutu's Congo, became kleptocracies. Political corruption and neopatrimonial leadership in post-independent Africa should be understood within this framework of clientelistic machinations by the ruling elites.

Chapter Six

Methods and Strategies for Corruption Control: Theoretical and Practical Considerations

6.0 Introduction

The control of corruption has been regarded as one of the greatest challenges to the establishment and consolidation of good systems of governance (Kpundeh, 2000). Anti-corruption strategies are perceived as constructs within the legal framework of the state that seek to repair this systemic breakdown in the relationship between public officers and state institutions (World Bank, 2012). This following chapter traces the evolution of anti-corruption strategies from the initial attempts to contain maladministration through the utilisation of the structural adjustment reforms of the 1980s to the current conceptual and practical directions that promote the good governance policy agenda. The chapter concludes by presenting the current state of debate which portrays these internationally inspired approaches of containing corruption as inadequate when they are tested against the local practicalities of clientelistic politics within the African context.

6.1 Good Governance and Accountable State Administration

In 1989 the World Bank authored a report entitled *Sub-Saharan Africa: From Crisis to Sustainable Growth* as one of the primary authoritative presentations that established the discussion on how governance and the manner in which power was exercised in the management of a country's economic resources were related to development (World Bank, 1989:60). The report delved into the dialogue of "governance" that associated economic growth to desired institutional arrangements in the conversion of policy into political action for sustainable growth.

Kaufman *et al*, (2009) define governance as:

> [t]he set of traditions and institutions by which authority in a country is exercised. This includes 1) the process by which governments are selected, monitored and replaced, 2) the capacity of the government to effectively formulate and implement sound policies, and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them (Kaufmann *et al*, 2009).

Since the pursuit and the development of accountable governance has been placed high on the reform agenda by multilateral institutions for emerging developmental states, these policy objectives have been progressively added and aggressively pursued as supplementary to the economic and governance conditions that had previously been attached to Structural Adjustment Programmes (Hyden, 1992:7). Good governance encompasses the enhancement of the state's institutional capacities, the processes for formulating policy, decision-making and implementation. The agenda advocates for easy information flows within and without government that would improve the overall relationship between citizens and the state (Woods, 2000: 824). Therefore, the general fundamentals are to strengthen the market by improving public sector management, advance financial probity and accountability and improve the levels of public participation for the transparent administration of the state. Good governance is therefore taken as multi-dimensional process that endeavoured to capacitate the state for the productive engagement with its citizens in the development of an efficient free market. As such, the interventions are interrelated and mutually supportive for the proper exercise of power by the political leadership (Riley, 1992: 18).

Although good governance is a very general concept that relates to the processes of managing regime structures with the goal of enhancing the legitimacy of the public realm, government performance is measured against some common criteria. Central to the establishment of successful and efficient good governance regimes are the quality and performance of administrative structures that are legitimised by the rule of law, decision making that is accountable in all transparent government processes and implementation of measures that allocate freedoms for independence of choice firmly grounded in popular participation within a liberal political process. The proper exercise of power by the political leadership therefore is viewed as a significant factor in the creation of an environment conducive to market efficiencies.

6.2 Anti-Corruption Strategies within Broader Structural Reforms

The current state of art of anti-corruption strategies advocates for the employment of a number of anti-corruption measures, strategies and initiatives that are usually grouped into distinct families. Gillespie and Okruhlik have identified societal, legal, market and political categories (Gillespie and Okruhlik 1991: 80) while Bryane Michael (2006) has recognised four themes of universalistic, state-centric, society-centric, and critical families. Broadly

speaking, institutions developed out of these strategies are designed at controlling corruption on three fronts; they attempt to control the behaviour of the personnel working for the government institutions and secondly, they endeavour to close the opportunities for corruption by closing the weaknesses in state structures, and finally, they aim to educate the public. These include calls for the government to institute and implement measures for progress in the following areas of state administration:

- Policy reforms aimed at increasing internal and external competition in the delivery of services and removing opportunities for rent seeking;
- Development and/or transformation of state structures such as the judiciary and parliament to increase their capacity and independence;
- Revitalising the civil service and local governments as effective supportive organisations for popular participation;
- Creation and sustenance of effective and reliable watch-dog organisations which involve civil society organisations in the work of these organisations;
- Political reforms that expand the political space and institutional opportunities for civil society organisations, the media and other non-state actors (World Bank 1997).

The pursuit of good governance as an anti-corruption measure looks beyond government activities and broadly focuses on the ends by which the population as a whole can benefit from the interventions. Specifically, the measures include interventions that aim at improving internal and external structures of state administrative systems that emerging economies have to pursue to achieve market efficiency (De Maria, 2007: 18-19). In the following discussion, I group these interventions into the five categories of control and reinforcement, institutional reconstruction, social interventions and public engagement, political reforms and policy change and integrated interventions.

6.2.1 Control and Reinforcement

Migdal (1988) describes control as an organisation's ability to make people behave in a way they would not otherwise do. In the context of organisational relationships, this is the capacity for institutions to manage the behaviour of employees in reference to their interaction with each other and their organisations. One of the favoured and well promoted anti-corruption methods has been to control the behaviour of public servants through positive and negative reinforcement as a method of improving competency and reducing self-serving. Migdal's argument expands to state that individuals take components of systems in order to construct their strategies for survival-the means by which they meet their material needs. The extent of an organisation's control therefore rests on its ability to deliver these key

components. The amount of compliance, participation and legitimation an organisation enjoys provides a measure of the degree of social control it exercises. One of the grounding theoretical arguments of this hypothesis is the public choice model as advanced by Mbaku (1996) who perceives the existence of corruption as a crime of opportunity than anything else. Its proliferation directly correlates with the quality of the personnel who have the mandate to execute state policies.

The creation of highly favourable incentive structures in the public service has been one of the major tenets of control and reinforcement anti-corruption drives with the aim of developing a highly skilled and professional public sector that is not susceptible to corruption (Klitgaard 1988). It has been argued that in many African countries, public servants' pay has gradually declined in real terms from the initial levels of immediately after independence which has added pressures on the public servant to supplement their income illegally. In Tanzania for instance, the real average public service pay in 1998 was 70% of what it was in 1969 (Therkildsen, 2001: 25; Valentine, 1999). For this reason, structural reforms have been pushing for the improvement of public sector wages. Increases in pecuniary incentives for public sector employees pegged at market or at above market levels is said to be justified by that the work which bureaucrats do in reference to professional judgements and discretion which are views as difficult to monitor (Khan, 2006). This argument has found favour in leading academics such as Rose-Ackerman (1975) who contends that a favourable incentive structure in the public sector is associated with a reduction of bribery. In agreement with the above, Mbaku (1996) is of the opinion that approaches toward corruption must look at incentive structures as the primary motivator for positive behaviour. The "efficiency wage" then creates an additional motivation for honest service delivery by increasing the anticipated financial benefit (Mauro, 1997). It is thought that public servants will confine their behaviour within prescribed laws and procedures because self-serving behaviour would be a personal cost if discovered. Higher incentive schemes have also been observed to improve the principal and agent relationship. Palmier (1985: 2-6), for example, points out that adequate pay is an essential ingredient of reform where incentive structures minimise disaffection and ensures the loyalty of public servants.

In addition to the above, these strategies endeavour to reduce the appeal of corruption through negative reinforcement such as increasing penalties for corrupt acts, by reducing opportunities for abuse of office, by reforming the criminal justice system and by increasing

the risk of getting caught for corruption (Kaufmann, 2000, Rose-Ackerman, 1978, 1998). As Palmier (1985) points out, high wages for public servants can only work if the probability of being detected for corrupt behaviour and severely punished is very high(Palmier, 1985: 271-272). In agreement, Harsch (1999) explains that the World Bank recommendations on anti-corruption measures can only work if public servants are remunerated with incentives that are good enough to reduce the temptation to act contrary to the interests of the state, but due diligence should also be placed on institutions that would increase the likelihood of detection and punishment of malfeasance. He notes that:

> Raising civil service salaries to the levels of those in the private sector, hiring and promoting public servants on the basis of merit not patronage, mechanisms to enhance the monitoring and accountability of officials, the establishment of clear rules and an independent judiciary, the naming of ombudsmen to hear citizens' complaints, and anti-corruption commissions to investigate serious allegations (Harsch, 1999: 75).

We now review institutional restructuring and reinforcement mechanisms that aim to decrease the opportunities of public servants to act contrary to established norms and procedures for corrupt ends.

6.2.2 Institutional Reconstruction, Restructuring and Reform

Institutional reconstruction interventions associate the sources of corruption and maladministration with weaknesses in the structural integrity of institutions (Michael, 2004). The argument is that when state oversight structures are weak or that they accord public servants with unbridled discretion, this is open for abuse and they must be restructured. This should be implemented with bolstering institutions that assist in containing corruption. The main emphasis is to control corruption by improving structures for public servants to be accountable for their discretionary use of authority to allocate services (Klitgaard, 1988). Interventions are based on the understanding that there is a breakdown of this relationship between state entities and its employees and their interaction with private citizens (clients). The control and prevention of corruption, therefore, should be aimed at restructuring the principal-agent-client relationship to circumscribe discretion and enhance accountability (Klitgaard, 1998).

Other interventions approach anti-corruption measures from the perspective of the operating environment (Rose-Ackerman, 1978:6). This view sees corruption as a symptom of system

failures where institutions of public administration fall short in providing services in an optimal way. Corruption is exacerbated by a dysfunctional and bloated public sector which is a burden on public resources through wastage and self-serving of its officers (Shleifer and Vishny 1998). Reforms under this umbrella therefore aim at the control corruption by minimising the position of monopoly that public agents have on government resources (Michael, 2004). On these terms, "right-sizing" of the state institutional apparatus to retain the most competent and experienced staff that are loyal and efficient in their productivity (Brennan and Buchanan, 1985; Dobel, 1978). The measures remove the focus of decision making from individual public agencies to specific tools which the public can be governed through. This requires capacity building and enhancement of skills to replace command management practices of the old with those that advance persuasion and negotiation to achieve common goals (Salamon, 2002:7-20). This is more effective because the structure of the public service shifts from a rigid and hierarchical setup of the past that was inimical to the free flow of ideas to a more network based entity that is collaborative and partners with private enterprises as units that work in tandem with government structures. This new approach incorporates the most effective competencies of those of the private and public enterprises in a mutually beneficial symbiotic relationship of the market and the government.

The World Bank, on the other hand, has argued that corruption exists where distortions in the policy and regulatory regime provide the facilities for its existence (World Bank, 1999). Institutional restructuring and administrative reforms should aim at the reform of the rules and/or regulations that govern the socio-political processes of the state in relation to public expenditure/financial management, administrative and public service delivery structures, restructuring of legal and judicial systems and public oversight that should ultimately increase the efficiency levels of these institutions and consequently strengthen areas of weakness. The basis for this view is that most African states have outmoded administrative, constitutional and legal instruments that have had their foundations in colonial technologies which were informed by the economic and political relationships between the colonies and the metropolis. The state was primarily structured as a mechanism for maintaining law and order first before development could be achieved. These structures were abused after independence by despots who utilised inherited laws to oppress the masses and to illegally accumulate personal wealth as post-colonial politics unravelled (Huntington, 1995). Institutional reform measures advocate for effective judicial and legal entities that are

independent from political interference; have dependable infrastructure and resources; are accessible and have highly skilled legal and administrative personnel who ensure the provision of justice is dispensed objectively. Therefore, primary objective of these strategies is to secure changes in administrative instruments that would permit the implementation of major policy changes in government to minimise rent seeking. The restructuring of state institutions also involves the creation of semi-autonomous enclaves of excellence as reference points for the transfer of knowledge and skills for best practices to take root, the reorganising of management schemes and methods that improve the quality of decision making and the introduction of legal remedies for the promotion of a culture of transparency in institutions that would ultimately improve public participation and stimulate productivity (Lambsdorff, 2006).

There have been a number of empirical studies that provide evidence to support the institutional reform agenda. Siddiqui *et al* (2010) cite studies which provide evidence in support of the association between the quality of institutions and economic growth. They point out studies by Acemoglu *et al.*, (2005) that show that quality of institutions have an important effect on long term growth while Jalilian *et al*, (2007) validate the positive role that the regulatory and institutional arrangements have on economic growth.

In order for these measures to be effective, there should be efforts to combine institutions that examine and expose illegal activity such as the National Audit Offices, to those that investigate transgressions and punish wrongdoers. Increasing the probability of being caught and punished minimises the propensity for public servants to behave with criminal intent (Mbaku, 1996; Mauro, 1997:5). Hence these strategies also advocate for the creation of dedicated and independent structures of the executive that are specific for investigating and prosecuting acts of corruption.

6.2.3 Social Interventions and Public Engagement

Social interventions toward anti-corruption mechanisms promote strategies of vigilance by empowering members of society though education and capacity building (Dobel, 1978; Mbaku, 1996, Johnston cited in Camerer, 2009:62).

Processes for social engagement aim to stimulate positive action and ethical standards directly in society through the promotion of moral campaigns to drive a positive connection

between formal and informal (social) institutions. As Johnson (1998) points out, these interventions are an expeditious form of participation devoid of the bureaucratic red tape that usually exists when citizens wish to interact with government through the formal channels. These interventions have been favoured as a more practical measure for controlling corruption.

The main premise behind these approaches is that corruption should not be seen simply as a phenomenon that exists suspended and isolated from social relationships. It must be interpreted, defined and redefined in meanings ascribed to it by social and cultural institutions (Michael, 2004; Pope and Vogl, 2000). Anti-corruption programmes therefore must solicit the assistance of civil society groups amongst other similar approaches to be effective in cultivating ethical and moral behaviour.

The main interventions, apart from the formation of civil society groups, are the development of coalitions and networks of like-minded non-governmental organisations. These strategies therefore advocate for media freedom, greater civic participation in anti-corruption campaigns, coalition building and networking amongst themselves, with national governments as well as associations with international organisations (Pope, 1995). Such remedies might include the establishment of government press institutions for the dissemination of information, the enactment of laws to ease access to government information and the encouragement of positive state and media relationships. This, in theory, would lead to a more transparent government that is less prone to corruption and is accountable to the people, who in turn accept and internalise the moral standards of anti-corruption messages.

As can be deduced, societal involvement in the fight against corruption presupposes that there is a political undertaking by the incumbent administration for democratic and liberal policies that allow for the expression of human rights such as the freedom of association and speech. Therefore, these strategies can only prosper in polities that have open systems of governance and where the state enjoys a significant level of political legitimacy in the eyes of the citizens acquired through popular participation in democratic political processes (Johnston 1998:88). With regard to transitional politics of post-autocratic African regimes, this would entail regime consolidation which involves the establishment of quality political and social institutions that deepen a culture of political responsibility, transparency and accountability

(Diamond, 1995:56-60). Because these methods have the objective of cultivating ethical standards and social norms that are constructive for successful public sector and private individual interaction, they require long term and persistent effort.

6.2.4 Political Reforms and Policy Change

A corrupt government system distorts the policy formulation and implementation processes by excluding the majority voice for the benefit of a few. Therefore, the existence of corruption is attributed to failures in the process of resource distribution and service provision by government agents and agencies (Klitgaard, 1988; Riley, 1993; Kaufmann, 1997). These views advocate for the identification of ways and means that promote better accountability and transparency. One of the most propped up reforms has been the push for democratic change.

Democratic states are said to share common characteristics that separate them from non-democratic states. Meny (1993) has identified systems of governance that ensure the separation of powers, popular representation and the rule of law (Meny, 1993:230-276) while Robert Dahl (1989:221) informs us that democratic systems must have the following ingredients to be identified as such: free and fair elections, a choice for political representation, inclusive suffrage, freedom of expression, associational autonomy, rule of law, an efficient bureaucracy, the right to run for office and a development based market economy. Decentralisation of authority is an integral aspect of these political strategies that aim at controlling corruption through political reforms (Quah, 1999). This, it is argued, moderates ethno-regional antagonism and tensions (Bueno and Bastard, 2007; Klitgaard, 1988). It is essential that central and local governments should be elected by popular vote through free and fair elections and chosen from a plurality of political parties who contest for power and authority through democratic processes. Therefore, governments should promote independent electoral commissions that oversee elections and investigate incidents of electoral malpractices.

Political reforms push for the separation of power amongst the arms of government to ensure checks and balances. There is also a call for the institutionalisation of key features that promote positive political interaction and accountability such as parliamentary oversight committees, elected legislatures and other institutions that promote public trust in the political

process. These strategies therefore seek for political reforms that legitimise the structures that are accountable to the people.

6.2.5 The Integrated Approach

Finally, the integrated approaches also known as universalistic or universal perspectives (Michael, 2004) describe anti-corruption remedies as the interplay of variables found between state and non-state actors in a given society. They observe corrupt transactions as universal phenomena which run contrary to standard social laws. Anti-corruption programmes are therefore universally applicable and replicable in different settings. The integrated model is best illustrated by national integrity systems which have been popular since the early 2000s. Created out of the discovery that tackling corruption in a piece-meal fashion was impossible, the intent of the NIS model is to build a platform which identifies areas of vulnerability and develop contextual programmes that are holistic and sustainable through dedicated structures and a formal framework(Pope 2003; Michael, 2004). Pope explains that "the aim is not complete rectitude or an on-time cure or remedy, but an increase in the honesty or integrity of government as a whole" (Kaufmann, 1998: 159). The framework identifies key government, international and civil society institutions that are mutually supportive. These are: legislative branch, executive branch, judicial branch, watchdog agencies, civil society, public service, private sector, mass media and international agencies. The executive is assigned the role of preparing the environment for the anti-corruption system by providing genuine and sustainable political will and guidance, the media would provide for a transparent and impartial means of exposing corrupt behaviour and giving information that would aid in anti-corruption efforts and specialised anti-corruption agencies would give law enforcement support and guidance. Since corruption has increasingly attained an international dimension in this integrated global economy, the harmonization of local institutions with international agencies would assist in providing information on best practices, capacity building and research data and international instruments that would ease repatriation of ill-gotten gains, freezing of corrupt assets and the promotion of cooperation (Pope, 2000:103). Other branches of government such as parliament and the judiciary would provide oversight and the necessary checks and balances; and so on and so forth. All of the above the measures have been collated by Fjeldstad *et al* (2003: 32) and summarised in the Table 2 below:

Table 2: Measures for Controlling Corruption

1. *Payment:*
   - Salary.
   - Fringe benefits, pensions, allowances, other financial incentives.
2. *Controls:*

   2.a. Internal control:
   - Supervision and control systems.
   - Standards of performance for employees.
   - Recruitment and selection procedures for personnel.
   - Rules and procedures for tax collection and reporting.

   2.b External control:
   - General auditor's independence and capacity.
   - Law and order tradition, checks and balances.
   - Public attitudes about corruption (e.g., public tolerance of corruption and the role of civil society).
   - Information made available to the public (e.g., newspapers, media).
   - The judiciary system.
3. *Statutory penalty:*
   - The size of penalty (amount of fine, confiscation of wealth, prison sentence).
   - Administrative sanctions.
4. *Public sector regulations:*
   - Governmental regulations (e.g., licences, fees, the etc.).
   - The tax law and tax regulations (including tax bases, collection procedures and transparency).
   - Statutory tax rates.
5. *Other factors:*
   - Parliament and political institutions.
   - The bureaucratic structure.
   - Political and administrative leadership.
   - Concentration of economic power.
   - Education of civil servants.
   - Cultural and ethnical determinants (e.g., the role of social networks and family ties).
   - Development aid organisations.

Source: Fjeldstad*et al, (2003: 32).*

6.3 Anti-Corruption Institutions

Toward the end of the 1980s, former President of the World Bank Wolfensohn had created a fraud and corruption investigation unit within the Bank in response to the increasing numbers of corruption cases emerging from World Bank projects in member states. This was a major landmark in that it was the first attempt to link anti-corruption regimes to aid. As stated before, corruption before the end of the 1980s was a very sensitive topic that was rarely mentioned in official settings in line with the policy of the lending institutions that limited its mandate to non-interference in internal politics of members (Marquette, 2004: 413).

As the 1980s were drawing to a close, the IMF and World Bank advised their member countries to adopt anti-corruption measures to the new millennium. In 1996 the World Bank President, James Wolfensohn, and IMF Managing Director, Michael Camdessus announced that from henceforth they would unequivocally utilise the influence enjoyed by the institutions amongst development partners as leverage to eradicate corruption (IMF, 1997). This position embodied the Bank's vision of developing specific and specialised state institutions which would assist in creating the space needed for the expansion of private enterprise. Wolfensohn argued that corruption was not a political issue but a development one and therefore was one of the greatest obstacles to economic growth (De Maria, 2005). The placement of corruption on a development and not a political platform paved the way for the Bank in particular, and other agencies in general, to dictate and control the terms for anti-corruption reforms that countries would administer as attachments to financial assistance (Oliver de Sardan, 1999; Adelman, 2000; Levine, 2001; Michael, 2004:322). The Bank concluded that it would tackle corruption along four dimensions: preventing fraud and corruption in Bank projects, helping countries which request Bank assistance for fighting corruption, mainstreaming the concern with corruption in all of the Bank's work and lending active support to international efforts in fighting corruption (Khan, 2002).

Other institutions soon joined in. As early as in 1996 the OECD had taken positive steps in the creation of strategies for correcting procedures that were conducive to corruption. 36 OECD countries ratified the convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Sandholtz and Gray, 2003). The European Union was next when it adopted a Union Policy against Corruption in 1997 that guided member states on steps to take in identifying, investigating and combating corruption. By September 1997 the Executive Board of the World Bank followed suit and adopted its anti-corruption strategy that aimed to formally consolidate the Bank's position on corruption and approach to anti-corruption measures in its global undertakings (World Bank, 2007). At the hub of these anti-corruption efforts are specialised government institutions which have prescribed mandates and established by law (Meagher, 2005: 69; De Maria, 2007: 11). The definition of an anti-corruption agency as provided by de Sousa (2006) is:

> [a] publically funded body of a durable nature whose specific mission is to fight corruption and associated crimes and to reduce the opportunity structures favourable to its occurrence through preventive and repressive strategies (de Sousa, 2006: 12).

Charron (2008) has identified the seven criteria of what constitutes such an agency as:

- distinct from other government agencies, with a single issue of preventing and controlling corruption;
- are permanent in nature, not meant to serve as a "temporary fix", but as a long term institution;
- are publically funded;
- are accountable to at least one other government body-parliament, ministry of justice, the executive, etc.;
- contain both preventative and repressive dimensions of corruption control;
- centralise information on domestic corruption which is disseminated to other actors, media, IO's, law enforcement, etc.;
- recognised by, and accessible to, the general public (Charron, 2008:6).

Anti-corruption institutions are designed to be autonomous bodies independent from any external influences. They are usually accountable to the public through the executive or legislature. They are specialised agencies with the state of the art training regimes, highly competent staff and well-resourced in comparison to other law enforcement agencies.

6.3.1 Anti-Corruption Structural Archetypes

Anti-corruption institutions show great variation in the way they conduct business and pursue their mandates. One elemental decision for any anti-corruption reform programme that the government has to make is to decide what form of strategy and approach it has to integrate into public policy in relation to the resources and capacity at its disposal. These can be small entities with a localised mandate or they can be relatively large agencies with huge overheads. They can take the form of specific interventions in government departments, or the development of overarching agencies that target corruption as a national problem. Doig *et al* (2007: 252) have identified three mandates which these institutions carry out in different degrees. The first one is for the bodies to investigate, enforce and prosecute incidents of corruption. The institutions are accorded immense authority to curb corruption through special laws and ordinances specific and related to corruption. The second mandate that a majority of these institutions carry out is to prevent corruption. This is implemented through institutional audits that offer recommendations and aim to secure the revision of organisational procedures and methods of work that are prone or conducive to corrupt behaviour. Finally, they serve the educational function by teaching and disseminating information on the harm that corruption causes to society on the whole and government

processes in particular. In a recent report entitled *Specialised Anti-Corruption Institutions: Review of Models* (2007), the OECD classified three ideal functions that existing agencies pursue in varied configurations. These mainly are:

1) Specialised institutions with multiple competences with preventive and penal powers that combine the educational and advisory mandate and prosecute offenders while offering guidance and assistance to institutions;

2) Specialised departments with police forces or prosecution bodies which are extremely focused and dedicated to investigations, arrests and prosecutions and;

3) Preventive Institutions which exclusively rely on prevention as the main method for containing corruption.

The four institutional models outlined below are usually the preferred structures that states adopt to perform the above functions (De Maria, 2007; Heilbrunn, 2004). These are:

6.3.1.1 The Specialised "Hong Kong" Model

The first model has three the functions of investigation/prosecution, preventative and education. These institutions model their operational structure on Hong Kong's Independent Commission Against Corruption (ICAC). The ICAC was established in 1974 as a response to massive incidents of corruption in the colonial police. The Independent Commission Against Corruption Ordinance (ICACO), the law that created the institution, expanded the definition of what constituted an act of corruption and furnished the institution with unprecedented powers and punitive measures (Michael, 2004).

For example, Section 10 of the ICACO permitted officials to seize passports, property, and incarcerate suspects when evidence suggests a risk of flight. The new laws also included offences such as the obstruction of justice, theft of government resources, blackmail, deception, bribery, making a false accusations and conspiracy to commit an offence. The comprehensive legal framework mandated authorities to conduct search and seizure operations, examine bank accounts, subpoena witnesses, audit private assets and to detain individuals on suspicion of engaging in corruption (Heilbrunn, 2004: 4). The preventative functions included the evaluation of systems and procedures of government institutions to identify and rectify areas that were vulnerable to corruption. Finally, the institution disseminated information on the dangers of corruption through its education function. These comprehensive measures were soon replicated by other institutions internationally.

6.3.1.2 The Investigative Model

The second type is known as the investigative model. This entails establishing small and centralised investigative structure that operates as a police section with the exclusive mandate of probing cases of corruption as criminal offences. It has no preventative or education functions. Heilbrunn (2004: 4) cites Singapore's Corrupt Practices Investigation Bureau (CPIB) as one of the examples. The theoretical basis of this model is based on the fact that crime is best deterred by rigorous punitive measures that are complemented with well-constructed systems of detection (Becker, 1968). The investigative model therefore borrows on the structure of the criminal investigation section of the police service in all intents and purposes. The very hierarchical structure emphases its strict relationship with the executive branch of government where, in most cases, it is accountable to. In the case of the CPIB, the institutional management reports are submitted directly to the president who has the final say on operational directions.

6.3.1.3 The Parliamentary Model

The parliamentary model derives its name from the institution that these agencies report to. These institutions are mainly independent from the executive and judicial branches of state and report directly to the legislature Heilbrunn (2004: 5). Although the parliamentary model somewhat follows the structure of the ICAC, its main focus is on preventing corruption rather than investigations and prosecutions. An example of such an institution is the New South Wales Independent Commission Against Corruption where the institution is supervised by two committees: the Parliamentary Joint Committee which is accountable to Parliament and submits its reports to the legislature and an Operations Review Committee, represented by members from different political parties in Parliament. The Operations Review Committee directly supervises the ICAC by advising the institutional head on matters of operations such as whether to continue, suspend, or terminate an investigation (*Ibid*).

6.3.1.4 Multi-Agency Model

Finally, the multi-agency model incorporates contributions from individual agencies that have different mandates to form a web of anti-corruption inclined government institutions which act in concert to contain corruption. This is most favoured in the United States where

the United States Office of Government Ethics (OGE) is but one aspect of multiple agencies such as Office of Management and Budget, Government Accounting Office, federalpolice agencies and the Justice Department that complement each other to enhance their legal powers (Heilbrunn; 2004: 4).

6.4 Evaluation of Structural Reforms as Anti-Corruption Interventions

Although there is a general consensus that corruption is inimical to development, the structural reforms that had been introduced on the good governance platform to curb corruption have been extensively criticised by researchers as ineffectual mainly due to their exogenous nature and oversimplification of the political context of developing and transitional states (De Maria, 2007:8). These criticisms often relate to the validity, legitimacy and feasibility of the economic and structural reforms as a measure for controlling corruption and maladministration in contexts that are very different from where these reforms originate. Khan (2006) for example has argued that good governance is not necessarily a remedy for corruption. He states that:

> More worrying is the observation that governance and institutions in the most successful developing countries have often been starkly at variance with the good governance model that international agencies are committed to. Even the most successful developing countries have suffered from significant corruption and other governance failures during the early stages of their development (Khan, 2006: *vii*).

States can economically develop fully with incidents of high corruption as has been observed in China, Russia and East Asian countries. The evidence suggests that in all of the successful newly developing countries, the high number of incidents of corruption can and do co-exist with rapid capitalist development. In successful developers, corruption could co-exist with growth because it is part of a system of "primitive accumulation" through which a new class of capitalists emerges with strong state assistance and often in collusion with state leaders (Khan, 2002:3). Khan continues to argue that the mechanism for growth is activated when functionaries share a portion of the accumulated wealth with the corrupt newly developed capitalist class.

Economic austerity programmes have in fact had the opposite effect by increasing inflation and expenditure. Privatisation itself is plagued by tender fraud and political interference to the benefit of a few that are politically connected-creating avenues for nepotism and crony

capitalism (Mbaku 2004:48). Heywood describes how these measures have assisted in creating "opportunity structures" that have been abused for private or group gain. In Privatisation, for example, has created opportunities for cronyism, influence peddling, clientelism and other forms of abuse of office (Heywood, 1997: 428).

More of the criticism has been placed on the restructuring process of state administration. For example, right-sizing the bureaucracy, it has been argued, increases the frequency of corrupt behaviour because in contributes unemployment, poverty and administrative ineffectiveness of government institutions. Deregulation has had the negative effect of removing security measures that would have ensured a more vigilant due process in public sector activities (*ibid*). In economic environments where unemployment is high and the financial sector is weak, this has created more drivers for corruption through dispensing of patronage and largesse through favouritism and nepotism (Besley and McLaren 1993). The premise that higher wages for bureaucrats would motivate employees and discourage self-serving has been discredited by numerous studies. The incentive mechanism, for example, only works if other variables which are equally essential are considered. Using incentives to develop loyalty and efficiency breaks down if the probability of getting caught, and/or of being actually punished when caught is very low (Huther and Shah 2000). In that case, the higher salary is just a bonus since bureaucrats can and usually do continue to be corrupt (Khan, 2006). Cross-national empirical evidence shows, as expected, that there is very little if any relationship between pay increases and the reduction of corruption (Treisman, 2000). As Oliver de Sardan (1999) points out, one of the reasons why these measures fail is that the influence of social-cultural logics has been totally ignored in their design. The problem is not in the institutions or structures themselves, but the processes by which public servants interact with their environment and the Western type bureaucracy. He argues that:

> [t]he functioning of the administrative apparatus, entirely copied from the European pattern is of a schizophrenic type. In law, official functioning and budget it is totally Western. In practice, it is otherwise, traversed by logics in drastic contradiction with the original model (Oliver de Sardan, 1999:47).

Much as corruption is perceived to be embedded in the way politics, bureaucratic and economic performance intersect as processes in state administration; anti-corruption efforts assume that political and bureaucratic elites act as rational actors. In reality, this is not true as different variables play out in the development of these strategies. Huntington (1991) for example, points out that there are a number of preconditions that are needed for the existence

and consolidation of democratic and open societies which restrict the growth of corruption. These include positive growth of a middle class which is educated and well informed, the existence of well-established social networks and the existence of credible and legitimate leaders; the very set of conditions which are lacking in developing countries. In most cases, these are luxuries that states in periods of transition do not enjoy. In extreme cases, elites accept democratic reforms that are advantageous for their survival, but not necessarily advantageous for their states. In explaining the deficiencies of democratic reforms in post-authoritarian regimes, Mueller (1989: 59-62) for example, informs us that democratic reforms themselves can impede the exposure of the misallocation and diversion of resources by elites to favourite groups therefore compounding the problem of corruption. Political leaders in these developing economies have very few incentives to implement effective public sector reforms and the enforcement of the changes that would risk the alienation of key supporters. These superficial reforms are aimed at placating donors and diverting public attention. They offer nothing more than a veneer of legitimacy that conceals maladministration under the guise democracy while cronyism and nepotism are the norm occurring below (Deacon (2009).

Other reforms such as decentralisation and devolution of power and authority have intensified the problem of corruption further in certain sectors. Local government has not worked as effectively as it was envisioned for many African countries. By generating more opportunities for graft and self-serving in the absence of direct central government oversight and management, the decentralised institutions have become corruption grottos and rent havens for bribery, influence peddling, illegal contracts, nepotism and embezzlement. Bardan (2002) argues that local governments create avenues for corrupt behaviour by among other things misrepresenting crucial information to the central government, restricting financial access to a select group of individuals or a few favoured projects caused by insufficient incomes and deficiencies in collecting state revenues (Treisman, 2002). The distribution process of public services therefore follows the pattern of "prebendalism" where powerful political elites control the dispensing of public goods based on subjective criteria such as ethnicity (Lemarchand, 1988).

In conclusion, these changes have increasingly been observed as window dressing to appease the donor agencies and insure continued financial support which in the end serves political and private economic ends of the few elite families. Whether they have been instigated by

state or inter-state actors in the political arena, NGOs who solicit funding by utilising the "anti-corruption agenda" or international aid donors, anti-corruption activities have persistently been mired in politics.

6.4.1 Appraisal of the Efficacy of Anti-Corruption Agencies in Africa

There is a growing body of literature that examines these institutions and their effectiveness (Doig *et al*, 2007; de Sousa, 2009; Charron, 2008). Although there have been noted cases of earlier efforts in some African countries in the 1970s and early 1980s of the creation of institutions against corruption (Tanzania and Uganda for example), these efforts soon faltered against the aftermath of the global economic recession of the early 1980s (Doig *et al*, 2005).

The most ubiquitous and reference point for these agencies currently has been Hong Kong's Independent Commission against Corruption (ICAC). Since then, the ICAC has been successful in reducing the levels of corruption in Hong Kong and has established itself, through its three pronged elements of investigations/prosecution, corruption prevention and public education, as the best practice for law enforcement institutions mandated to tackle corruption.

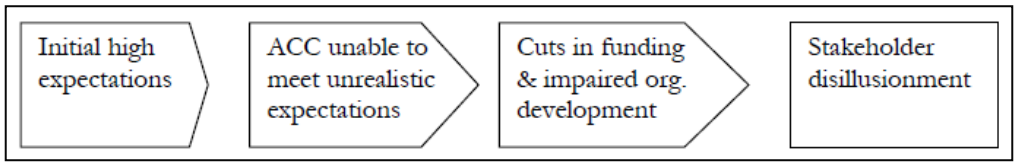
The mounting belief is that despite the increased emphasis on fighting corruption in this manner and the popularity of anti-corruption institutions, a majority of these efforts have floundered in developing countries. In recent years, this criticism has grown due to the inability for the anti-corruption strategies to control corruption. They have increasingly been perceived as organisations created out of political expediency to serve the interests of those who advocate for them (Michael, 2004). From a political standpoint, the impetus to develop clean-up campaigns has been viewed primarily as driven by political exigencies rather than by genuine interest in the efficient functioning of the nation's political and economic institutions. In other words, there is a need to take into account that the environment in which African governance systems operate in relation to anti-corruption agencies is politically driven. The reality is that structural precursors that are required for effective institutional functioning are absent in most forms of African governance. De Maria (2007:8) for example informs us that this raises geo-political and moral dimensions that subject African governance to external challenges that have questionable currency and pressure the absorption of west-centric ideas into local practices. He asks whether these divergent values may possibly be closing the door on the efficacy of the institutional option which are adopted rather than

adapted. In the African context, politicians regularly use the clean-up campaigns to help them stay in power by discrediting members of a previous regime or the reputations of members of the opposition.

The fact that these have been impositions from the lending institutions as conditions for continued support has brought the attention of scholars to what De Maria (2005:3) calls the "hegemonic logics of neo-colonialism". He notes that "the orthodoxy that a trans-cultural position on "corruption" has legal and moral validity and can be captured in a measurable way", is problematic. These sentiments summarise the attitudes most African governments who find the "recommendations" of multilateral organisations unpalatable, unrealistic and ineffective because they do not consider local cultural and political nuances of the states on the receiving end.

Doig *et al* (2005:4) have identified the general lifecycle of an anti-corruption agency as one with initial high expectations from stakeholders but unable to meet the unrealistic expectations imposed upon it. This failure leads to the withdrawal of support which limits its capacity to evolve as an organisation. The failure then encourages disillusionment by governments, donors and the employees of ACCs themselves.

Figure 1. The Anti-corruption Commission Cycle



Doig *et al (*2005: 4)

Most anti-corruption measures seem to fail in Africa because, amongst other reasons, they have been designed with the idea that corruption can be curbed through administrative and legal interventions. This ignores other factors such as political dynamics, economic and cultural/social influences that determine the environmental realities and relationships. A majority of these institutions have been plagued by resources constraints; political interference and lack of human resources that make intentions "outnumber accomplishments and tangible successes" (Doig *et al*, 2007: 252).

6.5 Conclusions

From the observations of the preceding discussion, the anti-corruption effort is created with the best intentions but from a position of limited knowledge of local political conditions and the historicity of corruption. These institutions, regimes and structures may very well operate at an optimum in advanced economies, but the African state and the legacy of its development has more influence on political institutions than has been credited. This has been largely ignored in their design and has proven to be a major fatal flaw. As prescribed panaceas from western-centric conceptualisations of corruption, anti-corruption regimes have been considerably criticised for their lack of significant progress. For this fact, these measures must take into account local prevailing conditions to understand the processes which create the political economy in which they operate if they are to succeed in curtailing political elite corruption. In other words, much effort has to be made to contextualise their structures, strategies and operations as one size does not fit all.

International institutions also bear the brunt of this criticism. They have been accused of heavy handedness, hypocrisy and double standards in their advocacy for public participation and ownership of reforms. These have been imposed without considering the adverse ramifications of the hurried policies (De Maria, 2005:8). These institutions have also been linked to more administrative costs for countries that already have strains on their budgets. Since these agencies have a higher public profile and effectively, more donor support, budgetary allocations and preference for their activities often leads to competition with other law enforcement institutions and agencies which undermines the fight against corruption. The functional inter-departmental cooperation and dependency on other government offices on operational aspects such as prosecutions and confinement of arrested suspects (e.g. in Malawi, the Director of Public Prosecution's Office and the police service respectively), further destabilises the efficiency and independence of anti-corruption agencies in the execution of their mandates because of different priorities with cooperating agencies.

Unless anti-corruption measures are restructured to confront the causes rather than the symptoms of political corruption, they risk losing public confidence and therefore become spectator institutions without credibility.

Chapter Seven

Empirical Analysis: Characteristics of Corruption in Post-1994 Malawi

7.0 Introduction

The aim of this chapter is to present the results of the empirical study of 2545 incidents of corruption that had been reported to the Anti-corruption Bureau and recorded in the complaints database of authorised complaints. Although the scope of this thesis is an evaluation of the period from 1994-2004, the descriptive analysis of the empirical data presented below includes information on incidents of corruption from 1997 and post-2004. The cases cited beyond the scope of the thesis are included for comparative purposes to give an overall picture of corruption in Malawi.

With regard to data on pre-1994 levels of corruption, information on Malawi is extremely limited. Although scholars such as Anders (2005), Cammack *et al*, (2009), Booth *et al* (2006) have made inferences and provided anecdotal references to a public service that was not largely corrupt, the researcher had difficulty in locating literature or research results on the subject. It must be noted that the highly centralised dictatorship of Hastings Kamuzu Banda was averse to academic pursuits that would present a negative image of the administration. The data reviewed therefore covers the time between the first complaints in July 1997 to those recorded in February 2010 at the end of the research. From this range, the necessary qualitative information related to the period concerned is interrogated. The rationale behind the review of the complaints that were authorised for investigations/corruption prevention exercises was for two reasons. Firstly, it was to gain qualitative insights to the nature and characteristics of corruption and secondly it was to provide information on institutional vulnerability.

The Anti-corruption Bureau customarily considers a complaint from a single source that refers to multiple incidents as one case regardless of whether the complaints are unrelated. Depending on the progress of the investigation, the case will be subsequently separated into different the investigation dockets at a later stage. To assist in the delineation of corruption in Malawi for this study, information that was acquired from a single source but referred to multiple incidents of corruption was not treated as an individual case but was considered as separate cases. This was employed to enhance the qualitative value of the information

gathered in order to have a more comprehensive image on incidents in terms of typology and characteristics of corruption in the period under review.

In the qualitative assessment of the data, complaints that were authorised for investigation but did not provide sufficient information or were deemed to have limited qualitative value for evaluation were not incorporated. These included general statements from complainants such as there was corruption at a particular organisation.

The researcher reviewed the data according to the following criteria:

- the levels of authority of those involved in corrupt practices;
- the typology of the identifiable corrupt acts;
- motivation for engaging in a corrupt transaction;
- methods and techniques employed in corrupt transactions;
- action taken

I. Levels of Authority

The levels of authority were identified as the position of employees involved in corrupt transactions relative to their placement in the organisational staff structure. This was done in reference to the Labour Act (2000) and other government documents such as Human Resources Department memos. After this exercise was completed, the positions were grouped into seven main areas. The highest tier was the top management followed by senior management, junior management, senior officers, officers, junior officers and finally the rank and file. Top management consisted of the top most executive officers of an organisation regardless of the size of the institution. This included chief executive officers and managing directors of private institutions, the president of political parties and directors of non-governmental institutions. Deputies of top management were placed in the senior management stratum. These included directors of government departments that were accountable to parent ministries. The next level consisted of managers of departments within organisations such as finance, human resources and operations. The junior management level consisted of assistant managers and other entry level managerial positions. Senior officers were classified as executors of policy who exerted a high level of authority and served a supervisory function over subordinates. Officers were the frontline personnel in the provision of government goods and services or were responsible for sales as was in the case of private institutions. These had a certain level of discretion in decision making, but were accountable to their superior officers. For example, the traffic police officer at a roadblock or the accounts

personnel in a government department. Junior officers included the clerks and administrative assistants and finally the rank and file were employees that performed general duties and had the least amount of authority. These included messengers, drivers and grounds keepers. Although this was admittedly a subjective process of coding, the Labour Act (2000) in addition to other government documents offered some objective guidelines that assisted in the categorisation.

II. Typology of Corruption

The classification of types of corruption is based on Amundsen's (2000) categorisation of corrupt behaviour. These are:

- Bribery
- Embezzlement
- Fraud
- Extortion
- Abuse of Power
- Conflict of Interest
- Receiving an unlawful gratuity, favour or illegal commission
- Favouritism/Nepotism.

III. Motivation for Engaging in Corruption

To determine the motivation behind the corrupt behaviour is a problematic exercise for academic research. The individual who is commits a corrupt act may have multiple reasons for engaging in this behaviour which are not always explicitly evident or declared. The researcher encountered this challenge and surmised from the end outcome of the corrupt exchange what the most plausible impetus for the action might have been. These were grouped into the areas of concern that necessitated the general public to complain on corrupt transactions to the Anti-corruption Bureau. The motivations for engaging in corrupt behaviour were clustered based on the following most frequently observed and consistent incentives that were recorded in the complaints:

- Unlawful award of contracts or procurement of goods and services;
- Illegal transactions for gaining an advantage in political elections and/or office;
- Illegitimate employment practices and false employment qualifications;
- Examination malpractices and cheating;
- Misappropriation of farm subsidies and illegal distribution of relief items;
- Misappropriation of finances by employees;

- Mismanagement/misuse/misappropriation of material resources such as manpower, use of official vehicles and other property for personal gain;
- Abuse of office in the provision or receiving of official services such as distributing government services;
- Disregard of general office regulations for self-serving. Examples would include flouting immigration processes.

IV. Sectors Reviewed

Both public and private institutions were considered in this research. The sectors were differentiated by the researcher into the following seven sectors:

- Government institutions comprising of Ministries and Departments, Statutory corporations, Law enforcement institutions, Local Government;
- Private institutions including private businesses and banks;
- Judicial institutions including Magistrate's Courts, High Courts, the Supreme Court and the Industrial Court;
- Political structures and institutions including the Presidency, Members of Parliament, local politicians and Political Parties;
- Non-governmental organisations, community based organisations, churches and religious organisations;
- Traditional Authorities comprising of government appointed administrators, Senior Traditional Authorities, Traditional Authorities, Sub-Traditional Authorities, Group Village Headmen, Village Headmen and clerks and assistants and finally;
- Individual and private complaints. These were complaints by or against private individuals and were mostly reported by members of the general public.

With regard to the classifications noted above, it should be noted that the distinction between incidents reported from individuals and private complaints and those identified according to specific institutions was made to separate the nature of observations of the complainants by utilising the Bureau's own criteria. The majority of the cases ascribed to the institutions were by complainants who had been either participants or direct observers of the acts within the institution. Those that were classified as individuals/private were mostly unrelated to specific institutions or employees within the institutions referred to in the complaints.

V. Methods and Techniques Employed in Corrupt Transactions

The research also evaluated the methods and techniques that were employed in the corrupt transactions as indicated in the complaints. For example, cases of abuse of power through the demand for sexual favours as payment for employment.

VI. Action taken

Finally the researcher examined the decisions taken on the complaints that had been received and considered the rationale behind these decisions in relation to the legal framework on corruption. This included actions such as referrals, prosecutions, corruption prevention programmes and investigations.

7.1 Characteristics of Corruption in Malawi: Trends and Patterns

Corruption in Malawi pervades all institutions of society with some more susceptible than others. The majority of recorded occurrences were by or with individuals employed in the public sector. Of the total number of 2545 incidents, 1697 (or 67%) corrupt transactions were directly associated with the public sector. Private institutions accounted for 308 cases or 12% of the total amount while 264 of the occurrences were associated with traditional institutions which translated to 10% of the aggregate figure. Individuals who had witnessed institutional corruption or corruption amongst individuals themselves was 4% (89 cases) and corruption within political institutions provided for 3% of the total. The Judiciary and Non-governmental organisations provided for 2% each respectively as indicated by the Table 3 below.

Table 3: Aggregate Incidents of Corruption per Sector 1997-2010

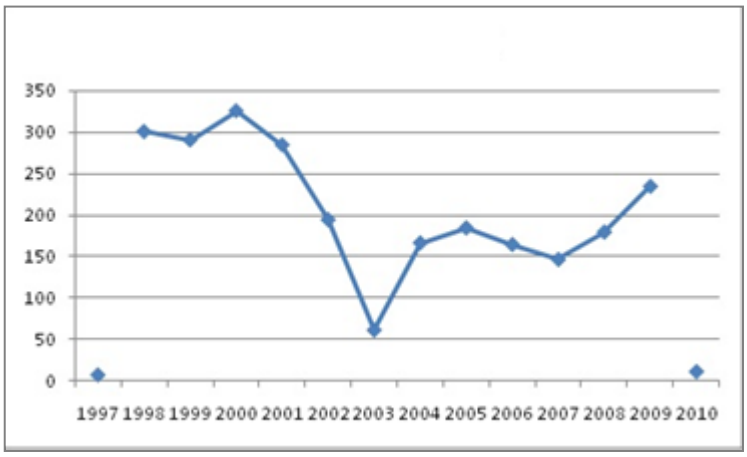
Sector		Number of Incidents	% of inst	% of Total
1). Public Institutions				
	i) Government Ministries/Dept.	827	48.8	32.5
	ii) Statutory Institutions	273	16.1	10.7
	iii) Law enforcement Institutions	514	30.3	20.2
	iv) Local Government	82	4.8	3.2
	Subtotal	**1696**		**66.6**
2) Private Institutions				
	i) Banks	8	2.6	0.3
	ii) Businesses	300	97.4	11.8
	Subtotal	**308**	**100.0**	**12.1**
3) Judiciary				

	i) Magistrates/High Court	53	98.1	2.1
	ii) Industrial Court	1	1.9	0.0
	Subtotal	**54**	**100.0**	**2.1**
4) Political Institutions				
	i) Presidents, Ministers and other politicians	78	91.8	3.1
	ii) Political Parties	7	8.2	0.3
	Subtotal	**85**	**100.0**	**3.3**
5) NGOs				
	i) Community Based Organisations	5	10.2	0.2
	ii) UN Agencies	2	4.1	0.1
	iii) NGOs	28	57.1	1.1
	iv) Churches and Religious Organisations	14	28.6	0.5
	Subtotal	**49**	**100.0**	**1.9**
6) Traditional Authorities		264	100.0	
	Subtotal	**264**	**100.0**	**10.4**
7) Individuals/complaints		89	100.0	
	Subtotal	**89**	**100.0**	**3.5**
Total		**2545**	**100.0**	**100.0**

Source: *Compiled by author from Anti-corruption Bureau data base (2012).*

The average number of incidents reported per year was high and steady from 1997 until this begun to decline considerably in 2002-2003 as indicated in the Figure 2 below. This observation is supported by the results of the Malawi Governance and Corruption Baseline Surveys (MGCBS) of 2006 and the follow up survey of 2010 that indicated people perceived corruption as more rampant in the Muluzi era (1994-2004) than the pre or post-2004 period. The variations in the volume of corrupt transactions did not change the characteristics and nature of corruption between the two periods.

Figure 2. Aggregate Trends of Corruption (1997-2010)



Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

Although some sectors had more variations in the number of cases reported than others across time, the data is indicative of the general patterns of corruption in post-1994 Malawi and is corroborated with the results from other sources such as the World Bank Governance Survey (2006), Transparency International Survey and the Afrobarometer. Below are results from key sectors.

7.2 Corruption in Key Sectors

7.2.1 Public Institutions

The public institutions sector comprised of government ministries and departments, law enforcement agencies, local government and statutory corporations. With regard to individual government institutions within, the Malawi Police Service as an institution had the largest number of cases with 320 complaints authorised (13%). The Police also had the largest quantity of complaints recorded in comparison with institutions in other sectors. This was followed by Ministry of Education with 10% or 242 cases, Ministry of Health (5%) and Ministry of Agriculture (3%) of 2545.

An analysis of the causes of corruption presents a very complex picture of the intersection between the implementation of government policy on one hand and the existence of corruption on the other. Employees deliberately created and exploited rents and bottlenecks in system for the private gain. The institutions noted above have traditionally been by budget size, work force and office space the largest in Malawi. In general, there were variances in the characteristics of corrupt transactions. These were often department specific and

associated with the opportunistic misuse, mismanagement and abuse/or misappropriation of goods and services that institutions provided by the institutions. For this reason, the goods and services that the government institutions provided determined the characteristics of corruption. For example, a majority of incidents within the Ministry of Education and Malawi National Examinations Board (MANEB) were associated with bribery, nepotism and abuse of power and this was associated with the facilitation of securing school placements and the enabling of examination malpractices (cheating). The competitive nature of placements for secondary education and the limited resources of these institutions created the necessary conditions for corruption to take place. Most cases involved parents bribing education officials to get their children admitted into schools or of school officials conniving with invigilators to facilitate cheating. In addition to that, the processing of the high volumes of contracts awarded to build, renovate or supply schools with sundry was very was vulnerable to fraud and bribery, especially at higher levels of the administration. Another illustration is the manner in which officials within the Ministry of Agriculture facilitated corrupt transactions. For example, during the 1999/2000 financial year, the government had placed a moratorium against the exportation of the staple maize crop by private traders to arrest maize hoarding and overpricing during periods of drought/famine. Further, the government set standard prices to make the crop affordable for the public. The opposite effect of these measures occurred. Price fixing, smuggling and profiteering increased in tandem with bribery, fraud, embezzlement that facilitated the other crimes. Of particular significance was the increase of corruption during the distribution of relief items such as the distribution of free farm inputs as well as the distribution of subsidised fertilizer.

With regard to the typology of the corrupt transactions, the most prevalent type of corrupt transaction in public institutions was fraud at 24% of which government ministries and departments contributed 14% of all cases of fraud in the sector. Fraud was seconded by bribery at 15.6% of which corruption in law enforcement institutions contributed 7.3 % of all cases registered in the sector. This was followed closely by extortion at 6.4 %. Table 4 (Cross reference Appendix B) below illustrates the typology of corrupt transactions in public institutions.

Table 4 Typology of Complaints in Public Sector

Sector		Percentages on the Type of Complaints									
		Abuse of power	Bribery	Conflict of interest	Embezzlement	Extortion	Favouritism	Fraud	Nepotism	Unlawful gratuity	Total %
1). Public In	i) Govt Dept.	1.4	6.0	0.6	3.4	3.4	1.0	14.2	2.0	0.5	32.5
	ii) Statutory Institutions	0.7	1.5	0.2	0.5	1.4	0.5	5.1	0.7	0.1	10.7
	iii) Law enforcement	1.0	7.3	0.0	0.8	6.4	0.3	3.9	0.2	0.3	20.2
	iv) District Assemblies	0.2	0.9	0.2	0.2	0.2	0.2	1.3	0.1	0.0	3.2
Sub–total		3.3	15.6	1.0	4.9	11.4	2.0	24.6	2.9	0.9	66.6

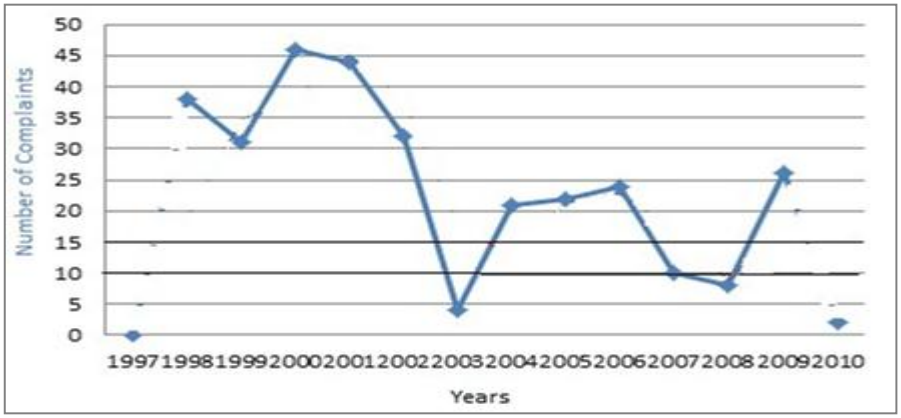
Source: *Compiled by author from Anti-corruption Bureau data base (1997-2010).*

7.2.2 Private Institutions

Private sector corruption accounted for 12.1 % of all corruption cases. These incidents occurred in banks at 0.3% (8 cases) while 11.8% (300 cases) occurred in institutions that ranged in size from large multi-national corporations to small and medium level enterprises.

Based on the aggregate number of complaints received, pre 2003-2004 complaint levels were higher than the post period. After the dip in 2003-2004, there was an observable slight increase in the number of incidents before a stable pattern emerged from 2004 to 2007. Another dip followed in 2008 before slightly increasing again in 2009 as the Figure 3 below illustrates.

Figure 3. Trend of Corruption in the Private Sector



Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

Fraud was the most reported corrupt transaction within the private sector, representing 43 % or 133 of the 308 cases (5.2% of all complaints). Bribery was second with 53 cases or 19% of

the sector complaints (2.3 % of all cases in total). Extortion was third with 17%, followed by favouritism at 6%, nepotism and embezzlement at 4%, abuse of power and conflict of interest at 3% and unlawful gratuity at 1% as shown in Table 5 below.

Table 5: Typology of Complaints in Private Sector

Sector		Percentages on Type of complaints									
		Abuse of power	Bribery	Conflict of interest	embezzle-ment	Extortion	favouriti-sm	Fraud	nepotism	Unlawful gratuity	Total %
2) Private Institutions											
	i) Banks	0	0	0	0.0	0.1	0.0	0.2	0	0	0.3
	ii) Businesses	0.3	2.3	0.3	0.5	2.0	0.7	5.1	0.6	0.1	11.8
	Sub Total	0.3	2.3	0.3	0.6	2.1	0.7	5.2	0.6	0.1	12.1

Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

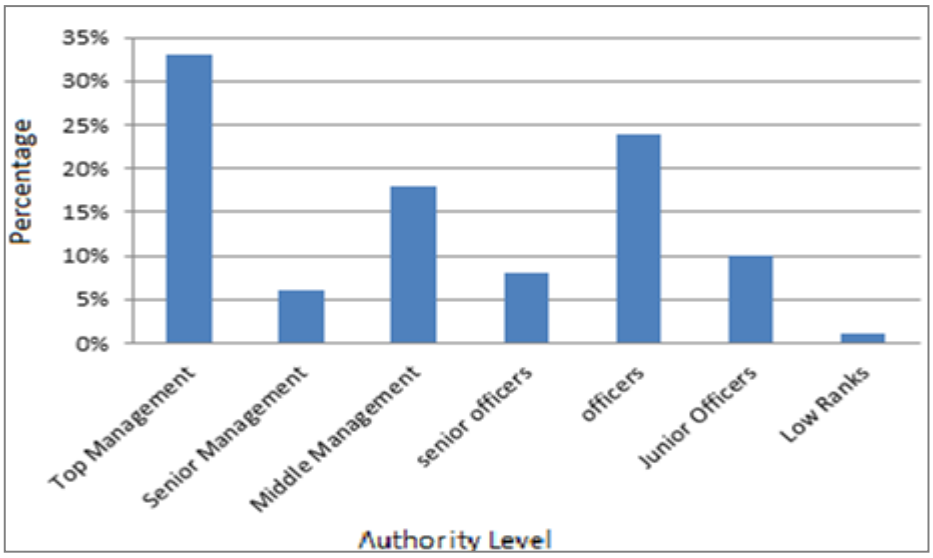
When the cases were analysed against authority levels, one-third (33%) of the complaints were of corruption committed by or with top-level management (101 of the 308 complaints). The officer level at 75 cases of 308 or 24% (3% of all registered complaints) had the second highest percentage within the sector.

Concerning the reasons why people were motivated to engage in corruption, a quarter of all cases were associated with securing contracts and procurement of services and goods. Mismanagement of company finances for personal gain was also high at 20% of all cases in the sector. Corruption associated with the provision of services was also 20% of all incidents reported for the sector. This included speed money with regard to the payment of suppliers, payment of bribes to public officers for permits, to facilitate duty evasion and bribes solicited for services such as the giving of loans. Other noted incidents related to employment. This was most prevalent in large companies where supervisors solicited bribes from prospective employees or demanded a monthly fraction of the salary from new recruits. Favouritism and nepotism (6% and 4% respectively) also regarded as disturbing for some complainants.

A reasonable explanation for the large number of complaints against high-level employees is that the authority to conclude business deals rested with proprietors or senior staff members. Therefore, they were the most exposed to corruption when public officers solicited bribes from businesses or that they gave bribes to public employees to get preferential treatment and remain competitive.

Although Government Procurement Guidelines had placed a ceiling of MK 300,000 for individual ministries and departments to make purchases directly from suppliers, this provision was grossly abused by private traders (with the connivance of government employees) to supply sundry to the offices which in some cases were not needed. Businesses paid bribes to public employees to circumvent the MK 300,000 ceiling by breaking large contracts into smaller amounts. The sheer volume of these minor transactions led to massive losses of government revenue as it occurred in all departments and institutions in the government.

Figure 4. Private Sector Authority Levels versus Involvement in Corruption



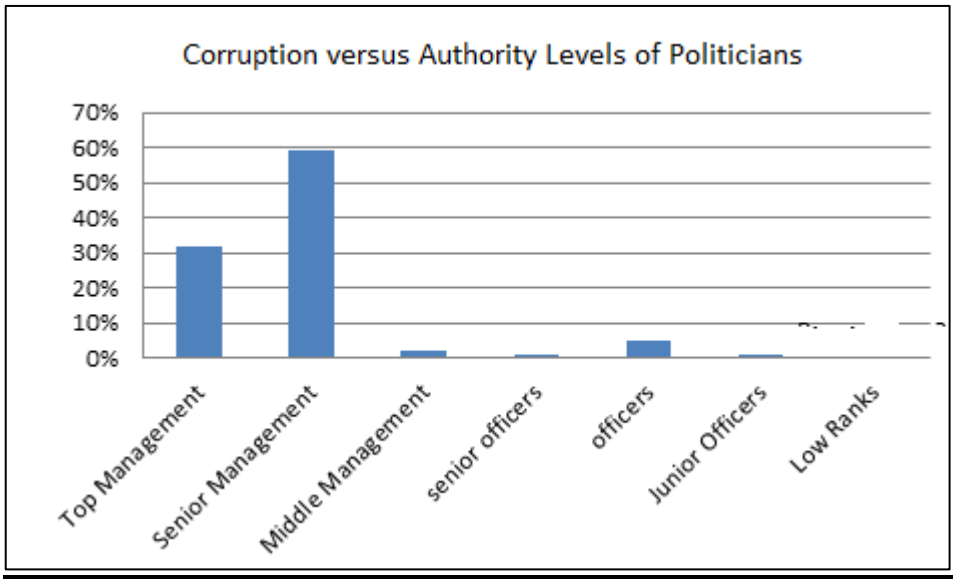
Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

7.2.3 Political Institutions

Corruption directly associated with political institutions accounted for 3% of the 2545 cases. Of the 85 cases recorded in the sector, a significant 34% were fraud related. Embezzlement was second with 20% and abuse of power and bribery were a close third with 19% each. Extortion followed at 4%. Favouritism, nepotism and abuse of power had 1% each. In reference to the levels of authority, corruption was concentrated at the top most tiers of political structures with 32% for top management and 59% for senior management levels engaged in corrupt transactions. The officer level accounted for 5% and 1% for lower levels of officers respectively. This was one of the few sectors where complaints of corruption were mainly against the top management.

There were periods of heightened activity such as before, during or immediately after national elections. The highest number of incidents occurred in 1998, 2005 and 2009. One plausible explanation was that political contests were extremely expensive and this would account for the marked increase of incidents of bribery and fraud that were high during these years either to fund elections or to bribe opponents and voters. This was evident in the nature of complaints during elections that accounted for a high number of bribery cases. A few cases illustrated how politicians solicited "campaign funding" from the business community during elections with the view of repaying the "debt" by awarding contracts after the politician had won the election. Some cases also revealed how political elite actors established dummy enterprises or front companies in the names of relatives and associates to enable the extraction of illicit profits from government institutions. A significant proportion of these cases involved fraudulent payments made to private firms that did not supply the contracted goods and services. The figure 5 below illustrates the levels of corruption per authority levels in political institutions.

Figure 5. Political Authority Levels versus Involvement in Corruption



Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

The complaints indicated that political actors were more likely to be involved in the misappropriation of property or mismanagement finances (22%) for personal or group gain when compared with other reasons for engaging in corrupt acts. Corruption with regard to procurement and award of contracts was second with 16% of the incidents. Complaints on

corruption with the intent to influence the outcome of elections were 12% of the total registered cases in the sector.

Only 9% of the 85 complaints suggested that there was political interference in the outcome of the recruitment process and other employment related matters in institutions. Complaints related to the provision of services were also at 9%.

Political influence in appointments of elected officers and the abuse of office by these appointees for nefarious activities had far reaching consequences. The assessment of the case files indicated that a significant number of these cases involved political appointees who were "recommended" by the party to occupy elected office and won the seats unopposed due to the fact that they were already identified by the leadership and imposed on the electorate. Politicians from rival parties were "bought" to maintain the UDF in power, thereby distorting the electoral process. For example, Chihana of the AFORD and John Tembo of MCP were both implicated in the bribery scandals of 2002 in which the then president bribed Members of Parliament from the opposing groups to vote for the amendment of the Constitution to allow Muluzi to run for a third term.

7.2.4 Corruption in Traditional Structures

Traditional authorities assist the government in implementing policies at the most basic level of social-political functions in rural areas. These include issues such as distributing food relief items, recruitment drives for development projects and relaying messages between the government and the rural population. Traditional authorities also provide social functions such as arbitrating in disputes and minor infractions of village social norms such as those associated with land demarcation, family feuds and minor conflicts. They have the additional responsibility of identifying and employing subordinates. As semi-public officials and social leaders of the population in rural areas; their authority is susceptible to corruption.

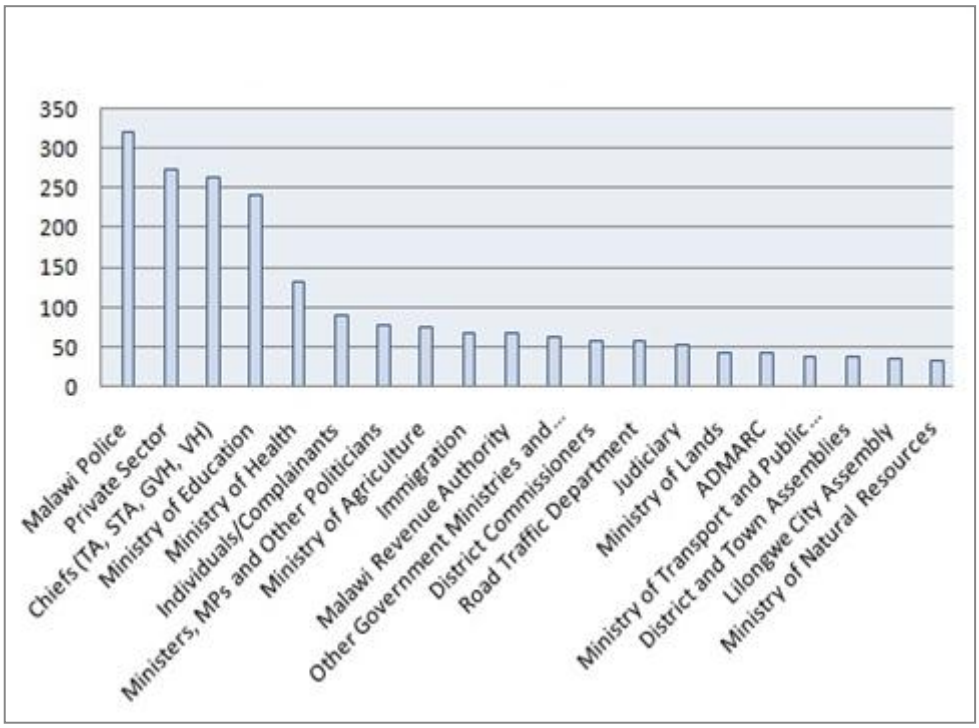
Incidents concerning traditional authority structures accounted for 10 % of all cases of corruption. Of these, 42% of cases were related to matters of employment such as the enthronement of new office bearers. Bribery was by far the most reported type of corrupt transaction with 60% of all the incidents in this sector. Extortion was second with 18% followed by fraud at 13%, embezzlement at 5%, abuse of power at 2 % and favouritism and nepotism at 1% each.Higher-ranking officers employed their relations and associates with

disregard to standing procedures. Positions were often sold or auctioned to the highest bidder. In the democratic dispensation, the control and the provision of goods and services that the government distributed as subsidies were often used as resources for patronage. Corruption such as embezzlement and bribery were especially high during periods of natural disasters where these individuals were mobilised to distribute relief items. During political mobilisation for elections, individuals were bribed by political parties to influence their subjects to vote for specific parties. For these reasons, positions were lucrative and highly sought after. In many cases, inducements were paid to chiefs higher up on the hierarchy to secure ones position. It was not uncommon for chiefs to depose those of lower ranks and replace them with people who paid a higher bribe.

7.3 Petty Corruption and Structural Weaknesses

Corruption in Malawi has to be taken within the context that the public service is the largest employer. There is a historical basis to this. At the time of independence, the Malawian civil service numbered 10,745 staff but by 2004 it had increased to 130,000 public servants (Freeman, 2005: 5). The growth by as much as 5% of GDP of certain ministries such as those for education, agriculture and health set the processes in motion that would place these ministries as those with the highest recorded incidents of corruption within the public sector (Freeman, 2005: 5). The growth of the ministries is attributable partly due to political reasons. In the absence of a viable private sector and an effective social welfare system, leaders used government employment as a political tool to dispense patronage (Anders, 2005). Nepotism, favouritism and bribery were often the forms of corruption that were utilised to secure government employment for close associates and family. After 1994, the oppressive systems of autocratic rule that had kept corruption in check were either replaced or dismantled. As such, there was a perception that corruption had increased. The Figure 6 below shows the ranking of the top twenty institutions according to the number of complaints received. Most areas of concern were bribery of police, bribery at schools, health centres, road traffic department and other service oriented institutions. There were numerous cases of fraud such as the misuse of travel allowances in public institutions that occurred in all ministries and departments.

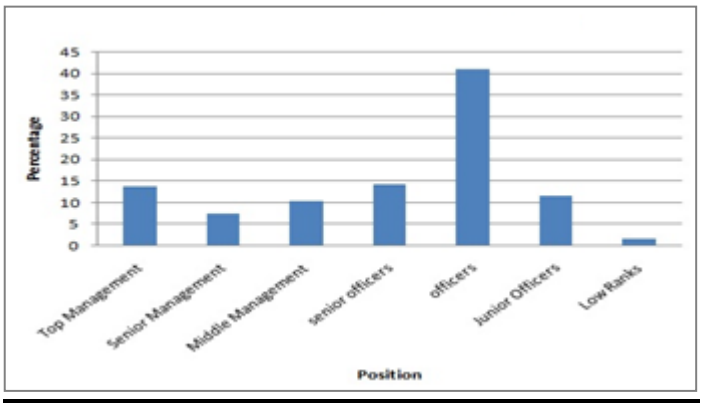
Figure 6. Ranking of Institutions in Relation to Number of Incidents Reported



Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

As can be noted by the number of cases in large public institutions, the results of the data evaluation is consistent with conclusions proffered by academics that corruption is frequently observed in state structures where the number of grabbing hands are comparatively high than in other sectors (Shleifer and Vishny 1998, Diamond, 1987).

Figure 7. Number of Incidents per Authority Level



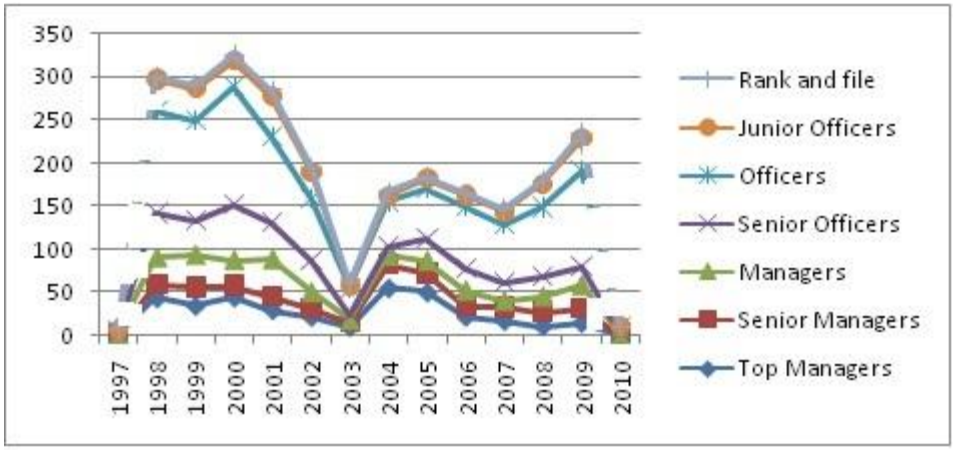
Source: *Compiled by author from Anti-corruption Bureau data base (1997-2010).*

The officer level had by far the largest number of complaints which had totalled 41% as illustrated by the figure 7 above. The majority of these incidents were opportunistic, incidental and of low value. The review of the complaints showed that institutional weaknesses such as ineffective monitoring systems, ineffective rules and regulations, an inadequate work ethic and the preference of informal methods of work over formal procedures were amongst other factors that were plausible determinants of corruption. The convergence of these variables with low salaries created the necessary conditions for corruption to take place. Judging from the fact that most cases occurred at lower levels of authority with poor pecuniary incentives, petty corruption was a method to augment salaries. This observation is supported by the Malawi Governance and Corruption Survey (2006)which indicated that of those interviewed, 92% ranked low salaries and 87% ranked the lack of effective incentive mechanisms as the two highly consider determinants in the existence of corruption in the public service (MGCBS, 2010, 43).

7.4 Grand Corruption, Political Collusion and State Capture

In regard to corruption at management levels, there were slightly more complaints from 1997 to 2003 than after. There was also a slight increase in 2003/2004 (election year) and this was followed by a decline in the number of incidents. The last three tiers of officers, junior officers and rank and file exhibited the most dramatic shift in terms of the number of complaints received against them than the top tiers of managers, senior managers and top managers. This is illustrated in the figure 8 below.

Figure 8. Number of Incidents per Year versus Authority Levels



Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

The experiences of high level political duplicity as perceived by the public and indicated in the complaints supported the hypothesis that there was an association between the quality of leadership and levels of corruption. Grand corruption, although not as common as petty corruption, had wide-ranging consequences on the political economy. Self-serving actions by the leadership were fewer than petty corruption but involved substantial amounts that distorted financial and political processes. Higher level managers misused state structures for private benefit, either in their personal capacity or as a collective (i.e. the party). Altogether, the senior officer level (14%) and top management (13%), managers (10%) and senior managers (8%) illustrated that managerial level corruption was significant enough to be of serious concern to Malawians. Corruption at this level was mainly associated with issues pertaining to public procurement, mismanagement of finances, misappropriation of materials/resources and partiality in decision making with regard to the provision of services. The most vulnerable areas for grand corruption occurred where there was an intersection between business enterprises and government entities. This was evident with ministers who owned businesses and amongst executive officers of parastatal institutions. Parastatals had the highest percentages of management level corruption when compared to other sectors. As government entities, they were headed by political appointees who had the mandate to set their own administrative agenda in terms of budgeting, activity planning and the implementation of policy and were semi-autonomous from ministerial oversight and direct government supervision. As a result of this, it was common for the political appointees to siphon financial resources as a means of funding political activities and utilising the institutions as a source of patronage. Table 6 below shows percentages of incidents per sector versus authority levels. Top and senior managers were particularly notorious in awarding themselves (or their proxies) contracts worth millions of dollars. Party members would often award a percentage of the ill-gotten gains directly to the president or to the UDF party with impunity. For example, MANEB, Shire Buslines and ADMARC CEOs had been implicated in some the biggest infamous scandals of this type with the consequence that the organisations were rendered bankrupt by the end of Muluzi's term. Senior officers and party officials such as Friday Jumbe, Humphrey Mvula, Cassim Chilumpha and Sam Mpasu were amongst those that were not only involved in high value transactions, but were engaged in multiple acts of corruption for the benefit of the party and themselves.

This co-dependency between business persons, public servants and political actors was indicative of state capture. This was ubiquitous and pervaded across all sectors. The number of cases registered as fraud in comparison to other types was very informing about the efficacy of management and administrative structures.

Table 6 Number of Incidents per Sector versus Authority Levels

	Judiciary	Trad.	Statutory	Business	Govt	District	Law	Ministers	Indv.	Ngo	Total
Top Mgt	0.1	0.2	2.2	4.0	3.0	0.8	0.9	1.1	0.8	0.7	13.6
Senior Mgt	0.2	0.6	1.0	0.7	2.0	0.2	0.4	2.0	0.4	0.1	7.5
Managers	0.0	4.1	0.8	2.2	2.3	0.4	0.4	0.1	0.1	0.1	10.4
Senior Officers	0.1	0.6	1.4	0.9	8.6	0.2	1.9	0.0	0.4	0.1	14.3
Officers	1.1	1.7	3.7	2.9	12.1	1.3	16.1	0.2	1.0	0.8	40.9
Junior Officers	0.4	3.1	1.5	1.2	3.8	0.3	0.4	0.0	0.7	0.1	11.6
Rank And File	0.2	0.1	0.3	0.2	0.5	0.0	0.2	0.0	0.1	0.0	1.7
Total	2.1	10.4	10.7	12.1	32.5	3.2	20.2	3.3	3.5	1.9	100.0

Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

7.5 Typology of Corrupt Transactions

As the Table 7 below illustrates, Fraud (35%) and bribery (27%) were consistently the most common types of corruption in all sectors. As explained in the previous section, fraud was often associated with public procurement and the award of contracts. Bribery was used as tool by senior personnel to persuade junior employees to commit fraud. Poor internal controls in institutions failed to detect and contain these problems. The problem was exacerbated when management ignored or prevented the implementation of preventative countermeasures to contain it and in some cases was involved in corrupt acts or the sharing of gains from corrupt transactions.

Table 7. Typology of Corruption versus Authority Levels

	Abuse of Power	Bribe	Conflict of Interest	Embezzlement	Extortion	Favouritism	Fraud	Nepotism	Unlawful Gratuity	total
Top Mgt.	1.3	3.1	0.5	1.4	0.2	0.9	5.7	0.4	0.1	**13.6**
Senior Mgt.	1.0	1.2	0.2	0.8	0.4	0.3	3.2	0.4	0.1	**7.5**
Managers	0.3	3.8	0.4	0.7	1.5	0.4	2.6	0.6	0.1	**10.4**
Senior Officers	0.5	3.4	0.4	1.5	1.3	0.5	5.5	1.1	0.2	**14.3**
Officers	1.4	11.6	0.2	1.8	9.9	1.0	13.7	1.1	0.3	**40.9**
Junior Officers	0.2	3.7	0.0	0.7	2.5	0.2	3.7	0.2	0.3	**11.6**
Rank and File	0.0	0.4	0.0	0.1	0.3	0.0	0.8	0.1	0.0	**1.7**
Total	**4.7**	**27.2**	**1.7**	**7.1**	**16.1**	**3.2**	**35.1**	**3.9**	**1.1**	**100**

Source: *Compiled by author from Anti-corruption Bureau data base (1997-2010).*

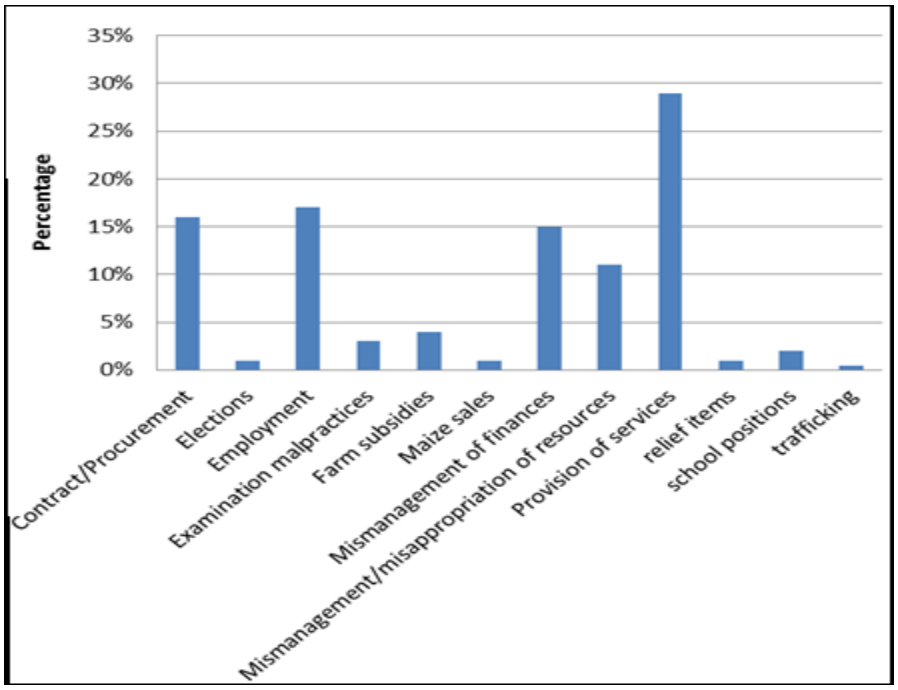
The number of incidents of fraud also indicated that the procedures for punishing offenders were ineffective. The lax attitude by supervisors and management to oversee and hold the guilty accountable were exploited by employees for self-serving. A majority of incidents were characterised by payments to front companies, ghost contractors, and full payments for incomplete or non-existent projects. Contracts were often inflated to aid in skimming and accommodate kickbacks.

The percentage of cases of extortion, at 16%, mostly occurred in law enforcement institutions. The inability of police management to control this type of corruption despite constant media and victim complaints suggested lapses in supervision. Embezzlement was fourth at 7%. The direct misuse of influence and status (abuse of power) to gain an advantage such as jumping the queue to gain from government benefits and services (e.g. housing loans) was registered at 5% and was followed by conflict of interest (2%). Only 1% of the incidents were of unlawful gratuity (possessing unexplained property reasonably suspected to have been sourced from corruption).

7.5.1 Motivation for engaging in Corruption

There was variance in the motivation for engaging in the corrupt act, but the highest number of cases related to the provision of services, access to employment, access to contracts, mismanagement of finances and mismanagement of other resources. The most prevalent motivation for corrupt transactions, at 29% of all incidents, was associated with corruption to gain access to government services as illustrated by the Figure 9 below.

Figure 9. Motivation for Corrupt Transactions



Source: *Compiled by author from Anti-corruption Bureau data base (2012)*

Corruption in this case mostly involved the receipt or offer of a bribe as an inducement for public officers to act outside of their prescribed mandate. In public institutions in particular, these incidents were concentrated in organisations whose officers had wide discretionary powers and high frequency of contact with the general public. Individual cases sometimes displayed wide variations in the manner by which corrupt officials engaged in corrupt transactions and were often associated with the nature of the government service given. For example, employees in law enforcement organisations were more inclined toward the misuse of power by means of intimidation (extortion) to source financial advantages. Traditional institutions were more inclined toward bribery and nepotism; while the rest of government employees had illustrated the propensity to get "speed money" through bribery, embezzlement of funds or fraudulent activities. This suggests that the administrative reforms that were instituted since the democratic elections of 1994 were not fully internalised. A review of the cases concerning the provision of services revealed extensive collusion amongst employees of different organisations or within the same institution for the common purpose of extracting bribes, committing fraud or embezzlement. Of serious concern to most Malawians were the many cases of police officers colluding with magistrates, suspects and court administrators to defeat ends of justice. There were many cases of offenders bribing

prosecutors, judges and magistrates and police officers to avoid the legal process. Of concern was the existence of syndicates between police prosecutors for common criminal offences and magistrates who conspired to either acquit or convict offenders depending on the bribe amount that the person paid. The bribe was paid to the prosecutor who in turn gave a percentage to the magistrate. Ministry of Education teachers colluded with parents, invigilators and pupils to facilitate cheating in national examinations.

Complaints associated with employment were 17% of the total number of cases registered. Apart from money, in some cases noted, especially for unskilled labourers, there were incidents of sexual assault of prospective female employees by personnel therefore heightening the risk of HIV/AIDS infection. At the higher levels, this consisted mainly of falsifying qualifications or nepotism.

Other areas of concern for Malawians were the mismanagement of finances (15%) and misappropriation of official public property (11%) for private use of all cases registered. As the authority levels increased, so did the complexity of incidents in terms of calculated risk-taking and sophistication in planning and execution. The elaborate schemes involving many actors from different institutions and with divergent skills in accounting and information technology and mostly at the officer and supervisory levels indicated how systems were vulnerable because of the skills inequalities within institutions. Specialised personnel such as accountants in most government institutions were compromised by senior colleagues to "cook the books" for personal and group gain.

The inability or lack of effort to disguise corrupt acts at the highest levels of authority was most telling of the lack of political will of leaders to contain it. Most incidents illustrated the blatant disregard for rules and procedures without the fear of punitive sanctions.

7.6 Evidence of Social Factionalism and Ethno-regional Networks

The data analysis suggested that cultural traditions were a contributory factor in the existence of corruption. This was illustrated by the large number of incidents in traditional structures. As community leaders of in the rural areas, the relevance of traditional practices and the logics of these social institutions were redefined in the political context of the mid-1990s and early 2000s. As noted earlier, each of the three regions in Malawi had a dominant ethnic group. Politicians used these differences for political ends. One group was played against

another to gain a demographic advantage and this often transferred into the public service and manifested as cronyism, favouritism and nepotism.

The influence of these horizontal relationships had some effect on the existence of corruption. Nepotism (4%) and favouritism (3%) although observed separately, were associated by the fact that officials often misused their authority for the benefit of family (nepotism), political associates or friends (favouritism). Even though these incidents were recorded as very few, this discrepancy can be explained by the fact these activities were regarded as normal practices of politics and were ignored to large extent. Interview results indicated that nepotism and favouritism pervaded across all institutions and featured in a majority of corrupt transactions, especially during the first years of the Muluzi administration. This form of corruption was very significant in entrenching the ethos and rules of the game that consolidated clientelistic factional politics of neopatrimony during the Muluzi era.

7.7 Conclusions

The high levels of corruption during the Muluzi administration indicated that although the state had in place the legal-rational structures to govern, the problem was in the implementation of those standards. At lower levels of administration, especially at the officer level, the perception by the public was that corruption was rampant. This suggested that with the low income levels, some degree of discretion and opportunity, government employees may engage in corruption. In addition to this, there were high levels of collusion between state agents, private interests and politicians to extract public resources for self-serving. The high incidents of fraud associated with public procurement indicated that oversight mechanisms were by-passed or ignored to facilitate illegal resource extraction. Fraud and bribery were used to gain access to these resources. In this way, politics and corruption became synonymous and the lack of political will to tackle the problem which prevailed across all institutions.

The results of the data analysis suggest that there were notable variations in the levels of incidents through the years. One could propose three possible main reasons. The first and most notable was related to the power struggles within the ruling United Democratic Front prior to the 2004 general elections. By 2000, the party was beginning to disintegrate into many centres of power that eroded the ethno-regional base of the UDF. There was an emergence of new parties, particularly from the Southern Region, that challenged the

monopoly of power of the UDF political elites in anticipation of developing their own power centres after the elections of 2004. The fragmentation of the UDF disturbed the political balance amongst the political networks that had formed after 1994 and acted as patrons for illicit wealth accumulation and distribution. The entry of multiple actors into the political environment divided the ethno-regional vote and the ability to mobilise the electorate through illicit sources of patronage and incentives.

The second reason was the withdrawal of aid in 2001-2002 by the donor community to influence change in administrative procedures for a more accountable and transparent government to take root. This greatly reduced the amount of resources that were available for mismanagement. The multilateral actors such as Britain, Norway, Sweden, the USA, IMF, and DANIDA placed the conditions for improved financial management in 2001-2002 and withheld aid until such conditions were met. The Danish Government for instance withdrew all of its support when government could not account for MK 10 million for an inter-party conflict resolution program. In the case if the EU, it demanded a refund of MK 650 million from the Malawi government which was misused by political actors before aid would resume.

The third reason was that the use of corruption for political mobilisation was reduced by the Bingu wa Mutharika's government post-2004 due to the political will. In the first term of office, the president made anti-corruption efforts a strategic priority for his administration. During Muluzi's term of office there were some powerful individuals who were implicated in numerous corruption scandals (chapter 10).

Part II-Explaining Causality of Political Corruption in Malawi

Chapter Eight

Precedents of Corruption, Neopatrimony and Bad Governance under Colonialism

8.0 Introduction

The following discussion is an evaluation of the emergence, progression and evolution of the systems of governance that had enabled corruption to persist as a tool for clientelistic political mobilisation in a neopatrimonial system.

Toward the end of colonial rule, governance was chaotic and reactive (Sandbrook, 1985). In general terms, some precedents of corruption within the state emerged out of the development agenda in most of post-colonial Africa can be traced to the evolution of the state itself and the dynamics that had emerged in the transition of political organisation from colonies to independent states. This pattern was also observable in Malawi. The researcher has argued that neopatrimonial rule can be traced back to the establishment of the state. The incorporation of traditional modes of social organisation into the legal-rational structures of modern government during its creation necessitated extensive political manipulation. Patronage, favouritism, coercion, bribery and in some cases extortion had formed the instruments of control by colonisers to pacify a rapidly growing indigenous population in the colonial territories (Szeftel, 2000). The resultant effect was the emergence of state hybridity that infused the dual characteristics of cultural and informal norms of socio-political organisation that co-existed with the legal-rational institutions of modern government. This not only determined the ethos and rules of the game for public service but had politically aggravated ethno-regional tensions that determined the direction of patron-client relationships (Rose-Ackerman, 1978:6; Oliver de Sardan, 1999).

The effect that state institutions have had on these dynamics and the way that they in turn influenced the administration of the state are crucial in understanding the nature and determinants of political corruption in present day in Malawi. It has been a well argued that corruption is a dysfunctional principal-agent-client configuration. The chapter therefore identifies the structural and institutional patterns that established these interactions. It presents the historical background of the legal and institutional framework that established

the state and the patterns of leadership that were abused by colonial administrators for political ends. This pattern created the rules of the game in government administration that were abused by leaders in post-colonial administrations. I argue that the process that established the state was dependent on the use and monopolisation of power by an executive that was neither transparent nor accountable to the people that it presided over and that was akin to presidentialism which subsequently led to neopatrimony.

8.1 The Colonial Governance Model: Establishing the Rules of the Game

There is a broad consensus that prior to the democratic revolution of the 1990s developing states (African states to be specific) exhibited commonalities of totalitarianism, particularistic rule, presidentialism and clientelism (Gerring and Thacker, 2004; Kunicova, 2004; Sandbrook, 1985; Szeftel, 2000; Leftwich, 1994: 372). These autocratic political systems were dominated by closed ruling cliques that shaped policies that expediently promoted particular economic and political interests for their survival (Klitgaard, 1988). Unchecked power without countervailing systems of accountability and transparency often contributed to the abuse of authority.

We must recognise that much as the discussion on African political corruption refers to the dysfunctional Weberian structures of state administration, the post-colonial African leaders did not inherit accountable, transparent and democratic governments. Colonial rule, through its strong centralised executive, had all the characteristics of systems of bad governance (Le Vine, 1980). As we will see later on in the chapter, laws were applied and abused with partiality to promote economic and political interests of particular segments of society over others. Strategies that were adopted in policy formulation and implementation were designed for the domination of European interests and subjugation of African demands and the state relied on coercion to preserve and legitimise its authority without the necessary accountability and transparency mechanisms.

The progression of the state in Malawi followed this familiar pattern. The use of legal instruments and institutions for oppression, asymmetrical economic policies and the abuse of office for private gain that surfaced in subsequent governments had their foundations in colonialism. Initially, the executive arm of government was an instrument for direct control that fused political, administrative, judicial and legislative responsibilities into one construct. The methods of governance that were employed, if anything, exemplified how the principles

of the Weberian model of legal-rational institutions could be circumvented or compromised, both legally and illegally, to justify political ends. This system survived the post-independent autocratic rule of Banda and his brand of patron-client politics and was a quintessential instrument of neopatrimonial rule during the transitional period in the 1990s.

The early colonial administration was a purposefully crafted system of resource extraction designed to maintain the integrity of a socio-political structure that benefited British colonial interests. On 14th May 1881, the territory that would become the state of Malawi was declared a British Protectorate. From 1891 to 1902, Malawi was called British Central Africa governed under the legal provisions of the Africa Order-in-Council (Pike, 1968). The territory was administered by a structure of direct rule, managed by the Commissioner and Consul General. The Commissioner was assisted by a Deputy who in turn was in charge of Consuls that managed administrative personnel below them.[6] The Commissioner had all executive, judicial and legislative powers vested in him in a very vertical and rigid system of administration (Pachai, 1973: 115).

The economic value of the territory, in comparison with many of the other colonies under British control, was relatively low as no mineral deposits had been discovered. Sir Harry Johnston, the first Commissioner and Consul General, was tasked by the colonial office to establish British sovereignty over the region in the most effective and efficient way possible. His instructions were to lay the framework for administrative control, exact and generate revenue and to provide some measure of justice in determining the legitimacy of settler claims to land. To fulfil this mandate the administration set out to develop a commercial system of agriculture that provided a sustainable economic base for the territory (Williams 1978: 54).

Johnston's administration initially relied on a disparate group of individuals from the settler community to form this first administration. There were 15 persons of European descent comprising of game hunters, farmers, ex-traders, missionaries, a doctor and a number of African volunteers; all to say the least, were not professional bureaucrats (Pachai, 1973: 115). Clearly the Weberian legal-rational notion that public officers should be impartial, professional and their recruitment based on merit did not apply to these first officers. The

[6]British Central Africa Order-in-Council, 1902

officers were divided along the responsibilities of security, health, revenue collection, and other basic services. To defend this system from internal and external threats, a security force was established to subdue any chiefs and subjects that would oppose the establishment of the protectorate. A militia called the Kings African Rifles was then established for this purpose (KAR) (Mandiza, 2003).

The interaction between the British and local population in these initial stages of the administration was of antagonism. Both sides of the divide had reservations on the authority and legitimacy of the other to rule. Agents of the state known as Collectors were the primary intermediaries between the head office in Zomba and the native population in regard to legal, administrative and judicial functions. They were mandated by the Commissioner to hold courts for the resolution of disputes amongst Africans and in this regard, they assumed the role of paramount chief above all authority figures in their areas of jurisdiction. Pachai (1973) quotes a Collector by the name of Duff who described a situation filled with many challenges and confusion. He explained these early colonial interactions thus:

> We have a remarkable spectacle of a score or so of Englishmen, who have received no special legal training at home, administering in a most intimate and homely way, the affairs of a nearly a million human-beings of a totally different race, whose own laws are, highly peculiar in themselves, have either fallen into desuetude or have been thrown into a state of flux by the sudden transfer of power from their own chiefs to the alien government....in all cases...while are constant occurrence in the lives of natives, the authority of the Collector in his district is supreme and this decision is final (Pachai: 1973: 182).

This quote is very significant in that the state structures in the rural areas were associated with the strength of the personality of the individual that was the incumbent Collector and that the law had dramatically changed from that of traditional customs to the early forms of a Weberian bureaucracy.

There were three problems with this strategy: first and foremost, British law was incompatible with the customary law in major respects, especially punitive measures, and was often seen as illegitimate and extreme by the African subjects. Secondly, the British officers who were implementing government policy and administering justice had very limited or no legal training in both British and African law (Shepperson and Price, 1958). Thirdly, the indigenous authority structures were seen as highly ineffective and had been largely excluded from designing and implementing official policy to the detriment of social

cohesion (Pachai 1973; Pike 1968). Considering that corruption may be a product of bad rules and regulations (Treisman, 2000; Svenson 2005: 29), it was inevitable that the system would create an environment conducive to mismanagement and abuse of office. Some Collectors were confronted by belligerent tribes like those of the Yao and Ngoni in the South and North of the country, while others administered the more passive groups, like the Chewa and Nyanja in the Central Region (Williams, 1978). As can be deduced, the application of policy was very arbitrary and depended on the resourcefulness of the public officers. However so, coercion and force were the main instruments of control.

On August 11th 1902 the adoption of the British Central Africa Order in Council expanded the concept of separation of powers and created two arms of government. The executive was headed by the Governor, Sir Alfred Sharpe, who presided over a very nascent judiciary, known as the Court of Record, or High Court. The Court of Record had full jurisdiction over all matters of civil and criminal in nature based on English law (Chigawa, 2006). The constitutional changes that incorporated some rudimentary form of the three arms of government were adopted on July 6th 1907. The Nyasaland Order-in-Council changed the structure of government and the name of the Protectorate from British Central Africa to Nyasaland (Pike, 1968). Prior to this, Nyasaland had no legislature and this new Order instituted a Legislative Council which together with an Executive Council would advise the government. The Legislative Council membership consisted of the Governor as chairman, three nominated persons and three ex-officio members. The Executive Council consisted of the Governor, the Attorney-General, Treasurer and Secretary and some nominated individuals.

The organisation of this governance model placed all authority in the Governor to initiate, accept or veto any or all ordinances that the Legislative Council had proposed. The authoritative dominance of the Governor and the hierarchical nature of the administration created the patron-client duo relationship of "big man" versus "little man" that is characteristic in corrupt governments. All office bearers in both councils were government appointees and serving at the pleasure of the Governor. African interests were served by a missionary appointee. The majority of the population was thus disenfranchised from all economic and political life (Kaunda, 1992: 54).

As the state developed and demands placed upon the administration increased, the government structure transformed in response. After it became apparent that the growing indigenous population could not be directly managed by a few colonial officers, a District Administration Native Ordinance (DANO) was passed in 1912. As before, the Governor reported to the Colonial Secretary in the United Kingdom as the proxy and was the head of the executive. The territory was divided into provincial areas headed by Provincial Commissioners. These managed districts in their provinces which were administered by District Commissioners (DCs). DCs were public servants in charge of everyday district affairs including the administration of justice, tax collection, security and finance. Finally the native administrators, or chiefs, administered affairs at the local village level and assisted the District Commissioner with essential services such as tax collection (Poeschke and Chirwa, 1998:8). Of note is how indigenous people were now governed. Each district was now divided into administrative units headed by Principal Headmen. These were assisted by Village Headmen. All appointments were made by or on behalf of the Governor. In essence, the Governor could and did impose leaders on communities who were more loyal than those with a "royal" lineage as was in the past.

The transformation of society steadily expanded with the entrenchment of the cash economy, increasing numbers of emigrants returning from the mines of South Africa and Northern Rhodesia and the popularity of western education amongst Africans. These factors created more awareness, more exposure and more experience in world affairs (Pike, 1968). By the time of the First World War, social transformation had progressed to a critical level where the awareness aroused bitterness and resentment at the inequalities of the colonial system and the absence of avenues for legitimate political and economic expression for the indigenous population. The government grew more coercive and despotic in response to these challenges. Anyone who seemed even the slightest inclined to question government authority was imprisoned and/or tortured (Page, 1992: 12).

The resentment and negative sentiments toward this system grew to the point that a direct revolt ensued against the government in January 1915. This event was known as the Chilembwe uprising, a rebellion led by a preacher from the southern region who was amongst the first of the emerging African petit bourgeoisie.

8.2 Particularistic Political and Economic Policies as a Foundation for Neopatrimony

The use of processes and procedures of government to create artificial economic and political command situations that were favourable to the administration and its European citizens necessitated the development of biased regulations that would control and maintain power differentials. There were three major goals of particularistic regulations that the Legislative Council undertook to construct a propertied and commercial European society at the expense of the local population. The first was the direct control of means of production, especially land, in favour of European monopolies. The second was the control of labour movements through tax and labour policies to direct the native population to work for Europeans. The third was to contain African enterprise which at times posed as competition to European economic interests. As it will be observed later, these three elements although deemed proper at the time, had created the legacy of the abuse of power by agents of the state to direct patronage toward exclusive groups. These laws and strategies were adopted by post-colonial leaders in one form or another.

For example, European estates were established on native lands under questionable processes for ownership. The Lands Ordinance (Native Locations) of 1903, The Native Rent (Private Estates) Ordinance of 1917 and the Natives on Private Estates Ordinance of 1928 all ceded the authority to estate owners to demand rent payment from Africans occupying on estates or in lieu provide labour at the risk of being evicted. The amount of rent payable was three times the minimum monthly wage which was way beyond what most could afford (Pike, 1968: 129).

Another factor that the administration considered in its policies was the level of migration by Africans in search of work outside the country. The introduction of the hut and poll taxes in 1892 had forced the migration which posed a very serious challenge with regard to estate labour. It has been estimated that as many as 170,000 men were working in other countries such as Zambia (20,000), South Africa (30,000) and Rhodesia (120,000) prior to independence in 1964 (Pike, 1969:25). The pressure for labour on some European estates was so large that the government was forced to intervene. The first method of intervention was to heavily punish those that migrated without the consent of the government. All those that wished to work outside the country had to obtain a special pass from the district representative of the administration under the consideration of the labour needs of the district.

Migration was further controlled by having prospectors pay their taxes before they left. Failure to comply was an offence that attracted stiff fines or imprisonment. By 1911 out of the 1,535 who had migrated and returned that year, 1,368 had been fined and 167 were imprisoned for up to six weeks (Williams, 1978: 76).

Taxing Africans to force them to work took another dimension. The introduction of the head and hut tax in 1881 was a not only a means by which the administration could raise revenue to fund its affairs but also as another political tool for forcing cheap labour. Unscrupulous planters exploited this to demand more than the required time from their labourers by withholding tax certificates. Others paid the taxes on behalf of their labourers and demanded payment that far exceeded the required one month. African labourers were under obligation to work or risk arrests for non-payment of debt while other estate owners collected more than the stipulated amount from their workers on behalf of the government (Shepperson and Price, 1958: 189).

The growth of the cash economy saw the emergence of a number of enterprising African farmers who were in direct competition with the European monopolies. The tax certification policy was only applicable and restricted to the European estates. Africans were not authorised to dispense them thereby seriously compromising their ability to recruit labourers for their emerging enterprises. Despite petitions and protests, especially in the years leading to the Chilembwe revolt, the government did not invalidate the policy.[7] In 1911, a provision was added to allow African crops to be sold to the European estate owners at a low price in exchange for the tax rebate. In general, the prices that African produce attracted were already much lower than their European counterparts. For example, tobacco or cotton was bought at GB £ 1 or GB £ 1.50 compared to that of GB £ 3 the European planters could fetch. Obviously the crops would be resold at a higher price (Pachai, 1973: 103, 175).

Government complicity in restricting the emergence of an indigenous petit bourgeoisie amongst the African population also included instituting legal constraints that targeted African commercial interests that were in direct competition with European monopolies. First and foremost, African businesses were restricted in terms of where they could conduct their trade. Laws governed the movement, settlement and trading of African entrepreneurs

[7]NSB 7/3/1, Colonial monthly report Chiradzulu sub-district, 14 September 1913, cited in Ng'oma (2010).

and as such prime real estate or favourable sites were inaccessible, specifically in urban areas. As the law stated, Africans "were not allowed to settle, carry on trade, or acquire any real or leasehold interest in Townships" according to the Blantyre Town Council Rules passed by the Executive Council on January 18th 1910 and amended in 1911 (Ng'oma, 2010). Africans (and Indian traders) were contained in Native and Indian wards and were only permitted in European areas on special circumstances. The taxes imposed on the African entrepreneurs that persevered were much higher than his/her labourer counterpart. In addition to this, the African commerce was limited by the law which controlled the access to credit facilities. Under the Credit Trade with Natives Ordinance (Chapter 28 of 1903) and subsequent amendments ordinances, No. 15 of 1926, No. 27 of 1936 and No. 23 of 1950, any credit in excess of a certain amount given to an African was unrecoverable. The amount was 20 shillings in 1926, GB £10 in 1936 and GB £30 in 1950(Ng'ong'ola, 1990:40-41; Power, 1992). African trade between districts was also forbidden though the Native Foodstuffs Ordinance.

These ordinances were aimed at restricting economic, social and political development of Africans but they had the unintended consequence of distorting regional economic development that would later be exploited by corrupt politicians for political ends. The utilitarian policies of the colonial administration were minimalist in the Northern Region in terms of the development of public infrastructure and guiding capital investment because the topography, unfavourable climate and the sparse population were not conducive for colonial settlements and large scale farming. The "dead north" as it was commonly referred to, was largely ignored by the colonial government and the tax regime had particularly affected the socio-political organisation of groups in this region. There were limited employment prospects for the working class to sell their labour to meet the demands of the government. For this reason, a significant number of the male population had no option but to seek employment in regional labour markets in South Africa and Northern Rhodesia. By the 1920s, as much as 70% of the male population in the region were working away from their homes at any given time (Vail and White, 1989: 158). This emigration was very significant in the development of a petit bourgeoisie from the Northern Region that were at the vanguard of political consciousness in colonial Nyasaland.

Cash crops such as tea and coffee were a restricted commodity for Africans. As Johnson indicated in his memoirs, "from time to time a planter…object[ed] to the [Africans] being

allowed to plant coffee, in case they should come into competition with him...the administration [was prompted] to use its power despotically to compel a black man to work for wages whether he will or not" (Johnston, 1897:183). Of particular importance was the level of government intervention in tobacco farming which was of strategic value to the economy. Commercial tobacco farming was started on a small scale by the Buchanan brothers in Blantyre and Zomba in 1889 and the crop soon became economically viable to African planters when in 1920 the crop was introduced to the Central Region. There were a number of reasons why tobacco became successful in the Central Region. The first was that the land was plentiful in the absence of large European commercial farms. The fact that colonial settlements favoured the Southern Region due to its temperate climate and fertile land, large tracks of territory had been appropriated from the African inhabitants to accommodate industrial activity and the farming of cash crops. By the mid-1930s, only 30,000 acres were European owned in the Central Region compared to more than a million acres held by planters in the south. The second reason was that the tobacco was the smoke cured type, which required massive fuel input in terms of trees which were ample in the region when compared to the Southern Region, and thirdly, there was labour to take on the project on a massive scale (Vail and White, 1989: 175).

In four years after tobacco was introduced, the number of African planters had grown from 900 to 33,000 by 1924 (*Ibid*). The popularity of tobacco growing led to overproduction which reduced the prices to the detriment of established European estates. The estates were uncompetitive due to high production costs and the capital intensive nature of their business. The Depression of the late 1930s further pushed the prices of tobacco down and the government intervened to drastically reduce the farming of the crop by Africans. It was in the opinion of the government and the settler community that success of the African production threatened the balance of economic power and social demarcations that the government soon undertook interventions to restore these differentials. In response to the demands of European planters to curb the competition, a Native Tobacco Board was established in 1926 that was funded from a special tax placed on African producers. The Board, comprising of European farmers, put in place special provisions which included the control of prices and even the extreme measures of destroying African crops in the field to manipulate the rate of production (McCracken, 1989: 175-192). These measures worked to the point that by 1934,

the District Commissioner at Dedza in the Central Region noted how the local industry was dying of discouragement and neglect (Vail and White, 1989: 175).

Another method that the government with the connivance of European producers undertook was to reduce African enterprise through the control food production. When tobacco production was controlled, African planters switched to maize as an alternative. Again, the very success of food production was its fatal flaw as it attracted the ire government due to the levels of resourcefulness by the smallholder farmers. They yielded a high quality commodity at the most minimal cost. In the 1950s the government placed price controlling mechanisms to artificially maintain low prices while reducing the number of markets accessible to African farmers. Thus, the political economic and social power asymmetries were sustained in favour of European class interests (*Ibid*).

The practices outlined above and others similar were tantamount to acts of legislated extortion to push for cheap African labour while containing African enterprise and repel the rise of an indigenous petit bourgeoisie. As will be argued in the following chapter, the relevance of these strategies in the development of corruption and neopatrimonial rule was that they were replicated by Banda's one party system for wealth accumulation and the propagation of clientelistic political mobilisation. After independence, tobacco had remained as the primary commodity for Malawi's political economy and the Central Region was the where it would be grown in significant quantities by Kamuzu Banda political base of the Chewas. Banda utilised this to preserve the support from the Central Region by guaranteeing that access to production was a resource for patronage and self-enrichment. This played a significant role in post-1994 when Banda's system was deconstructed to create new patron-client configurations that shifted the focus of economic policies from agriculture to private enterprise that was funded by the massive looting of the country's resources. This process of transforming the political and economic system was replete with favouritism, nepotism and clientelistic associations.

8.2.1 State Capture and Private-Public Sector Collusion

Another dimension of the unitary development of the colonial political economy was the influence that capital from private business had on the administration of government and how this infusion maintained clientelism as a system for political mobilisation. Of particular import were the influences that large commercial interests had on colonial Nyasaland and

post-colonial Malawian governments with regard to economic concessions and agreements between state agents and private business for the mutual benefit.

Political corruption, manifested as state capture, entails the tailoring of laws and regulations to facilitate illicit extraction with the collusion of private interests (Amundsen, 1999: 3). There is an epistemological challenge in the conceptualisation of corruption when it is institutionalised by the state. Who defines it? How can we consider it as such when legal instruments are developed by the state itself? What comes to mind is the relativity in the conceptualisation of corruption in time. The actions by the government were legal and moral in the political structure and therefore not regarded as corruption to a large extent.

In the early years of state formation, the cash strapped protectorate was in need of capital to establish a working government. State capture and political symbiosis comes to mind when the intersection between the professional interests of the businessmen crossed paths with those of the government. As explained above, the administration was partial in the distribution of land to Europeans. The reason being that not only did big business influence the actions of government, but it was part of it. The Legislative Council, the primary legislative body in Nyasaland, was dominated by commercial interests. One of the longest serving members and leader of the non-official members was Sir William Tait-Bowie, an employee of the Blantyre and East Africa Company, who served for eighteen years, fourteen of which he served as the leader (Pachai 1973). He also served in other organisations such as chairman of the Chamber of Commerce and tea and tobacco associations as well as a member of the Executive Council.

The influence and improper relations between business and government is especially illustrated when we observe the relationship between Cecil Rhodes and the Nyasaland Government. A chance meeting between Johnson, who was then the British Consul to Mozambique, and Rhodes in 1890 revealed that Rhodes had plans to create a British controlled area from Cape to Cairo. This informal meeting between the businessman and the politician synchronised the vision for the land that would later become the British Protectorate of Nyasaland. Rhodes confided in Johnston of his plans for financing a treaty making expedition with chiefs in the area that would secure the land for his company, the British South Africa Company (BSAC) as a prospective venture into mineral extraction.

Rhodes paid GB £ 2000 for the treaty expedition in 1890 and a further GB £ 13,500 to the Africa Lakes Company to provide security, a concern which he had substantial shares in and finally acquired in 1893. When the area was designated as a protectorate in 1891 with Johnson as its first Commissioner, the agreement was then officially arranged between Rhodes and Johnson, with the blessing of the British government, to cede some land to BSAC in exchange for a much needed subsidy to fund the nascent administration. The company's expenses were GB £ 10,000 and later increased to GB £ 17,500 annually. In addition, the company covered all expenditure and included extending a line of credit for the new administration. By December 1891 the budget expenditure was GB £ 22,500 of which GB £ 20,000 was met by the BSAC (Pachai, 1973, 82).

The financing of the nascent administration of the protectorate by Rhodes ran up to 1st July 1895 until the British Government withdrew its support of the agreement citing inconsistencies and growing demands from the company. In all, the company had ownership of 20% of the land. The rest was divided amongst European planters and commercial interests (20%), the government (20%), missionaries (20%) and Africans owned the remaining 40%. Eventually, the BSAC would own 2,730,000 acres of land in the protectorate.[8] The company retained the rights to this property until 1936 when it exchanged them for mineral rights. When the government was transferred to Africans after independence the BSAC finally relinquished these rights to the new government on 1st July 1966 (Pachai, 1973:83).

The relationship between BSAC and the government was very inappropriate in that the Commissioner was observably biased in decisions that favoured the company's business interests in exchange for financial assistance. This has been observed by Woods (1991: 26-27) who noted that Johnston often declined to issue land claim certificates to entities that would have competed with the BSAC. This was the case in a case when the Central Africa Company had made treaties with the local chiefs and Johnson denied the claims because "it would be very hard if this greedy company were to worm its way in and try to oust the [the BSAC] from its rights".[9] When the company sought redress from the Foreign Office, Johnston obstructed the order from the British government to assist by offering land that was

[8] PRO CO 525/120/10. From secretary of BSAC to SSC

[9] Johnston to Foreign Office, 21 January 1893 enclosed in Bowler to Roseberry, 9th June 1893, PRO FO 403/185 cited in Ng'oma, (2010:96).

in difficult terrain and therefore had no commercial value to the company (Ng'oma, 2010: 96).

The impropriety of the actions by the government, particularly those of Johnson, was observed by spectators who were astonished at the boldness of the actors involved and readily commented. A Blantyre missionary succinctly denounced the collusion between the BSAC and government at the expense of the local population. He pointed out that "If [Johnson] can lift ivory and taxes when and where he pleases in the interest of the [BSAC], we demand, on behalf of the natives some independent power to watch their interest" (Ross, 1975).

This was not by far an isolated incident of mutual benefit from the collusion between settlers, commercial interests and the administration. The growth of Nyasaland necessitated the construction of a transport infrastructure that would assist in the movement of goods within and the exportation of produce without in the most cost effective way. The settler community pressurised Johnson for a commitment by the government to build a railway line. The pressure was directed by John Buchanan, a very successful farmer, who had a meeting with the governor in 1893 where they agreed that plans would be approved for the development of such a project the following year. However the problem was, as with all government projects in Nyasaland, the availability of resources.

The government engaged the Shire Highlands Railway Company to develop the railway line on condition that they would pay for this with a small subsidy and with land and mineral concessions. In 1897, a departmental committee of the Foreign Office consented to the arrangement and a contract was signed on 3rd September 1901 with amendments made on 31 December 1902 for more liberal terms. The terms were that there would be an exemption on import duties; the use of natural resources for the construction would be free; a 25 year monopoly on the management of the railway and 3,200 acres of land per mile of railway which equated to 360,000 acres in total. The government could purchase the line after the period at the cost of GB £ 4750 per mile (Pachai, 1973: 147). Although there had been substantial difficulties in honouring the contract due to the scarcity of land, the government took measures that compensated the company to its delight and engaged it for further business opportunities.

The precedent of having politicians in the "pockets" of business entities was thus established in Nyasaland. It is interesting to observe that Johnson was recognised as a legitimate and formal agent of the BSAC who acted on behalf of the company with the knowledge and approval of the British government (Baker: 1972). His successor Sir Alfred Sharpe, when he retired as Governor of Nyasaland, became the Managing Director of Zambezi Mining Development Company (ZMDC) which had extensive business interests in Nyasaland and of which he had been in contact with while in office.

The concessions made through the collusion between the government and commercial interests were obviously made to the detriment of the African population which was growing on rapidly decreasing land. The *status quo* was accepted as a legitimate process of government administration and the land policy had shifted the balance of power from the chiefs as custodians of the land to the government, which through its certification, decided on who should have ownership of it. As observed, the business community exercised its vast influence in policy formulation at both the Legislative and Executive Councils to direct government largesse and patronage toward specific companies and individuals. This political economy taxed the majority of the population to subsidise the minority and therefore patronage and clientelist policies were the established forms of political mobilisation in Nyasaland.

8.2.3 Traditions and Culture as Determinants of Corruption in the Colonial State

As indicated earlier, one of the observed determining factors of corruption in contemporary African states has been the duality of existence of the modern and the traditional, and of the formal and the informal. This is attributable largely to the colonial strategy of indirect rule.

In the first decade of the 20th century, the government acknowledged that colonialism was having undesirable effects on social cohesion and organisation of traditional societies, which in turn had a negative impact on the ability of the government to manage the population. As colonialism was becoming increasingly unpopular, the government decided that if it was to survive, there was need to make adaptations. They had to recognise indigenous institutions before African resentment reached a critical point (Vail and White, 1989). The "hybrid" state was thus devised where informal institutions co-existed side by side with those of the formal (Chabal and Daloz, 1999; van de Walle, 2001:128).

In Malawi, the legal instruments that established formal state structures and the attendant public service traditions have been explained in the preceding sections. The system of direct rule outlined in the section 8.1 above was not and could not sustain the colonial system as an efficient means of administration because, amongst other reasons, there were too few of British officers to cover the territory. For example, in 1921 there were only 1 480 Europeans residing in the territory-389 of whom were planters, 299 were traders, 107 were missionaries, and only 141 were public servants administering to a million or so indigenous residents (Gray, 1960: 32). Besides the numbers, it was conceded that British officers were not proficient enough in their understanding of traditional modes of social and political organisation.

It was for these reasons that traditional practices that had a utilitarian function for colonial administrative efficiency were encouraged and promoted to conserve social bonds, norms and values. The construction of this governance model had its basis on the premise that pre-colonial African societies were communal and cohesive in nature and had high regard for their traditional leaders as authority figures. According to Power:

> "Educating for progress" was abandoned in favour of a new imperial vision predicated upon the resurrection of a communal, egalitarian and largely mythical pre-colonial past (Power, 1992).

This project aimed at co-opting the informal indigenous institutions into the legal-rational state. In the aptly entitled book *The Dual Mandate in British Tropical Africa* (1922), the architect of indirect rule, Lord Lugard pronounced that:

> It becomes impossible to maintain the old order; the urgent need is for the adaptation to the new-to build up tribal authority with a recognised legal standing, which may oust social chaos...the objective is to group together small tribes or sections of a tribes, so as to form a single administrative unit [of a constituted] Native Authority (Lugard, 1922: 217).

The policy was to merge the best administrative and political culture of Britain with the best of African social organisation. Quoting a report by the Advisory Committee on Education in the Colonies, Kark (2008:126) captures the sentiments of the Colonial government with regard to this strategy by quoting from a Colonial Office report on education. The report noted that:

> ....now [Africans] see change in all around them: the vigour is ebbing from their festivals, their rites, even their family ties, and they are fast losing their former ways of self-expression. We are sure that we must restore these and find...others before their new way of life can have the fullness of the old. We believe that under this vibrant self-expression lies the power of African character and that we must be always searching into, understanding and nurturing these traditional African ways as the new form of society takes its shape...we are sure this is the way to arouse in them a sense of each man's part in the progress of them all... (Kark, 2008:126).

The system was desirable on two fronts; it was a very cost effective way of developing rural areas with minimal financial input and liability; and secondly, the traditional structures would serve as a buffer between the population and the administration, especially with regard to unpopular demands.

The government gradually formalised the authority of traditional leaders through a number of ordinances for them serve as the principal intermediaries between the state and the African population. The first attempt to preserve and incorporate the traditional systems of governance into mainstream political structures was the amendment of the District Administration Native Ordinance in 1912 when the government had increased the powers of native authorities to manage the public affairs of the African population. In 1924, this was amended to permit Native councils some access to the policy making process, but these proved to be more ceremonial than anything else as the real decision-making powers remained with the colonial government. The system was highly circumspect of African political enterprise as evidenced by their lack of judicial, financial or executive authority. Another ordinance was enacted in 1933 for the establishment of formalised indirect rule as the preferred system of governance. Introduced by Governor Hubert Young, it was in line in with the trend in other British colonies such as Nigeria, Uganda, India, Fiji, South Africa and Tanganyika that had established the measures much earlier.

The new responsibilities for traditional officers included the actual implementation of policy on behalf of the government as presented by its agent the District Resident in conjunction with a traditional judicial system that would preserve and enforce African customary law. Two ordinances facilitated the recognition of the traditional structures as legitimate authorities with judicial and executive functions under the tutelage of the colonial government. The first was the Native Authority Ordinance (No.13/1933) and the other was

the Native Courts Ordinance (No.14/1933). The Native Authority Ordinance formalised traditional rulers as agents of the state that would act on behalf of the government on issues such as establishment and maintenance of a treasury, policy development and enforcement; but also implement government measures such as taxation and ability to force labour for government projects at the local level. Traditional leaders were empowered to appoint subordinate chiefs within their areas of administration who would assist at the group village and village levels.

An incentive scheme of patronage that compensated the most unquestionably faithful and obedient of the colonial subjects for loyalty entrenched what Mamdani (1996) observed as the "bifurcated state" which rationalised clientelism as a system of political mobilisation and the use of government incentives of patronage for political ends. The pecuniary inducements and bureaucratic appointments that were given as inducement to those that complied not only set the tone of "the rules of the game" in the political sphere, but consequently eroded the legal-rational establishment and ethos. It was the conventional practice to "recognise" the native authorities that submitted to the colonial agenda and sanction those that dissented. In general, chiefs were remunerated with 10% of any revenue they collected on behalf of the government in recognition of their loss of the annual tribute that had been due to them in the pre-colonial period (Pachai, 1973). Apart from the standard compensation, chiefs that were more compliant than others received preferential treatment in the form of special bonuses paid for outstanding work or to accommodate particular circumstances (Lipunga, 2006). For example, amongst the Ngoni's, Chief Chimtunga was paid GB £ 30 a year to assist the state while other Ngoni chiefs such as Jere, Mpherembe, Mtwalo, Mphindi and Mzukuzuku were paid GB £ 15 pounds each. The Yao chief Kanga was paid GB £ 40 for acquiescing to the demand by the administration to refrain from charging toll fees on caravans passing through his area of Michesi in Mulanje. Chief Mponda was given GB £ 100 for the loss of revenue that he had previously acquired through taxing traffic along his area of jurisdiction and Chief Jumbe of Nkhota Kota was paid GB £ 200 in exchange for the right by the government to levy customs duties in his area (Pachai, 1973: 112; 197).

The penalties for those who defied government instructions were often immediate and severe. For example, when Chief Chimtunga had disagreed with the government over the collection of unreasonable hut tax fees from his subjects and the government promptly withdrew his stipend and banished him from the Northern Province to the South (Vail and

White, 1989: 167). Chief Gomani is another case in point. After he had rancorously opposed European influences on his people and openly defied the administration with regard to the taxes imposed on his subjects, he was shot dead in April 1953 under very suspicious circumstances.

The fusion of the informal and formal nature of their mandates presented a select few of traditional leaders with opportunities to acquire material possessions that were out of the reach of their contemporaries (Read, 1938: 22). For example, Group Village Headman Balamanja was quoted in Kark (2008) reminiscing on the advantages of complying with the colonial administration. He listed some of his colleagues who benefited copiously from this arrangement. He noted that:

> Chikowi bought cars and mills, Machinjiri bought a fleet of taxis, and Kadewere had cars and several businesses. Certain Native Authorities made sure the chieftainship was not the only leg upon which they stood (Kark, 2008:313).

To counter this, some traditional leaders adopted illicit ways and means to close the income gap. There is evidence in literature of traditional leaders abusing their authority for private self-enrichment. They embezzled taxes, received bribes, misappropriated government property and engaged in other similar forms of corruption. It was common in some cases for strong communal bonds to supersede the legal-rational modes of administration. Pachai (1973) quotes a Colonial Office report on Native Authority Administration of 1936 that clearly illustrated this. The report noted that:

> many of the Chiefs cannot be trusted with anything...although their people entrust them with their tax money, they quickly dissipate it in no time. If there are local disputes in their territory, they seize the opportunity for private gain and for trivial offences impose excessive fines. If a relative has a dispute with a stranger, the case will not be fairly tried (Pachai, 1973: 189).[10]

In its application of sanctions against those who opposed its policies, the government consequently created conditions for corruption. The viciousness of punishment associated with the coercion and collective punishment of the population to ensure compliance to the new systems of governance led to instances where government agents implementing the policies were bribed to secure leniency or mercy. For example, the practice of forcing

[10]Quoted from a colonial office report C.O. 626/14, Report on Native Authority Administration, 1936 in Pachai (1973: 189).

Africans to provide labour to settlers (and contribute to the treasury) by way of hut and head taxes forced many to default. Colonial officers resolved this by offering rewards to those that efficiently promulgated these principles. Those in charge of enforcing the law were opportunistic in utilising their positions of authority in exploiting "their right to demand fowl, food, beer and even women from the local population". When resistance was encountered, entire villages were pillaged and huts burned to the ground (*Ibid*: 149). Wives of tax defaulters were often held hostage until the payment was made and increasingly, false arrests were common as a method for extorting bribes.

The resilience and existence of informal pressures upon the formal systems of government was the accepted norm of how things were to be done in the future. As purveyors of custom, traditional authorities had transferred the cultural practices, values and norms into the emerging proto-bureaucracy that survived the structural changes of the post-independence 1960s. Indirect rule did not transform this, but aided in the hybridity by acknowledging practices that were beneficial for colonial rule. These practices have survived the periods of transformation and are used by incumbent politicians in Malawi to entice traditional leaders with gifts and privileges. Amongst other forms of corruption, conditions for clientelism based on patronage, bribery and nepotism were transferred to post-independent states.

Colonial rule had introduced misguided policies that had multiple contradictions. The formal existed with traditional modes of socialisation that were based on social cohesion, personal relationships and communal action. Legal-rational institutions which traditional authorities had been co-opted into were the opposite; and had contributed to the socialisation of the dual attitudes and beliefs in relation to conduct within state structures. The consequence of this colonial misadventure in African administration was the emergence of political and state organisations that were conducive to corruption.

With regard to the Native Courts Ordinance, indigenous judicial institutions were reorganised in their system of administering of justice to the native populace in accordance with customary laws. While traditional justice was mostly aimed at restitution, the new system added punitive action such as incarceration for criminal offences as long as the sentence did not exceed 6 months imprisonment and a five pound fine in the Grade A courts, three months and a three pound fine for Grade B courts and one month and a one pound fine for Grade C courts. The gradation was based on the seniority of the presiding chief.

Appellant courts were higher courts in the system, leading to the District Commissioner, then Provincial Commissioner and finally the High court (Williams, 1978:121).

African traditional structures that contradicted these new norms were suppressed through statutory provisions and the use coercion while those that complemented the system were encouraged and rewarded. The development of attitudes toward formal institutions under colonial rule was therefore a by-product of indirect rule that was designed as a process of subjugation to ensure the compliance of the colonised to the new systems of public administration.

Some like Ranger (1966) have argued that the institutionalisation of exogenous administrative systems in colonial territories initiated the use of power and authority over the population in a superficial manner for immediate results at the expense of long lasting effects. As a consequence it entrenched traditional and cultural practices in concert with those that they were forced to adopt. Formal practices were superficially followed in fear of the sanctions that were applied for non-compliance and informal practices were adhered to in compliance with social mores. The perception of the state as a faceless, brutal and unforgiving entity was heightened by suspicions and fear of public officers who arbitrarily used force to insure compliance. The government was therefore perceived as an entity that operated from the top and could not be seen or realised at grassroots level. The collusion between traditional leaders and the state and the symbiotic relationship in which they shared allowed for the perseverance of customs that were contradictory to the tradition of a modern legal-rational bureaucracy.

8.2.3.1 Ethno-regional Variations in Access to Economic Opportunities

One of the most notable effects of indirect rule was the perpetuation of ethno-regional discrepancies and how these facilitated access to government positions. Colonial officials exploited cultural differences amongst African groups to generate disunity and vulnerability as a form of political control. Group differences were acknowledged, exaggerated and promulgated by the government to sustain the colonial system (Moto, 2009:4). As an illustration, Vail and White (1989) refer to S.S. Murray's *A Handbook of Nyasaland* (1922), an official publication which informed British administrators of identities and characteristics of groups in Nyasaland.

These perceptions guided government priorities and economic motives of where and how public resources would be invested for the most optimal economic returns on the investment.[11] The resultant effect was that colonialism, together with earlier missionary interventions, had created ethno-regional imbalances with regard to access to education, public services and economic development. These disparities were the major motivation for the contestations for political power and influence during colonial era, but more importantly they had established the foundation for ethno-regional clientelism, personal and group resource accumulation for neopatrimonial political mobilisation after independence.

Education played a crucial role in the development of industrial skills and commerce of the indigenous peoples as the primary process by which employment was guaranteed and as a medium for attaining a higher quality of life. The government's educational policy was very minimalistic at the beginning. There were no secondary schools in Nyasaland from 1891 to 1941 until 1948 when Africans were permitted to enter teacher training courses intended to provide instructors for higher learning (Williams, 1978: 159). Missionary education filled this void.

Early missionary settlements settled in the Northern Region first with their institutions of education. The area became known for its excellent African education. The Livingstonia Mission was one of the first to establish and invest in institutions of educational excellence. The influence of the Mission and growth of educational facilities was phenomenal. In 1893 there were only ten schools with 630 pupils in total, but by 1901 the schools numbered 55 with 2,800 pupils in total. Three years later in 1904, one station alone maintained some 134 schools with over 9000 students in total. This was well advanced in comparison to the other stations in other regions which had a third or half of that number (Vail and White, 1989: 154). At independence, the Northern Region with a population of 379,664 had 305 primary schools with 30,909 pupils. The Central Region with a population of 983,814 had 258 primary schools with 44,950 pupils while the Southern Region's population of 1,296,522 had 48,012 pupils enrolled in 303 schools (Lamba, 1984). By the 1980s the Northern Region which contributed 12% of the population provided for more than half of secondary and university enrolment (Carvier, 1990). This early educational foundation placed people of

[11] Cynthia H. Enloe's (1980) Ethnic Soldiers: State Security in a Divided Society (Penguin Books) provides a very thorough assessment of the colonial ethnic project in the development of Nyasaland. She explains how ethnicity and security were intertwined with the state administration to maintain the *status quo*.

Northern Region (specifically the Tumbuka speakers) at an advantage over others for employment in both the public and private sectors.

The performance of Southern and Central Regions in educational endeavours was not as adequate for a number of reasons. For the South, the region was dominated by those that followed Islam and missionary education propagated a belief system that was in direct conflict with their religious ideals. The colonial government supported this stance through the Education Ordinance of 1927 which stipulated that instruction in Christian philosophy in government supported mission schools was to be prerequisite for an education (Pachai, 1973: 179). As such, school enrolment was very low. In addition, employment options existed relatively higher in the Southern Region due to the fact that the two major British settlements of Blantyre district as the industrial centre and Zomba as the capital of the protectorate were in constant need of cheap African labour. Related to this was that the loss of land to European estates forced the native population to provide unskilled labour to farmers as a means for income. *Thangata,* a form of forced indentured servitude that was extensively practiced in the region, removed prospective students from educational institutions for indefinite periods. Because of these alternative employment prospects, the motivation for educational attainment was not cultivated.

The political economy of the Central Region took a somewhat different course from the Northern and Southern Regions. Unlike the ethnic composition of the Northern and Southern Regions which were more heterogeneous with a resident dominant tribal group dictating the identity of the region, the Central Region was largely a more homogenous Chewa homeland, containing isolated but negligible pockets of the Yao and Ngoni settlements. Scholars have attributed the slow acceptance of education in the Central Region to very strong attachments to traditional practices and cultural mores (Short, 1974). Missionaries experienced extreme resistance in their efforts for the mass conversion of the Chewa to Christianity due to their resilient grasp of indigenous beliefs of the cultural religion of Nyau. Although government infrastructure existed in the region, it was not at the scale of the Southern Region and hence the opportunities to work for the government were limited. In addition to the above, the Central Region did not attract as many colonial settlements when compared with the Southern Region; therefore land was in plentiful supply for the indigenous population to cultivate. The pressure to obtain an education or the pressure to seek formal employment therefore did not exist in the Central Region as it did in the North and South. These factors

provided relative autonomy for the Chewa to determine their fate with regard to economic development within the confines of colonial politics (Vail and White, 1989).

The meritocratic system of education that was introduced by missionaries in concert with capitalism and its attendant property rights had another subsidiary effect. It established social stratification based on material possessions and status. Social organisation now functioned on the precepts of status differentials that progressed parallel to the traditional identities. The educated Africans that were employed by the administration demonstrated an urban lifestyle of opulence and conspicuous consumption that mimicked the tastes of the colonisers while the uneducated were often the rural poor that followed traditional values. In Malawi as was the case in most of Africa, the nonexistence of a noteworthy industrial sector and capitalist class that would provide an alternative means for employment for the native population advanced the public service as the a gateway into a world of social mobility, "civilisation" and "sophistication". The formal legal-rational framework had invoked an ideological dichotomy between *zachizungu* (the western way of life) in reference to the desired British acquisitions that symbolised a superior standard of living and *zachikuda*; the African traditional way of life that was deemed inferior (Mtenje, 2003: 217).

The consequences upon society of the new found material wealth and acquired tastes are reflected in a colonial office report on native affairs which pointedly observed the impact of western desires on the native population. It declared that "the native wants are increasing year by year; what he was content with a few years ago will not do for him now" (Nyasaland Colonial Office Report 1905-1906). When the colonial era was nearing its end, these petit bourgeoisie mobilised political support along ethnic lines to maximise their opportunities of accessing resources and power after independence (Vail and White, 1989: 6). Thus the development of political conscienceless was tied to social status and personal and group economic growth. Political mobilisation in Nyasaland was an elite affair that equated positions with education and prosperity.

8.2.3.1.1 The "Africanisation" of the Public Service

The 1940s was a period of a more inclusive government that at all levels sought to incorporate African labour into government on a substantial scale in response to the political and social changes that were occurring in the colonies. A succession of Secretaries of State in the names of Malcolm MacDonald (1938-40), Oliver Stanley (1942-5) and Creech Jones

(1946-50) were instrumental in presiding over the political changes that were inevitable in the colonies. These men guided the change as part of a greater project under the Colonial Development and Welfare Acts that sought to improve the welfare of the colonised peoples and increase the development of the colonies for the mutual benefit of both Britain and its colonial territories. The project was also designed for greater African participation by separating the dual political and administrative roles that was absent from indirect rule (Constantine, 1984).

Although there had been some cases in the past of Africans of employed in the administration, especially in the security sector and to some extent in traditional leadership, this had been done on an *ad hoc* basis and the new project was to be more focused and deliberate. In addition, the new methods would also include educated Africans into Governing Councils.[12] Following a series of studies by the colonial office, the British government instructed its Governors in the territories for the gradual adoption of constitutional changes that would prepare the colonies for self-rule.[13] The changes were, in effect, to employ on a significant scale Africans in the administration of the protectorate as junior officers and to open the political system for popular participation. Charles Jeffries, Deputy Under Secretary of State for the Colonies from 1947-1956, was of the opinion that this would reduce the criticism of colonial rule as a system inimical to African welfare and perhaps placate the nationalistic movement that was advocating for radical reforms (Jeffries, 1956: 37-38).

The increased pace of African integration into the public service was not without its challenges. Two major problems emerged. As will be explained later, the first was that government positions were distributed along ethno-regional lines according to educational credentials, skills and experience. The northern and southern groups were appointed disproportionately in comparison to those from the central region because they were mostly farmers. They were neither as educated like the northerners nor were they experienced as their southern counterparts. The second was that the remuneration that was given to the

[12]Lord Hailey was commissioned to conduct a survey on the conditions of the colonial territories. It was published in 1938. See Hailey, J., (1992) A Study in British Imperialism, 1872-1969, CUP, Cambridge.

[13] The election of the Labour Party in 1945 was a watershed for African politics. The party committed itself to change its development policies in the colonial territories. Its manifesto emphasised this and is articulated in Morrison, H., (Labour Party), Let Us Face the Future: A Declaration of Labour Policy for the Consideration of the Nation (A World of Progress and Peace), 1945,

African public servants was much lower than their European counterparts at the same skill level. By the early 1950s the average wage of an administrative assistant was GB £ 200 annually compared to GB £ 600 for a British administration cadet of the same level who also received subsidised housing and leave benefits. In 1954, the wage gap was 4.1% and increased to 5.7% by the time of independence (Pike, 1968: 133-134). Education and all its promises of an elevated standard of living was providing selectively.

When opportunities did arise, the public servant abused his position to acquire the desired material possessions. In support of this argument, the contents of a letter written to a Peace Corps volunteer immediately after independence in 1967 by a junior public servant are very telling of the aspirations of public employees. The author describes a life of conspicuous consumption, hedonism and decadence in an attempt by public servants to reproduce the lifestyles of the people whom they were supplanting. He asks:

> What do the top bracket earners do with their income? Buy big cars, call girls, drink and unheard of luxury that is out of touch with the size of the country's economy...and why not? They do so to suppress their inferiority complexes.[14]

The institutionalisation of western systems of administration in the African context therefore had negative results on the structure of the public service, bearing in mind that the majority of officers of the new bureaucratic class were born and had been socialised in traditional settings which still had a profound influence as socialising agencies. The ideal Weberian bureaucratic model had also been debased through the offering of financial assistance or job opportunities to family and ethnic members in the village to take part and "enjoy the fruits of freedom". The high demand for positions in the civil service could not be fulfilled by the limited supply of available vacant positions and as a result nepotism, tribalism and favouritism proliferated as a means to secure positions for ones tribal members, family and friends. For politicians, public service was a means to gain favour from *akwathu* (people from home) and therefore develop a power base from which political support could be harvested[Interview: Dzayipa]. Favourable positions in the public service and state institutions were utilised to divert public resources towards one's family, village, district or region. With each success in this endeavour, the pressure on the public servant to provide for his associates increased, but so did competition among the various ethno-regional groups. The resulting friction brought resentment from those that had limited opportunities. In line

[14]Letter from Kwame Alex Phiri to Gordon Glass (Private Archives).

with Ekeh's (1975: 108) thesis, the public service was a domain that not only provided the opportunities for one to attain relative status in the traditional social sphere, but was also a means to achieve social mobility in the modern state, therefore sealing the connection between the formal and informal logics. This behaviour was and is culturally acceptable and expected of those who occupy a position of influence regardless of the fact that it contradicts the values of a modern public service. The more influence one has in the public service, the more pressure they receive from family and friends as a benefactor. This often leads to corruption to meet the demands and expectations.

8.3 The Rise of Nationalism and Factional Politics

In chapter two it was shown theoretically how in wealth accumulation and redistribution are prominent features of political mobilisation in neopatrimonial politics. Leaders utilise patron-client relationships to remain in power which in turn are often fed by corruption (Sandbrook, 1985; Chabal and Daloz, 1999).

When disparate groups coalesced to form the Nyasaland African Congress (NAC), the precursor to the Malawi Congress Party, the nature of political mobilisation that nationalism had advanced reflected the asymmetrical patterns of economic progress amongst the various groups. The united front against colonial rule that was presented by various actors during the period of nationalism proved extremely superficial as the strength of allegiance was stronger toward solidarity networks than to the prospective unified nation. Sectarian affiliations based on geographical differences, religion and ethnic identities soon prevailed after independence and were stronger than loyalty to the republic. Group associations and solidarity networks in line with Oliver de Sardan's work (1999) directed the use of power and entrenched corrupt patron-client systems as the mode of political action.

Although there had been voices of discontent from the masses against the professed legitimacy of colonial governance, these voices were stifled by the co-optation of traditional institutions by indirect rule. It can be argued that nationalism grew out of the need by a few educated and skilled individuals to enter into the class situations of their antagonists and motivated by the drive to break down economic and political boundaries. The political movement emerged from these needs of the indigenous capitalist class and followed a top-down rather than bottom-up revolutionary process. The "top" consisted of an emerging African petit bourgeoisie that constituted the intelligentsia, the professionals and propertied

class. These were amongst the growing number of educated and skilled persons from a rapidly developing entrepreneurial sector, farmers and office clerks and the ministers of the various churches that were springing up. What constituted as the "bottom" was the majority of the population which were regarded as the "peasant".

Bates (2000) shows that this pattern was followed in other countries by citing some works that show similarities such as Lonsdale's (1970) description of the effects of the missionary educated on the formation of the Kavirondo Taxpayers Welfare Association in Western Kenya; Twaddle's (1969) account on the formation of the Young Bagwere Association as observed in Eastern Uganda and Sklar (1967) posits that Nigerian ethnic associations were created by "lawyers, doctors, businessmen [and] civil servants"(Sklar (1967: 72). He notes that it was those who held jobs in the "modern" sector during colonial rule-such as clerks, traders, and professionals-founded such organisations which later transformed into political movements.

There were also institutional reasons as to why the petit bourgeoisie had emerged as the revolutionary force for nationalism. The goals and aspirations of this new status group were in conflict with those of traditional authorities whom they perceived as too conservative and passive for the emerging progressive movement (Rotberg, 1965). In addition to this, apart from the few junior clerks and security officers in the employ of the government, the structure of indirect rule had by design barred the inclusion of the educated and entrepreneurial class from political and administrative engagement. The government was overtly suspicious of the educated class after the Chilembwe incident and henceforth they isolated this segment from any possible mass support. Tangri (1968) quotes correspondence to the Governor from a District Commissioner in January 1930 that explicitly stated "it may be preferable not to give unnecessary recognition or compliments to associations composed of rather the other type of influential person-i.e. clerks whose influence is new, rather than chiefs whose influence is old" (Tangri, 1968: 241). It was in response to this exclusion that the educated and skilled individuals formed associations. For most of these, the criterion for membership was specifically articulated as education. This was the case with the Mombera Native Association (MNA) which explicitly described its aims as "being natives of the country, and acquainted with all the habits and customs of the people, it could adequately express their desires and needs to the government; and being educated, it could fully explain

the mind of the government to the people".[15] Explaining the class dimension of the groups, (Venter, 1966) presents the associations as pressure groups whose:

> Membership was purposely restricted to the new black elite. No attempt was made to enlist the support of the masses and thus to transform a primarily constitutional approach to a genuine popular movement for political change. The black associations were thus essentially elitist bodies operating as pressure groups on behalf of their members (Venter, 1966: 251).

There is no doubt that the local elites were a representation of African advancement and had estimations of honour bestowed upon them within their societies due to their class situations. The members were cognisant of this and utilised this privileged position to carve some political mileage. In a letter of protest to the government against the preference of the administration of traditional authorities over the associations, the Representative Committee for Northern Province Native Associations advised the government in 1933 that:

> [a]n effective constitutional function for expression of opinion would be lost as chiefs' councils will for a long time remain conservative in their aims, while native associations on account of their education are aspirants to a progressive policy.[16]

The leadership of the embryonic nationalistic movement was soon identified by education, status and economic privilege. In essence, all the associations followed six guiding principles: 1) Their membership had to be from the educated Africans; 2) they had to be approved by the government 3) they had to have public meetings 4) members were to be of good character 5) they had to be loyal to the government and 6) they had to send their minutes to the government (Pachai, 1973: 225).

In the initial stages, the associations were in compliance with government guidelines with regard to their operations. The government initially regarded them as an outlet for African opinion and welcomed their creation. For example, the District Commissioner of Mombera

[15]Mombera Native Association. Minutes of a Meeting on January 7, 1920 (File S i / 2 i o / 2 o) cited in Venter (1966).

[16]MNA File 1A/1380), Representative Committee for Northern Province Native Associations. Letter dated November 26, 1933 National Archives, Zomba, Malawi.

promoted their existence in his monthly report in 1920 as "a valuable safety valve for the escape of grievances along the right channel".[17]

The processes of developing these native associations have to be acknowledged as this had a very huge significance to post-independent ethno-regional factional competition for the control of levers of power. The original associations to emerge were in the Northern Region due to the educational advantages provide by the Livingstonia Mission. The North Nyasa Native Association (NNNA) was formed in 1912 as the first African political group. This was followed soon after in 1914 by the West Nyasa Native Association (WNNA) and then the Mombera Native Association in 1920. The founding documents identified their mission and objectives as:

- to assist the government in every way possible, especially by keeping it informed of African public opinion;
- assist the African by representing him in all political matters by keeping him informed of and explaining the objects of legislations, both new and already in force and;
- organise public meetings for the discussion of subjects of general or special interest (Venter, 1984: 251).

Soon, associations were established in other districts and were mostly disparate ethno-regional structures that dealt with matters of specific concern. By 1933, there were twelve associations. The main points of engagement with the government were mostly labour related issues in the Northern Region, which was particularly affected by government detachment and lack of investment; issues pertaining to land distribution in the Southern Region and economic policies with regard to the farming of cash crops by Africans in the Central Region (*Ibid*).

As the associations grew in membership, confidence and organisational capacity, it soon became apparent they were gaining momentum and conflict with the government was inevitable. Moreover, there was a growing connection between the associations as developers and purveyors of the modern African opinion which would later create a nascent mass

[17] MNA, File 81/2065/19, Mombera District Commissioner's Report, January, 1920, National Archives, Zomba, Malawi.

movement. They addressed specific problems faced by its members related to social issues such as protests against unjust laws, and partial economic strategies, education and health. From a position of acceptance, the administration increasingly regarded them as a nuisance when the associations transformed their tactics into radical and recalcitrant methods to demand change (van Velsen, 1966: 376). Thus, the associations were soon regarded with disdain by the government on one hand and with suspicion of their motives by traditional leaders on the other. Traditional leaders were particularly protective of their influence and newly acquired powers under indirect rule. In 1930 the government finally decided to contain the associations by ordering that they had to operate within the structures of District Administration and under the District Councils if they were to have any government recognition.[18] The attitude of the government toward these developments is articulated by the Chief Secretary who in 1930 is on record to have said that it was "highly undesirable [that the] clamorous natives should in any way displace the District Council as the vehicle for public opinion" (Williams, 1978: 122). Even so, they had to communicate through writing.

The Northern Region associations were noticeably very progressive and proactive in engaging with the government. For example, as early as 1919, the North Nyasa Native Association explicitly demanded for universal representation in the Legislative Council, a resolution that was considered as confrontational in the context of the politics of the time to the consternation of the colonial administrators (Rotberg, 1965). This was also the case for the West Nyasa Native Association which resolved in 1929 that all land belonged to Africans and that it was therefore their right to demand property entitlements (Tangri, 1968: 217).

It was due to two factors that the associations in the North had gained traction. The first was that their formation was tied to the efforts of educated and enterprising men who had the foresight of developing organised political awareness outside of the system of indirect rule. The second, and equally important, was that the emigrants were returning from the mines of South Africa and Rhodesia. They returned with progressive ideas and experiences of political organisation that they had gained from their stay in these colonies.

[18]For example, a letter from the Chief Secretary, Zomba, to the Provincial Commissioner, Northern Province, Nkhata Bay, dated September 17, 1930, which unequivocally stated "that resolutions of the native association [WNNA] will only receive the consideration of government if they have been submitted through and adopted by the district council". MNA File S1/2065/19, National Archives, Zomba, Malawi.

The first of these men, Simon Mhango, was a northerner who had spent some time in South Africa before returning to Nyasaland with the ideas of collective action and African political mobilisation. The second man was Levi Mumba, a northerner as well who was well educated by African standards (Pachai, 1973: 226). The NNNA, the WNNA and the MNA were amalgamated into an umbrella body called the Representative Committee for Northern Province Native Associations (RCNPNA) in 1928. This body promoted the welfare of public servants from the Northern Region that were living and working in Zomba and networking them with their counterparts in other provinces, especially in the Southern Region (van Velsen, 1966: 379).

By the mid-1930s to early 1940s the associations had evolved into professional institutions that expressed their vociferous criticism of government policies and were confident enough to challenge the *status quo*. From the initial acts of antagonism and disobedience, the protestations grew into sporadic riots that were mostly confined to the Northern and Southern Regions (Pachai, 1973: 105). The government could no longer ignore the political significance of these groups and the incumbent Governor in 1935, Harold Kittermaster, invited Levi Mumba for direct discussions on their concerns (Tangri: 1968: 227). The meeting was a first for the nationalistic movement and it taught the leaders of the various groups that the government would only react if enough pressure was exerted. Of all associations that were in existence in the protectorate, the government on May 20, 1935 decreed that only the RCNPNA would have direct access to the government (Pachai, 197: 230). This was the beginning of the nationalistic movement with the genesis in the northern region.

In the Southern Region the Nyasaland Southern Province Native Association (NSPNA) was founded in 1923 as an umbrella body of different associations. Noteworthy were the Blantyre Native Association (BNA) developed in 1924 and the Zomba Native Association (ZNA) that was set up in 1927. The significance of this was that these two groups were proximate to the seat of government in Zomba and the industrial centre of the protectorate in Blantyre. The BNA in particular was a revolutionary association with radical ideas that were comparable to the Northern Region counterparts. For example, in 1935 it organised a meeting of Native Authorities, village headmen, African government employees and others to petition the administration for at least half of the seats in the Legislative Council to be of indigenous African descent (Williams, 1978: 135).

The RCNPNA and the BNA soon formed a united front against the colonial government (van Velsen, 1966). Two individuals by the names of Frederick Sangala, the Assistant Secretary of the BNA and Lewis Mataka Bandawe, a member, were coordinating the interaction between the two associations in the Southern Region. These two individuals established a *de facto* secretariat and at a meeting held on 19th August 1943 the associations resolved to create the Nyasaland Educated African Council. In its inaugural meeting in October 1944, the Council elected to pursue a nationalistic agenda and to mobilise the population in furtherance of this goal. From that meeting, the Nyasaland African Congress, the precursor of the Malawi Congress Party was born. The "Educated" was later dropped from the name to attract a wider constituency and "Congress" substituted "Council" (Pachai, 1973: 232). These rudimentary steps were the *conditio sine qua non* in the development of a national movement that would eventually be known as National African Congress. When they finally merged, they improved upon the coordination and professionalism in presenting a unified agenda to engage with the government on national issues pertaining to economic, educational and political themes.

The associations in the Central Region were not as vocal as those of the Northern and Southern Region. The problems faced in this region were not as acute as those in the other two regions because the Chewa heartland was mostly devoid of massive European estates to cause the land problems as was the case in the south or the labour problems faced in the north. For this reason, the national movement in the Chewa heartland was conspicuous by the absence of radical leaders. Vail and White (1989) have identified the nonexistence of a notable intelligentsia within the petit bourgeoisie as a contributory factor. They note that "virtually no Chewa intellectuals emerged...to serve as culture brokers either for a progressive ethnic ideology along the lines of the north or a universalist nationalism" (Vail and White, 1989: 174). Hastings Kamuzu Banda was an exception that came later on.

The rise of Banda is the archetypical story of how corrupt leadership of the first republics entrenched itself. Post-independence leaders such as Nkrumah, Kenyatta, Kaunda, Banda and Mugabe all shared a common formula for power consolidation. During the formation of the NAC, Kamuzu Banda was practicing medicine in Britain as an accomplished surgeon and highly educated African with a keen interest in the politics of Nyasaland. Banda was an ardent nationalist who provided guidance and financial support to the NAC (MCP) in its

infancy and was viewed as the elder who the younger leaders could confide in (Chirwa, 2007). This appealed to the cultural sentiments of deference to the leadership that is characteristic in African societies. His benevolence was not left unappreciated by his supporters who propagated the image of Banda as a political messiah and benefactor. These initial acts of patronage contributed to the entrenchment of corruption in a number of ways as we shall see in detail in the next chapter. First, it aided in the consolidation of power by a dominant elite who associated formal office with the charisma of the president and the personalisation of authority (Leftwich, 1994: 372). "Kamuzu knew best" was the political mantra that legitimised the social and political positions of the leadership. Secondly, as Grief (1994: 913) has noted, corrupt neopatrimonial systems are characterised by "non-cooperation...[of] relations between members of different groups". This was evident in the actions Banda's government when it facilitated the utilisation of particularistic policies and regulations for the advancement of the Chewa political base. The transfer of power from the colonial to the African government only shifted the instruments of authority to new actors without changing the system of clientelistic political mobilisation and in so doing acts of patronage placed the president in the position where he abused his authority for private or political gain.

8.4 Conclusions

In conclusion, it has been argued in the foregoing discussion that the derivation of corrupt neopatrimonial rule is embedded in the process of state development in Malawi. This process established the particularistic implementation of the law as the norm and patronage as the political order that maintained the economic interests of specific factions at the expense of others. The colonial government established the precedence of collusion between private enterprise and government and at times his collusion was illegal.

There were examples of state capture, corruption and patronage that existed in these early stages of the administration. Colonialism was an autocratic and brutal system that was inclined toward coercion rather than democratic politics. The Governor ruled by decree and relied on prestige and authority and accorded no rights or privileges to his indigenous subjects other than those bestowed by the leadership (Bratton and van de Walle 1997). The administration was designed on the utilisation of force to secure its authority. In this way, the monopolisation of power by agents of the state often led to abuse of office, embezzlement,

bribery and other corrupt activities. This was transferred to post-colonial governments was common in contemporary neopatrimonial systems (Leftwich, 1994: 372.

The exigencies of politics that brought forth the social transformation and the progression of the political economy necessitated the adoption of utilitarian tactics that assimilated traditional systems. The introduction of indirect rule had the effect of instituting a system of governance that merged informal and formal centres of reference characteristic of corrupt governance. The expansion of these administrative structures thus engendered the differentiation between the official from the unofficial spheres and the public from the private realm which in turn entrenched the use of the public service as a resource for private gain. For this reason informal logics survived and prevailed within the institutions of the state. This hybridity, which is still evident in post-colonial Malawi, now legitimises political action from both spheres of influence. The resultant effect has been a cyclic distortion of socio-economic priorities which entrenches cultural affinities and heightens clientelistic political contestations based on superficial identities.

With regard to the genesis of political mobilisation in the nascent nationalistic movement, power variances amongst the divergent groups naturally progressed into ethno-regional factions. This solidified the bonds of solidarity networks which politicians would rely on as a form of political insurance. This major feature ties politics and authority with corrupt clientelistic processes and general neopatrimonial rule that is exploited by contending political elite networks. The development and progress of the state did not diminish these practices. They had been embedded into the ethos of public service and persevered to contribute to the perception of the proliferation of post-colonial political corruption.

Chapter Nine

Neopatrimonialism, Corruption and Political Mobilisation under Kamuzu Banda

9.0 Introduction

This chapter argues that the rules of the political game that defined methods for political mobilisation and the parameters for political engagement that were established under colonial rule were consolidated under the autocratic leadership of Dr Hastings Kamuzu Banda. The one party state was controlled by a political elite that abused its authority for political and personal ends similar to the methods of the government it had replaced, The use of clientelism necessitated the creation of a skewed political-economic system that favoured privileged wealth accumulation. To paraphrase Sklar cited in Chingaipe and Leftwich (2007), economic relations in Africa are determined by relations of power and not by the means of production. In Banda's style of politics the proximity that an individual was to the leadership determined his or her accessibility to economic opportunities. Similar to other African states after independence, the opportunities for social advancement were dispensed according to ethno-regional political realities. This feature of political mobilisation ensured that the Chewa, Banda's ethnic group, also benefited. This was a significant factor in the stratification of post-independence Malawian polity. It defined the status of economic relations and the development of political institutions that were characteristics of a corrupt system of neopatrimonial political mobilisation that survived the policy changes of the 1990s.

This stage in the evolution of the Malawian political economy is crucial in understanding the causes of bad governance and the perception of the proliferation of corruption that occurred post-1994. Banda's rule was associated with the consolidation and legitimation of executive power through the appropriation of traditional systems of social organisation and the utilisation of state institutions in a system of governance that was undeniably corrupt. It is the opinion of Hope (2000) that post-independent African governments "were not only bureaucratic autocracies but also political and economic monopolies now lacking in accountability, transparency and the rule of law" (Hope, 2000: 18). The post-independence public service that emerged in most African countries was overwhelmed by institutional instability, the polarisation of the state, and particularistic economic management where

clientelism was synonymous with political legitimacy and personal loyalty and obedience were rewarded more than merit (Hope: 2000).

The discussion below aims to illustrate the resilience of patron-client political mobilisation and describe the political processes that created the opportunities for rent-seeking, nepotism, bribery, favouritism and general neopatrimonial politics in post-colonial Malawi. The chapter concludes with the assertion that the structures and methods of governance in Banda's administration had prolonged and normalised presidentialism, illicit wealth accumulation, asymmetrical development and factionalism for sustaining economic, social and political power differentials.

9.1 Foundations of a Nation: The Materialisation of Factional Power Dynamics

Mamdani (1996) informs us that "no nationalist state was content to reproduce the colonial legacy...each sought to reform the bifurcated state that intentionally crystallised a state enforced separation, of rural from the urban and of one ethnicity from another, but in so doing so each reproduced part of that legacy, thereby creating its own variety of despotism" (Mamdani, 1996:8).

In Malawi's case, ethno-regional politics has been at the centre of mainstream political mobilisation. It guides the nature of patronage and corrupt transactions with regard to the allocation of economic opportunities and the acquisition of power. It forms the basis for the choices of political office holders and determines the country's economic strategies. Ethnicity is at the core of patron-client power situations of the divergent groups.

Due to factors that have been explained in the preceding chapter, the organisation of different political associations was ethno-regionally based. When they finally merged to form a unified organisation, this was reflected in the leadership and influenced the direction of the national movement. The Nyasaland African Congress was officially recognised as a representative of "various African associations in Nyasaland by the government in December 1944 (Short, 1974: 127). The most influential of its leaders were from the Northern and Southern Regions. Levi Mumba, elected as its first Chairman, was a northerner and former Chairman of the RCNPNA. Charles Mlanga, a southerner, was its Secretary General and Macdonald Lawrence, another southerner was appointed Treasurer General. James Sangala, a southerner and a former member of the BNA and ZNA, was a committee member, and

later became its president a few years after its launch. Other notables were Charles Chinula, from the north and a former Secretary of the MNA, who later became the vice president People of Chewa descent were glaringly underrepresented in this nascent nationalistic movement. From this composition of the first leadership it was inevitable that the spectre of ethnicity and corruption manifesting as nepotism would play a definitive role in the activities and decisions of the organisation and national politics as a whole.

The earliest squabbles that culminated into open conflict are illustrated by a peculiar incident that occurred in the early stages of the organisation. An opportunity for the deputation of Congress members to Britain was created for Charles Matinga, a Yao representing southern and Charles Chinula, representing the north and central branches of the NAC. The NAC had arranged for the two men to meet Colonial Secretary Creech Jones in May 1948 and to visit government officials associated with education policies in Britain. Charles Matinga, the second Chairman of Congress, unofficially replaced Chinula for a fellow Yao by the name of Andrew Mponda and left for Britain against the resolutions of the Congress. It is said that Chinula tried in vain to overtake the delegation in South Africa but they had already left for Britain, leaving him bitterly disappointed and destitute in Cape Town. Upon their return, allegations of embezzlement of GB £ 162 were brought against Mponda and he was subsequently relieved of his duties (Rotberg, 1965: 213). Incidents such as the one explained above entrenched solidarity networks in the NAC.

The Constitution of Nyasaland had undergone a few progressive changes by the mid-1940s under the auspices of the incumbent Governor Colby to facilitate the inclusion of African leaders into the Legislative Council. Native Councils that were viewed as highly inefficient were placed by new structures. From 1944 Provincial Councils comprising of twenty-five members were created and in 1946 a Protectorate Council was introduced in 1946. Further changes to the Constitution in 1949 permitted the Governor to invite two members from this Council to participate in the Legislative Council of the Protectorate. Altogether there were six British representatives for the 6,730 European population, two representatives (K.E. Mposa and E.A. Muwamba) for 2,350,000 Africans and one Indian (Dayaram) representing 8,490 people of Indian origin (Pachai, 1973: 240). Another seat was added in 1953.

The transformation of the government took a rapid turn in 1955 when the Constitution was again changed to create a common roll for European and Asian communities. For Africans,

the three Provincial Councils were established as electoral colleges that were to choose two representatives in the Southern and Central Region each and one in the Northern Region.

By 1957 the NAC was a well organised body with educated and experienced leaders that worked within the system. Two such leaders were Masauko Chipembere from the south and Kanyama Chiume from the north. Both of these men had won seats in the Legislative Council in 1956 and were well known for their fiery anti-colonial rhetoric. Chipembere was particularly popular amongst the population and had the charisma and intellect to lead a national movement, but lacked the political power and financial resources. The NAC needed a *coup-de-grace* to push for self-rule from colonialism. During the establishment of the nascent political movement, the NAC had specifically advised Banda that they would build his image as a political messiah to "cause great excitement and...precipitate almost a revolution of political thought" (Short, 1974: 87). In 1957 the executive committee resolved to invite Banda to lead the struggle and invigorate the call for liberation (Chirwa, 2007).

Banda's ascendancy to the leadership was a natural progression that combined opportunism, political tact and luck. He had been the patron of NAC since the 1940s and had consistently contributed to the *exchequer* of the organisation. From 1953, he paid the salaries for Mr K.W. Kalujili, the organising secretary for the Southern Region and K. Mhango for the Northern and Central Region (Pachai, 1973: 234). By then Banda was well advanced in age at 60 years old well experienced and financially stable from a well-established medical practice in Britain and then Ghana. He returned to Nyasaland after 40 years of self-imposed exile to lead the struggle for independence in 1958.

Banda's acceptance of the leadership was attached to the condition that upon his arrival he would be appointed immediately without any resistance. Banda's politics were very radical and this invigorated the nationalistic movement into an aggressive opposition. The government declared a state of emergency on March 3rd 1959 in response to violent clashes between NAC members and security personnel and amidst allegations of a massacre plot to murder colonial administrators (Chirwa, 2007: 21). In the aftermath, the NAC was banned by the government and its leaders, including Banda, were detained.

The detention of the leadership was by no means the end of the movement. On 30th September, 1959 the caretaker Chairman, Orton Chirwa (from the north), requested from Kamuzu Banda that a new political party be formed and with Banda's consent the Malawi

Congress Party was created out of the structures of the NAC. The membership rapidly increased from 8,100 in October 1959 to 250,000 in March 1960 (Short, 1974: 126). Upon Banda's release, Orton Chirwa formally handed over the reins of power on April 5th 1960. On the 4th of August 1960 Kamuzu Banda was unanimously elected the party president at the MCP convention in Nkhotakota. Other office holders were Masauko Chipembere who was elected Treasurer, Yatuta Chisiza (from the north) was the General Secretary, William Kanyama Chiume (north) was the party's Publicity Secretary and Dunduzu Kaluli Chisiza (north) was Treasury Secretary. The final chapter of colonial rule was therefore handled by Banda as leader of the MCP delegation that took part in the Lancaster House constitutional conference that was presided over by Colonial Secretary Iain Macleod from 25th July to 4th August 1960. Lower and upper rolls as well as an executive council were established in preparation for the elections. The national elections were to be held the following year on 15th August 1961 (Pachai, 1973).

The first general elections were contested by the Christian Democratic Party CDP), United Federal Party (UFP), the Congress Liberation Party (CLP) and the Malawi Congress Party (MCP). The MCP was a violent party from the beginning. On December 4 1960, congress supporters burned down the house of Chester Katsonga, the leader of the CDP. The CLP, led by T.D. T. Banda, a former president of the NAC, was intimidated with the brutal beatings of his supporters and burning of their houses until he withdrew (Chirwa, 2007). The elections were overwhelmingly won by the MCP which occupied all the seats on the lower roll, two of the seats on the higher roll and gained five seats in the Executive Council. On February 1st 1963 a cabinet replaced the Executive Council and on May 9th 1963 Banda was sworn as the Prime Minister. A constitutional review in September 1963 placed the next general elections in April, 1964 which the party overwhelmingly succeeded. Finally, on July 6th 1964, Nyasaland became an independent state (*Ibid*).

Banda's first cabinet again reflected the regional dominance of Northern and Southern Regions. Yatuta Chisiza was the Minister of Home Affairs; John Msonthi, from the centre, was the Minister of Transport and Communications; Augustine Bwanausi, from the north, was the Minister of Housing; Masauko Chipembere (south) had the Education portfolio; John Tembo (centre) was Finance Minister and Kanyama Chiume (north) was the External Affairs minister. This situation would provide the motivation for Banda's neopatrimonial

political mobilisation for the Chewa to dominate the bureaucracy and political structures of the country.

9.2 Banda's Governance Model: Presidentialism and Monopolisation of Power

The post-independence political economy was until 1994 dominated by the activities of Dr Hastings Kamuzu Banda. The transfer of power from the colonial government to the indigenous people merely shifted the autocratic authority of office from one set of actors to another. However, the change of the legal framework added the dimension of personalisation of power known as presidentialism (Gerring and Thacker, 2004; Kunicova, 2004; Sandbrook, 1985). His style of leadership, the longevity of his administration and the nature of power relations in his administration contributed to the consolidation of neopatrimonialism and clientelism as tools for political mobilisation that were extremely resistant to the pressures for good governance. Banda's governance model, known as *Kamuzuism*, was one where all government functions were concentrated in a highly centralised government. The executive was dominated by the authority of the office of the president. Kamuzuism also incorporated traditional institutions into the modern state. *Ngodya zinayi* (the four corner stones) of unity, loyalty, obedience and discipline that were meant to guide party and individual behaviour had profound influence in conditioning the behaviour of public servants and Banda utilised these structures to build a support base that legitimised his charismatic rule to appeal to the rural segment of the population.

At the beginning of his administration, he was the minister of six portfolios and took a keen interest in the rest. The government security agencies, which he personally directed, ensured that he was privy to any information on occurrences that would pose a challenge to his absolute control. He personally certified all execution warrants for political prisoners as well as certified all major private land claims. In February 1973, the party adopted a resolution that no minister could articulate, debate or present party policies without the consent of Banda (Williams, 1978: 07). "It is what Kamuzu says that...goes" was how government functions were best described.[19] Banda's governance model relied on two principles, absolute loyalty to the cause and politics of inclusion. "Rebels," defined as all those who held a contrary view to the president, disappeared into exile, were thrown into indefinite detention

[19]Hansard, Legislative Assembly, 26 February, 1964, p. 1272.

through the preventative detention statute or suffered extra-judicial killings at the hands of state agents. Treason, defined as the thinking and speaking of anything at variance with government policy,[20] was the basis for all political sanctions that identified the "other". Banda is on record to have declared that if he had to detain 100,000 people to maintain political stability he would do it without thought (Short, 1974:256), a threat which he backed by reinstating colonial powers of detention without trial in October 1964 and establishing the Dzeleka Detention Centre in January 1965. Short quotes him as having said "I want no one to misunderstand me...I will detain anyone who is interfering with the political stability of this country" (*Ibid*). The country had no vice-president. The sheer volume of what was within Banda's portfolios is staggering. This absolute power was very conducive to the abuse of office for private and group gain which he utilised optimally to benefit himself and his Central Region power base.

Similar to the methods of the colonial government, the executive dominated the other arms of government. The democratic processes that had placed Banda and his regime in power were systematically replaced by an autocracy. The legal institutions that had facilitated executive dominance during colonialism were reinstated to establish presidentialism under the new government and thereby destroying all hopes of good governance (Leftwich, 1994: 372). This is expressed by one of the interviewees who described Banda's Malawi in the following terms:

> Kamuzu Banda became the only leader. The people really believed [that] head infinite wisdom and authority that was given to him by God. The Party promoted this...[that] government policies often came to his understanding through dreams from God...he was *mpulumutsi*...(the messiah) and a *mpulumutsi* could do nothing wrong [Interview: Kabondo].

The progression of the monopolisation of power commenced with the review of the National Constitution in 1965 by a Committee appointed to develop proposals in time for the transformation of Malawi into a Republic in 1966. Hara (1997:11) expounds that the Committee, under the pressure of the then Prime Minister Banda, developed proposals that contained the following three primary considerations:

[20] Hansard, Legislative Assembly, 12th April, 1965, p. 241

1. In African traditional systems, it was not usual to have one leader with purely formal and ceremonial powers and another leader with real executive authority. This meant, in effect, that the new Constitution would vest the powers of Head of State and Head of Government in Malawi in one person.

2. An elected executive president would strengthen the democratic and representative nature of the government of Malawi.

3. A strong executive leader who should have such constitutional powers to ensure unity.

The Committee recommended that the Republican Constitution should not contain a Bill of Rights for the reason that provisions on human rights and freedoms tended to degenerate into political tensions and conflict in other African countries. Under the Constitution that was adopted in 1966, the country was declared a one party state and the president conferred with a wide array of unrestrained political and administrative powers as the Head of State and Government. The Malawi Congress Party was the only *de jure* political party. Kamuzu Banda was the life president of the state, a position that combined the office as Head of Republic and the Malawi Congress Party.

There were many similarities between Banda's administration and the deposed colonial government. For one thing, according to the MCP Constitution (1980), the president, like the governor preceding him, was the ultimate authority. The constitution stated that:

> WHEREAS it has been universally accepted that in Malawi the Party is supreme and that no-one is above the party;
>
> WHEREAS it has been unanimously agreed that Ngwazi Dr H. Kamuzu Banda, Life President of the mighty Malawi Congress Party, as a symbol of the party, is the Supreme Leader (Preamble of Malawi Congress Party Constitution, 1980).

He was "...the Supreme Leader and Symbol of the Supremacy of the Party, must be respected, honoured and revered by every member of the Party...[who] are expected to conduct themselves in a courteous and respectful manner in his presence".[21] The party Constitution succinctly explained that any transgression from these practices would attract the "pain of severe punishment". In his formal position as the life president of the party and

[21] In fact, the country's Constitution and that of the MCP were complementary. Both referred to the other in terms of administrative action and the conduct of citizens.

the Republic, Kamuzu Banda had absolute control and authority over the institutions of the state and the party.

At the onset, Kamuzu Banda did not conceal his intensions in attaining absolute authority. Williams (1978) quotes him in his early years of the presidency as saying:

> The Malawi system, the Malawi style is that Kamuzu says and it is just that, and then it is finished. Whether anyone likes it or not, that is how it is going to be here... you can't have everybody deciding what to do (Williams, 1978:214).

The highly politicised public service comprising of "Banda's boys and girls", as Kamuzu often referred to public servants, was socialised to be very loyal to him personally and the government in particular at the risk of punitive sanctions. This was the commencement of an administration that for thirty years enacted some of the most repressive laws on the continent that regulated the political and social dynamics of the population (Patel *et al*, 2007:6). Under Kamuzu's rule religious institutions were regulated and laws controlled what people wore (Decency Dress Act 1973), how long their hair should be and through the Censorship and Control of Entertainments Act (1968), what they read, watched or what music they listened to. [22]

Members of the legislature were regularly reminded under the threat of sanctions that they could not vote against the government (Pike, 1968). This position was formalised by the Constitution that prescribed the recall and suspension of any member of the national assembly that was "disloyal," "disobedient" or "ill disciplined" (Malawi Constitution, Act No. 23 of 1966). A series of constitutional amendments gradually increased the power of the president. With regard to the public service, he was at liberty to employ or dismiss public servants and to appoint the Chief Justice. In this so called "one-party participative democracy" the president had the discretion of selecting parliamentary candidates that were to stand for positions in the legislature.[23]. He is reported to have instructed his MCP loyalists that "If someone opposes my candidates, you deal with him. You know what I mean. I want no opposition" (Chirwa, 2007: 61). Chirwa, the wife of one of the earliest ministers in his

[22] Long hair; bell bottomed trousers, or even certain dances were prohibited. Trousers or garments that exposed any part of a woman's body between the lower level of the kneecaps and the waist for women would attract 6 months custodial sentence. Decency Dress Act (Section 2(a).

[23] Usually, party branches would submit a list of nominees from which he would make a careful assessment of the candidates and then shortlist. He also added or removed names as he deemed it necessary.

Cabinet, recalls an incident where Banda had instructed his party functionaries to murder an opposition candidate who dared to stand against his choice of candidate. This was the mode of governance which had capitalised on the structures and institutions that had been established during colonialism.

From 1963 to 1968, the president had been restricted by the constitution to select only three cabinet ministers who were not members of the legislature. In July 1971, this was removed to allow him free reign. This facility meant that he was at liberty to dispense patronage and largesse in the form of political office and the attendant perquisites that it entailed to his most loyal followers. As explained by G.E. Neman, the MP for Zomba: "the coming of members to Parliament to pass laws is just a formality; otherwise Ngwazi himself is enough to make laws for us. We happen to be here, Mr Speaker, just to fulfil the procedure of making laws".[24] The legislature therefore transformed into a rubber stamp for government policies and by extension, to the capricious desires of the President. As such, the legislative process, just as the Legislative Council before it, aided the administration in the corrupt use of structures of patronage.

Security was of essence in order for Banda to maintain his stranglehold on the state and sustain his government in the land locked Malawi. The use of instruments of coercion was not only based on their ability to punish, but they were particularly efficient in instilling terror. Terror had contained the acrimonious contestations for power, although at the expense of freedom of expression. The Malawi Young Pioneers (MYP) was such an instrument. It was established in August 1963 as a paramilitary organisation that reported directly to the president. This security service was deeply loyal and was instrumental in maintaining the regime in power through extra-judicial executions and other forms of violence. There are a number of cases of extra-judicial killings that have been recorded and accredited to Banda's "zone of security" that is a feature of neopatrimonial rule (Bratton and van de Walle 1997: 61). Attati Mpakati, Mkwapatira Mhango, the Chisiza brothers Dunduzu and Yatuta, Aaron Gadama, Dick Matenje, David Chiwanga and Twaibu Sangala, Orton Chirwa and many more that died in detention are amongst political opponents that Banda is claimed to have assassinated. In his address to the national assembly on 10th November 1965, Banda voiced

[24] These sentiments by G. E. Ndema, M.P. for Zomba South, were not isolated. The Legislative Assembly Records are replete examples with aggrandisement, Hansard Legislative Assembly, 12th April 1965 p. 642.

his concern that the Police were releasing people who had been arrested by the MYP. He warned that it was a criminal offence if the Police released anyone arrested by the Young Pioneers. Further, any member of the group (MYP) was not to be arrested for an offence unless he personally gave his consent for the police to do so.[25] In so doing, he established the primacy of the MYP over the Police and the rule of law.

Apart from their security detail, the party security agencies, especially the MYP and Youth League, were involved in illicit resource accumulation on behalf of party in general and specifically for Banda's benefit. This was formalised in the forced sale of party membership cards. The proceeds were utilised to sustain the finances of the extensive MCP branches at the grassroots level whose members functioned on a voluntary basis. Every Malawian citizen was a card-carrying member of the Malawi Congress Party regardless of age or creed and had to purchase a card.

The victimisation of the Jehovah's Witnesses from 1967 through to the 1990s is illustrative of the government's uncompromising stance that it had on the sale of party cards. The Jehovah's Witnesses were proscribed in 1977 under Section 64 of the Penal Code as an "unlawful society" for having prevented "people paying tax or to prevent[ed] members of the Malawi Congress Party from renewing their cards" (Carver, 1990: 65-66). What followed were the forceful exile, torture and extra-judicial killings of members of the Church perpetrated by Youth League members for their non-compliance in the purchase membership cards. By December 1975, more than 35,000 members had fled to neighbouring Zambia and Mozambique.

Kamuzu Banda's government had passed laws that accorded him the authority to dispense property rights. Through various Acts of Parliament, the state had the authority to confiscate land and material possessions of individuals that were under suspicion of theft of public property, fraud or corruption. The provisions in the Forfeiture Act enacted in 1966 stipulated that:

> If the Minister is satisfied that any person is, or has been, acting in a manner prejudicial to the safety or the economy of the state or subversive to the authority of the lawfully established government, irrespective of whether that person be within or without Malawi, he may by order, which shall be

[25] Speech given on 10 November, 1965 Hansard, Legislative Assembly, 10 November, 1965. p. 263

> published in the gazette, declare such person to be subject to forfeiture (Forfeiture Act No. 1 of 1966).

Thus empowered, Banda had the mandate to sequester to the state any private property of an individual who was a "subversive" element. People were deprived of property for flimsy transgressions such as "trying to emulate Kamuzu" if they exhibited any noteworthy entrepreneurial acumen. Subsequent amendments to the Act permitted the state to confiscate the property of any public servant who had committed theft.

Such was the case of Dr G.N.K. Khofi who in 1971 was a very successful businessman that owned Kadona Gowoka and Company Ltd and Nkhotakota General Traders. In February 1971, he received a letter from the Administrator General to state that all his business licences were revoked without explanation and he was then detained in prison without charge. Upon further inquiries, he received a letter dated 16th December 1971 from the Administrator General advising him that upon instruction from the president's office, all his business interests were now transferred to Press Trading and he had no legal claim to the property. Upon his release, Dr Khofi continued to trace his properties and for over 20 years there was no response until he received a telephone call in January 1986 from the company secretary of Press, Mr D.S. Kambauwa, who on behalf of Press Board of Directors, threatened him with unspecified "unpleasant consequences" if he did not desist with his investigations.[26] Banda's actions illustrated how corruption could be facilitated with the scope of discretion, the monopolisation of power and lack of accountability as has been argued by Klitgaard (1988).

9.2.3 The Cabinet Crisis and the Entrenchment of Ethno-regional Politics

In demonstrating the dysfunctional aspects of Banda's rule, the so called "cabinet crisis" of the 1960s should be mentioned in some detail here as a watershed that consolidated the post-independent Malawian neopatrimonial politics of coercion, patronage and clientelistic political mobilisation of factions.

The Cabinet Crisis, like the Chilembwe rebellion in the administration before it, had created the scene for political transformation and the entrenchment of patronage and factional politics. Banda and his first cabinet had hardly settled from the euphoria of self-government

[26] Court Records recorded in the High Court Civil Cause No. 289 of 1993; Civil Appeal No. 12 of 1998

when policy differences emerged amongst themselves. In August 1964, some ministers and party functionaries; Bwanausi, Chirwa (Attorney General), Chiume, Chisiza, Chokani, Chipembere and Rose Chibambo (leader of the Women's League), became increasingly alarmed by his autocratic methods of consolidating power and authority. The undercurrents of dissent to Banda's autocratic rule came to a head when his ministers challenged him openly on a number of policy positions. The main areas of concern were the slow rate of Africanisation that Banda was reluctant to accelerate, the imposition of hospital fees which was resented by the population, demands for changes in Malawi's capitalist economic path in favour of a more socialist inclination and an adjustment of Malawi's foreign policy which was congenial toward Portugal and South Africa. Banda was also criticised for his refusal of a GB £ 18 million grant which had been negotiated by Kanyama Chiume with China. Finally, the ministers charged him with nepotism for including John Tembo, the nephew of his confidant, into cabinet (Williams, 1978: 216).

Banda did not take these challenges very well. He promptly dismissed the ministers on 7th September, a day before he called an emergency sitting of parliament. At the sitting, he described the previous cabinet meeting as highly confrontational. He explained the confrontation to his supporters thus: "They all attacked me. I was shocked...No one tried to support me. Not one of them tried to defend me. They all attacked and attacked viciously".[27] He insisted that the ministers wanted more cabinet responsibilities for power and opportunities for corruption. After a resounding vote of confidence, Banda continued to consolidate his power. In public meetings, he denounced the ministers as "hyenas in the night," rebels, traitors and other disparaging names that diminished their status and estimation of honour amongst the population. Following the dismissal of the cabinet ministers, there were incidents of unrest in the Southern and Northern Regions in support of the dismissed ministers. Two of them tried to lead different guerrilla campaigns, Chipembere in February 1965 and Yatuta Chisiza in October 1967 but were quickly defeated. Banda used the Youth League and MYP to "defend" the party from the rebels, a pattern that was to recur for the next 30 years. Labour movements were banned as well as public meetings that were not endorsed by the party. Within the next few months, all the dissenting ex-ministers had escaped into exile or as in the case of Chisiza shot dead by the security services. He offered his opinion on the character of these persons at a speech at Chileka in Blantyre on September

[27] Hansard, Legislative Assembly, Zomba, 8th September, 1964 p. 10

13th 1965. He stated, "These people are wild animals now...they must be destroyed. No beating about the bush. Arrest them, but if they resist arrest, well anything you do is alright as far as I am concerned".[28]

It is very significant that those that rebelled were mostly from the Northern and Southern Regions and this would affect the nature of political mobilisation post-Cabinet Crisis. The Cabinet Crisis had entrenched ethno-regional politics and partial economic strategies that would direct patron-client relationships way into the post-independence era. A member of parliament from the Central Region, Richard Chidzanja, who suggested that the crisis was a conspiracy that was instigated by ministers from the Southern and Northern Regions who were not pleased with the involvement of politicians from the Central Region in national politics (Veil and White, 1989). Drawing on these sentiments President Kamuzu Banda's tactic was to manage the resultant power contestations amongst various factions to divide and rule.

The years after the cabinet row are known as the "Chewanisation" of Malawi. The government used of Chewa cultural symbols, traditions and social structures to implement particularistic policies and partial economic strategies for the development of the economic opportunities and life chances for the benefit his ethnic group (Kaspin, 1995; Posner, 1995). In the aftermath of the crisis, three out of five MCP District Councils in the Northern Region were dissolved and six out of ten in the Southern Region. The government either replaced or disciplined Chiefs that sided with the rebels (Williams, 1978: 227). Banda ordered periodic ethnic purges of "undesirables" from the party and public service by targeting people that were non-Chewa and mostly from the Northern and Southern Regions. Those that bore the brunt of this strategy were people of the Yao and Tumbuka lineage who, due to the historical factors associated with colonial rule, had progressed in the public and political spheres. There were periodic detentions *en masse* of members of the Yao and Tumbuka lineage as a form of collective punishment for imagined or *bona fide* transgressions by their kindred. Notable amongst these cases were the Tumbuka purges from the public service of 1973, 1976 and 1989 and the detention and torture of the inhabitants of the Yao villages of Molo and Taliya in 1971 on the pretext that they were harbouring dissidents (Williams, 1978: 259). Molo and

[28] Speech given on 13th September 1965, Malawi Information Department transcript

Taliya villages were located in Mangochi, the home district of Masauko Chipembere. As Lwanda (2006) observes:

> Relatively few people from the Central Region fell afoul of Dr Banda for political reasons, except those charged with 'political' economic misdeeds, such as theft from Dr Banda's estates. The reception book at Kikuyu [Detention Centre] showed an overwhelming preponderance of Northern and Southern Region detainees (Lwanda, 2006: 531).

As late as February 1989 Dr Kamuzu Banda announced that he had information to the effect that Tumbuka teachers were biased toward students from the north to secure Tumbuka educational superiority. Based on this unsubstantiated allegation, he decreed that all teachers from the country's three regions should teach "with immediate effect" in their respective regions "to ensure that all children in the country were adequately prepared for the future" (The Daily Times, 14 February 1989).

It was not without thought that he had earlier delayed the contentious issue of the Africanisation of the public service. The Southern and Northern Regions were at an advantage in terms of experienced and educated civil servants that would fill senior government positions to the disadvantage of the Chewa (Vail and White, 1989: 179; Chiume, 1975: 211).

These actions had the effect of bonding the opposition into camps based not on ideological differences but on ethno-regional dimensions. The dichotomy of the "ins" and "outs" which for years had determined who benefited from patronage had finally reinforced ethnic identities among the non-Chewa that eventually assisted the opposition to rally a counter-hegemonic coalition to remove him from power (Brown, 2008:14; Kaspin, 1995: 614). Amongst these were the Malawi Freedom Movement (MAFREMO) based in Tanzania. Orton Chirwa (from the north) led MAFREMO until his kidnapping by Malawi security agents in 1981 and imprisoned for life until his death in 1992. The Socialist League of Malawi (LESOMA), headquartered in Harare, Attati Mpakati (from the south) until his assassination in March 1983. Former External Affairs Minister Kanyama Chiume led the Congress for the Second Republic, also based in Tanzania (Encyclopaedia of Nations, 2012).

As can be seen, the groups did not pose a serious challenge to the government until the early 1990s when his influence as the patron; "the big man" of Malawian politics, was beginning to

wane. The concerted efforts of individuals and members from these opposition groups finally ousted him from power in 1994.

9.3 Clientelism and the Asymmetrical Redistribution of Resources

9.3.1 Partial Allotment of Property Rights and Wealth Accumulation

The initial structure that colonialism was specifically designed for wealth accumulation and expropriation by the European segment of the population, under Banda this evolved to one where selective wealth redistribution and reinvestment occurred for the purposes of political mobilisation. The Chewa heartland of the Central Region benefited disproportionately from government interventions that aimed to improve its economic standing relative to the other regions.

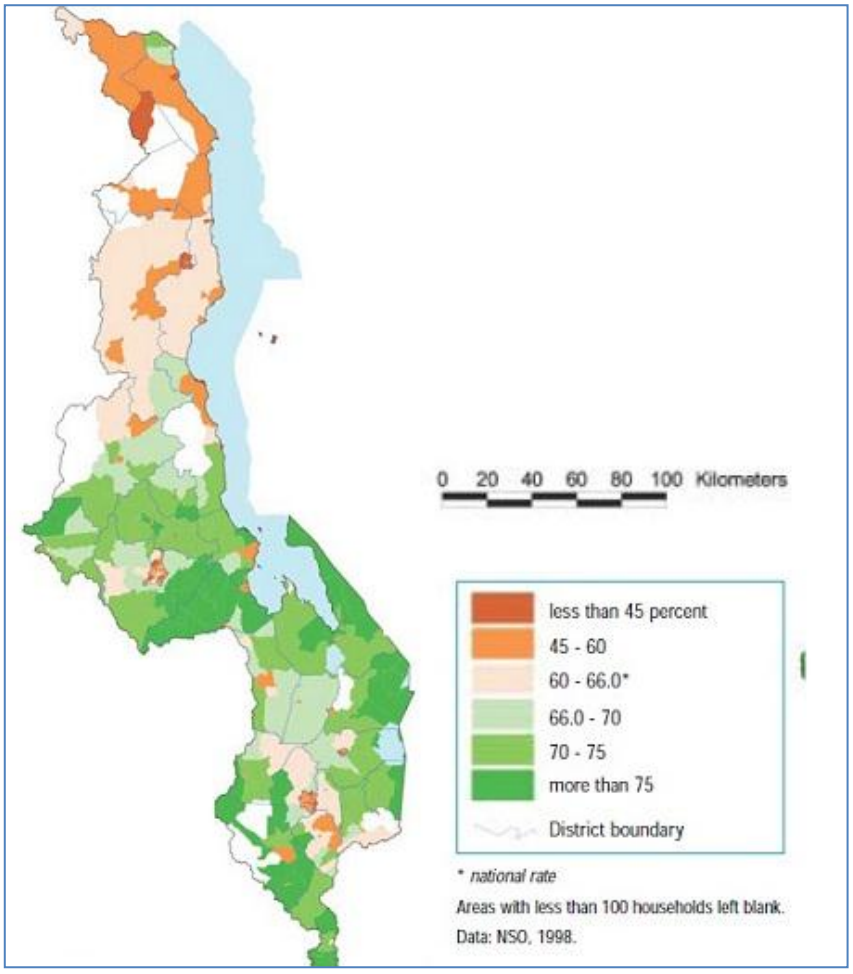
The first development plan developed in the 1960s emphasised the need for the expansion of agriculture and the export of primary produce (Power, 2010). The policy encouraged politicians and senior public servants to invest in the capital-intensive agricultural sector of large-scale estate farming. The government gave estate farmers low interest loans as starting capital with little or no security required. To facilitate this, Banda had established and strengthened parastatal institutions that provided capital and markets. The most prominent of these were the Malawi Development Corporation (MDC), Agriculture Development and Marketing Corporation (ADMARC) and Press Holdings. MDC was a development bank that invested in enterprises on behalf of the government, ADMARC reinvested profits from agriculture and provided markets and Press was at the vanguard of the economic strategy and which Banda personally controlled as his private business (Stambuli, 2002a).

Within the first decade, the estate sector grew at an annual average rate of just over 10% compared to smallholder farming which grew at 3%. However, this growth rate was highest in the Central Region. In 1967, only 11% of development funds were dispensed to the Central Region by government, but by 1972/1973 this had increased to 40%. Smallholder farmers were also encouraged to grow cash crops such as groundnuts and tobacco. ADMARC specifically was very efficient in its mandate that 36% of Malawi's agricultural export earnings, a fourfold growth rate in a decade, was by peasant farmers. Altogether, the Central Region in the same period accounted for 86 % of ADMARC’s profits (Kaspin, 1995: 606).

The transfer of the capital city from Zomba in the south to Lilongwe in the central on 1st January 1975 also improved the economic prospects of the region. This city provided the region with government services and institutions just as it had done for the Southern Region in the colonial period. Regional and rural development programme sites were established in Lilongwe (the capital) and Kasungu (Banda's home area) as focal points. For example, two of the four rural development programmes were in the centre while the north and south only had one each. Lilongwe alone had 42 of the 66 national agricultural training centres that were set up to enhance production (Kaspin, 1995: 606).

The effect of these policies can be illustrated by Figure 10 which illustrates data from the 1998 census; four years after the democratic elections. The proportion of the population considered economically active such as farmers, employees, family-business workers and the self-employed were concentrated in the districts of the Central Region (NSO, 1998).

Figure 10. Economically Active Individuals by Districts (1998)



Source: *NSO Data, (1998)*

The agricultural surplus bought from subsistence farmers created healthy returns for MDC, Press and ADMARC through a controlled pricing scheme that bought produce cheaply from peasants but sold it at a profit on the international markets (Kaspin, 1995). The peasants in effect subsidised Banda and his cronies through the reinvestment of the profits from the tripartite parastatals into estate agriculture as the soft loans extended to the ruling functionaries. Specifically, senior officers and politicians monopolised the lucrative burley tobacco that was monopolised from 1980 to 1990 through administrative controls of licensing and credit schemes that were inaccessible to all but a select few. The regime argued that this was a capital-intensive commodity that smallholder farmers could not meet the high standard of quality for production. This policy was dispelled when a in 1990, the World Bank and IMF insisted on the establishment of a smallholder burley scheme that allocated licenses for production of 1,500 tons of burley to smallholders on customary land. The burley allocation increased to 3,000 tons in 1991, and to 7,000 tons in 1992 due to the high quality of production (Ng'ong'ola, 1996: 6).

Despite constant pressure for reform in the interest of better market efficiency and effective public management, the political elites resisted all attempts to revise this system. In this environment, political exigencies played a key role in determining the outcome of policies and the implementation of structural reforms. Structural measures were superficially implemented and thus did not have a permanent presence or any notable change on administrative efficiency. Political elites were highly resistant to reform because they utilised state resources as a source for illicit wealth accumulation. A quote from foreign consultant illustrates this:

> It has been nowhere anywhere near as easy as we thought. The idea of spreading ownership has failed so far. We have realised that privatisation is more a political exercise than a financial one. It's basically about re-allocating power-and that's tricky (The Financial Times, August 30, 1989).

By the mid-1980s and early 1990s, the delicate economic balance had begun to unravel. Banda at the time was an ailing president who did not have succession plans for neither the country nor this vast enterprise that he personally managed. The structure of Press Group of companies, which among other parastatal agencies borrowed heavily from the government, became extremely worrying to donors because the collapse of this intricate financial web would translate to a financial disaster for the country. For example, as early as 1980, the

company had an overdraft of nearly MK 100 million and a net loss of MK 12 million (Press Website 2012, van Donge, 2002). After the elections of 1994 the new leadership privatised Press at the insistence of donors, a process that was controversial and wrought with political manoeuvring and questionable decisions.

.9.3.2 Particularistic Regulations, Political Mobilisation and State Capture

Banda's administration cannot be separated from his personal financial empire. It had its origins in the form of a trust (Press Trust) established by Kamuzu Banda and the Malawi Congress Party in 1956 "in trust for the nation". President Banda secured 4999 shares and, the party's Secretary General Aleke Banda held one. The Trust was registered as a Limited company called Malawi Press Limited and had its first investment in Malawi News, the mouthpiece for Malawi Congress Party. In 1969, the company diversified into farming and from then into other ventures. With the ownership of these shares and aided by the law, he strategically built a financial empire by obstructing and eliminating business rivals while dispensing patronage through the incorporation of his supporters into his economic sphere of influence. The Press group of companies were consolidated under Press Holdings, which run the conglomerate.

The development of Press Holdings was a political milestone that had significance in the development of Malawian politics and the existence of corruption in the one party state. Immediately after independence, Kamuzu Banda methodically removed business rivals from sectors where his prospective business interests were to operate. For instance, in April 1965 the Malawi Land Bill was passes in parliament. It enabled the government to take possession, control the use, or increase the rent of private land. The initial *raison d'être* was to appropriate private agricultural land (generally owned by European settlers) and redistribute it to the poor. The subsequent Act accorded the president with authority to "acquire any land, owned by anyone, in towns or in the rural areas, by force" (Williams, 1978: 244). Banda as the Minister responsible for Agriculture, assured the national assembly that "no matter how small the piece of land, I am going to sign the papers myself" (*ibid*) and a prerogative which he diligently exercised and abused for his personal benefit. A pertinent example was his acknowledgment to the legislature on 16th March 1971 of how he had received a "gift" of a portion of land from the directors of a European company that he had identified for

appropriation. He was so impressed by the gesture that he reversed his decision and returned the land to the owners (*Ibid*: 245).

. At independence, he acquired at least 15 large estates on which he proceeded to grow over 40% of the country's major cash crop of tobacco in the following years (Carver, 1990, 19). The use of state structures to gain privately also extended to commercial interests. Through an extensive licensing regime, Banda had the authority to permit or forbid any business entity from operating anywhere within the republic. All non-indigenous wholesale and retail traders, particularly those of Asian descent, were removed from rural areas ostensibly on the pretext of stimulating the entry of indigenous Malawians into the private sector. By the end of 1968 Kamuzu Banda directed parliament to withdraw government interests from a joint venture between Brooker Malawi Limited, an international concern that operated in retail and wholesale distribution in the country and the Malawi Development Corporation. Brooker was derided by Banda for raising prices, an accusation that was unsubstantiated. When the partnership was finally dissolved, he proceeded to acquire majority shares in the company through Press Trust. The removal of non-Malawian enterprises in the rural areas and the acquisition of Brooker's controlling interests had effectively placed him as the country's chief distributor, retailer and wholesaler of consumables under the McConnells and Peoples Trading Centre brands.

Press Holdings' assets grew with its investments in food production, financial markets, industry and properties. Its investments in the financial sector included considerable shares in the National Insurance Company (65%) and the two major banks; Commercial Bank of Malawi (40% shareholding) and National Bank of Malawi (38.4%). Throughout the 1970s, Press was at the centre of tobacco farming and in so doing added to the profit margin of the company. Of importance were the 42% shares in Limbe Leaf Corporation, the major tobacco buying company in Malawi in partnership with Universal Tobacco (Philip Morris) who owned the remaining 58% of the shares. Thus, with this arrangement "Press farmed tobacco, Press traded in tobacco, and Press was instrumental in financing the growing of tobacco (van Donge, 2002: 657) against the backdrop government policies that favoured tobacco farming as Malawi's main export commodity.

The financial returns were such that the total gross turnover was one third of the country's GDP. At the height of its success, its growth was such that it employed 10% of formal sector workers, or over 23,000 employees, in the 1970s and 1980s.

This financial empire grew into a convoluted financial complex that subsisted and thrived on cross financing and protectionism between its international partners, private establishments and the government. Between 1983 and 1993, the company's pre-tax profits were MK 177 million with an increase in shareholder funding from MK 4 million to MK 587 million over the same decade (van Donge, 2002).

These impressive gains concealed an elaborate web of illicit capital accumulation and abuse of power. Typical of the "big man" neopatrimonial status politics, Banda's political and economic reach was uncontested. Incidents of bribery by or of the political elite were not visible or publically discussed because of strict censorship laws and the climate of fear that pervaded. For example, in 1984 the Malawi government illegally transferred bad debts amounting to US $39 million from Press Corporation to Commercial Bank of Malawi. Both companies had John Tembo as their Chairman. In the 1990's, the government transferred 6 million shares held by Press Corporation in the loss making Dwangwa Sugar Corporation to the government in exchange for a state issued treasury cheque for a nominal. Lynod Chakakala Chaziya (from the central) was both Chairman of Press Corporation and Minister of Finance at the time (Stambuli, 2002a). The arrest of Aleke Banda, the first Director of Press Holdings, in 1980 gave proof that Banda was involved in fraud and corruption. He was detained without trial for twelve years for questioning the withdrawal of US $ 3.3 million from Press Holdings for Banda's personal use. Another notable case was that of Mkwapatira Mhango. Banda's security agents assassinated him on October 13, 1989 in Zambia for exposing the president's corrupt behaviour (Carver, 1990).

Clearly, Kamuzu's influence in both the government and the conglomerate streamlined business operations and contributed to the growth of Press by developing an environment for his own personal benefit. Specifically, laws were enacted to protect his clothes-making interests by prohibiting the sale of imported second hand clothes. He protected his industries, which were joint ventures with international companies such as Carlsberg, Coca Cola and the sugar making company LONRO to create a monopoly for Press (Power, 2010). In addition to this, there was an unwritten rule that the auction floors, the main avenue for the sale and

exportation of tobacco, should auction tobacco that belonged to Banda and his very close associates first to get the best prices before anyone else's was sold.

With regard to the private sector, patron-client relationships also existed for the benefit of Kamuzu Banda and his cronies. The government required that all members of business associations and bodies should align themselves to the party. For example, the government formed the African Business Association of Malawi (ABAM) in 1975 to transform the economy in favour of African owned businesses. The relationship between ABAM and the government was such that it periodically donated finances to the president personally and the party in general and in return was awarded business contracts. Ng'oma (2010) quotes the Chairman of the association as having said:

> What we should always remember is that we all belong to the MCP and without the MCP ABAM would not be formed and be where it is today ... We must contribute business services to the national development programmes loyally and diligently. It is also our duty to rally, support the MCP, government and above all, the Ngwazi, financially and materially (Ng'oma, 2010: 174).

Ng'oma observes that all office holders and members who were seen as politically problematic were removed and their business interests confiscated on instruction from political leaders (*Ibid*). Such was the case of Bakili Muluzi when he fell out of favour with Kamuzu Banda.

For actions such as these, the financial interests of Banda and his sycophants extended in all sectors of the economy across the country. It may appear as a contradiction as to why corruption at the lower levers of the administration was limited. The power differentials between the "haves" and "have nots" that maintained the system of patronage had, to a certain extent, some functional outcomes for the economic development of Malawi and the progress of the country's administrative institutions. Based on the fact that there was financial integration and a lack of distinction between private property and that of the state; the personalised nature of the way he merged his business concerns with the economic policies and institutions of the country created a very efficient and focused development agenda. The cross shareholding amongst the Press group of companies with government entities provided a forum where Board members and government officials conferred on development programmes and policies that were mutually beneficial; therefore leading to consistent and uniform economic strategies (van Donge, 2002).

Kamuzu Banda also demanded financial probity from his employees-in both government and his Press group of companies. Corruption, fraud or embezzlement by junior level public servants was synonymous with challenging Kamuzu Banda's authority. The public service therefore became an institution known for its discipline as financial corruption was almost non-existent due to the fact that penalties for stealing from Kamuzu were extremely arbitrary and severe. Perpetrators were relegated to *kumanda* (the graveyard) as prison was euphemistically referred to due to the harsh and unbearable conditions that convicts were subjected to which at times resulted in death [Interview: Nkhulande]. Banda's government was very careful to placate and motivate public servants to prevent the repeat of the 1960s riots. Although salaries were low, all public servants had benefits depending on their rank. These benefits ranged from subsidised institutional housing, transport, free health care and periodic training. The economy was artificially managed to control importation of goods, the externalisation of foreign exchange and maintaining a low inflation rate thereby keeping the standards of living for some manageable.

These methods translated into the fiscal prudence and financial discipline that contributed to an impressive growth in Malawi's economy in the 1960s and 1970s. The decline of the positive financial gains began in 1978 with a 39% drop in export prices. From 1980 to 1994, Malawi's financial position worsened as increases in transport costs, oil prices, unchecked elite consumption and drought led to economic, social and political pressures that eventually led to Malawi's conversion to a multi-party democracy in 1994 (Freeman, 2005: 5).

9.4 Bifurcated State Revisited: Appropriation of Horizontal Relations

The MCP government was very aware of the benefits that culture and tradition had on Malawian politics. For the 30 years after the cabinet crisis, the president had relied on both the conventional machinery of formal state instruments and purposefully choreographed traditional symbolism that specifically promoted cultural values to control the nation. The Chewa and affiliated Nyanja or Mang'anja tribes were the largest ethno-linguistic group at independence at 50.2% of the population (National Statistical Office, 1966). Historically, Chief Mwase of the Chewa presided over a Maravi Empire that covered parts of Mozambique, Malawi and Zambia before missionary and colonial settlements of the early 1800s. Kamuzu used this history to claim Chewa superiority over groups (Chiume, 1982:190-

191). His argument was that the promotion of Chewa customs and traditions was a historical right.

The adoption of Chichewa/Chinyanja as the national language in 1966 marked the launch of the "Chewanisation" of the country as a calculated step to create a national identity that was synonymous with his tribal affiliation (Kaspin, 1995). Primarily, Chinyanja was renamed Chichewa in 1966 to emphasise the tribal association. To complement this action, a Chichewa Board was formed to standardise this language and a Chichewa Syllabus Committee was created in 1969 to monitor and control the examinations of the language used in secondary and tertiary institutions. To ensure that the population complied, Banda's paramilitary Malawi Young Pioneers supervised and taught the language at schools (Moto, 2009: 33-51). Lwanda asserts that Banda's motivation was to create parity between the Tumbuka educational superiority and the Chewas who were not as academically capable (Lwanda, 1993: 181).

To appeal to the rural masses, the Malawi Congress Party manipulated Banda's image into that of a traditional African leader by associating his official position with that of the village the elder, known as the *mwinidziko* in Chewa culture (the owner of the land). Principally, Banda had assimilated the image of a senior authority figure (*Ngwazi*-the wise conqueror) and*nkhoswe* or *mwinimbumba* (the uncle of the nation) to appeal to the cultural sentiments of deference to leadership.[29] The epithets and practices had conveyed an image of authority and status, and with the concomitant autocratic statutory powers and extensive business interests, infused into the minds of the populace an enigmatic personality of the "big man" of Malawi. State resources therefore became an extension of his personage.

9.4.1 Decentralised Despotism: Traditional Institutions as Structures for Clientelism

Mamdani's (1996) perception of "decentralised despotism" of developing states applied to the Malawian context to a high degree. As indicated above, Banda extolled the virtues of African culture following the governance model of colonial rule. By perpetuating traditional institutions within the modern system of governance, the paradigms of the colonial

[29] In matri-focal Chewa cultural practices, it is the uncle who presides over the children, not the father. The image of *nkhoswe of the nation* has a significant denotation in that he effectively became the major influence in the affairs of the every one.

government that created the dual formal and informal influences for the modern Weberian legal-rational state remained.

After independence, the government had retained the structures of the Traditional Authorities through the Chiefs Act (1967) but seriously curtailed their powers. They were no longer semi-autonomous judicial agents as was the case during colonial rule (Chiweza, 2007). Although they had been denuded of much of the previous official powers, chiefs were members of the party and had to submit to the authority of the MCP through the Office of the President and Cabinet by default. The president also retained the power to appoint or dismiss them at will. As such, they acted as agents of the Malawi Congress Party. In justifying this strategy, he is quoted as saying: "People in the villages are still living in the old days. To them the Chief must rule. So they wanted that kind of President" (Short, 197: 282).

From the beginning of his presidency, Kamuzu Banda presented himself as part paramount chief and part mystic with qualities of infinite wisdom and bravery, but most importantly a person of honour and high standing in terms of financial capacity. As Short observes, "He was like one of the old Maravi kings, complete with divine right and authority" (*Ibid*: 281). He was known as the *boma* (the government) personified, the incarnation of the state. The merging of his private persona of an elderly and wise man with the powers of a chiefly custodian had the advantage of appeal for the rural masses. His academic and professional qualifications, which were by any standard very superior in comparison to those of his cabinet, the European colonial administrators or African administrative personnel, exalted his image as a political genius and highly competent public servant. Prior to independence, the Malawi Congress Party identified him for his characteristics of chiefly and elderly presence in order to appeal to the traditional loyalties of the indigenous population. This merger of the two personas personified the hybridity and "schizophrenic" nature of the state [Interview: Kabondo].

Traditional Authorities as custodians of culture and socialising agents of the rural population were central to this project. The government gave Senior chiefs such as Kaomba of Kasungu and Mbelwa of Chitipa subsidies and other financial incentives as "an appreciation" for their "good" leadership [Interview: Chipenda]. The resultant amalgam of indigenous practices and the modern system of government shaped the attitudes and beliefs of the public servants.

This authority structure, following indigenous practices, was dependant on the respect and reverence of the leadership. Traditional praise songs promulgated Banda's bravery, courage and intelligence while denigrating the personalities of his detractors. These were performed at all official functions and broadcasted in the national media. The Banda political machinery encouraged the deification of the president and the respect of the elder authority figures of the administration. In his role as "the traditional chief," he utilised the long held practice of giving tribute as an apparatus of extraction through *mphatso za Kamuzu* (gifts to Kamuzu), a forced campaign that compelled citizens to provide gifts to him, which in turn were utilised to finance patronage. Members of the Youth League extorted these donations and gave them to him during his annual crop inspection tour. The difference between giving a traditional chief a gift and the practice of donating to Kamuzu was that the latter was compulsory than voluntary because collections were usually accompanied by violence. Reminiscent of the colonial agents during tax collection, overzealous members of the Youth League would confiscate anything of value including foodstuffs and farm animals. In urban areas, the gifts consisted more of cash "donations". In public offices, it was the practice to deduct the "donations" from salaries of government employees. It was compulsory for public officers to donate.

At regular intervals, the President would donate some of the "gifts" he received such farm produce to hospitals and schools for the benefit of his people. His immediate family members were given monthly stipends and he had constructed residences across the country where his favourite *mbumbas* (people) occupied the homes rent-free. He sent his most ardent followers to western countries on sightseeing tours.

After Banda achieved absolute control over the legislature, the executive and the party, the next step was to control the judiciary which had exhibited relative independence since independence. This was achieved through promoting the virtues of the traditional systems of justice. In May 1962, the Local Courts Bill was tabled in the legislative council under the argument that chiefs during colonialism acted only to please the commissioner for the fear of sanctions. The Commissioner was the developer, executor of legislation and arbitrator in disputes, which often were in favour of European defendants.[30] Banda was of the opinion that the British magistrates, who continued to serve in the judicial hierarchy soon after

[30] These sentiments were articulated at length by non other than Orton Chirwa who was instrumental in developing the Bill, during the Legislative Council meeting of 29th May 1962.

independence, did not understand African jurisprudence. This perceived disparity concerning African and Western justice necessitated intervention that would bridge the gulf.[31] It had been his opinion from the onset that African justice did not dwell on the technicalities as was of the position of Western law, which often led to a number of acquittals that should not have occurred.[32] The defining moment was in 1969 when a British Judge by the name of D.D. Bolt acquitted five men who had been arrested for politically motivated murders. Dr Banda expressed his belief a few days later; "those people are not going to be let loose. Not let loose. I am in charge and I am not from England either...This was not the case for European judges or magistrates who use technicalities…which are not applicable here" he commented (Carver, 1990: 31; Short, 270). Banda immediately proceeded to implement radical reforms to the local courts system and developed a parallel judicial institution that was to rival the formal courts.

Unlike the local courts under the colonialists that had heard cases of petty theft, adultery, minor land disputes, violence, witchcraft and family disagreements (Lipunga, 2006), Kamuzu insisted that the traditional courts should also try cases of treason, theft and embezzlement by public servants. Under these traditional courts, the accused were not permitted legal representation and nor did they have access to prosecution evidence against which to mount a defence (Carver, 1990; Wanda, 1982). Banda had direct control of the judiciary as the Minister of Justice and had the mandate to decide on behalf of the Government in which judicial system an accused would be tried and whether he would grant *post facto* the right to appeal the verdict through the National Traditional Court of Appeal. The president had the right to review all verdicts and did not hesitate in abusing this prerogative. On several occasions, he overturned "not guilty verdicts announcing that he knew perfectly well the man was guilty and would make sure that he was duly punished" (Williams, 1978: 252). The sentences proffered by the Traditional Courts inclined toward verdicts that were in line with the Banda's philosophy of justice; where the lack of evidence "did not necessarily mean lack of guilt". Banda regularly proclaimed that under traditional jurisprudence, if you threaten a

[31] Hansard, Legislative Assembly Zomba, 29th May 1962 p. 197
[32] Hansard, Legislative Assembly, Zomba, 7th October 1965, p. 190

man with death and the man died, you were guilty of the murder regardless of whether evidence existed or not.[33]

Such was the case in 1976 of Albert Muwalo (Secretary General of the MCP) and Focus Gwede (Head of the Special Branch), who were charged, convicted and hanged for treason. In the ruling over the admissibility of anonymous letters as evidence, the court said:

> We would mention that this Court is a Court not only of law but also of custom. It is a trite observation at Malawi custom that there is *no smoke without fire*. This observation is as true today as it was 50, 70, or a 100 years ago (Carvier, 1990).

The influence of Banda in the court system consequently led to many cases of abuse of power. The duplicitous nature of this parallel system often condemned individuals based on dubious circumstantial evidence such as rumours, anonymous letters and unsupported allegations. The traditional courts became the tool used against political opponents regardless of the veracity of the evidence presented against the accused.

One of the most extraordinary cases tried under this system was that of Mr Orton Chirwa, the one-time Minister of Justice and Attorney General in the early years and his wife Mrs Vera Chirwa; a couple that had fallen out of Banda's favour during the cabinet crisis. Security agents kidnapped the couple from Zambia in 1981 and brought back to stand trial in Malawi for treason (Immick *et al,* 2003: 51). They arrested for having "prepared, endeavoured or conspired to overthrow the lawfully constituted Government Republic of Malawi by force or other unlawful means" (The Daily Times, July 29, 1982). At the beginning of the trial the Chairman of the Court, Chief Nazombe is quoted to have said: "it [had] been discussed with the head of this country and he has put us here to try troublesome people like you" (Chirwa, 2007: 99). After a nine-month trial that produced conflicting evidence and questionable testimony from "witnesses," the court agreed that the state did not make its case. However, the court reached a verdict of guilty and they were sentenced to death. Upon their appeal to the National Traditional Court of Appeal, the justices observed again the glaring inconsistencies in the legal process. Despite finding these major inconsistencies, the Court of Appeal upheld the lower court's decision based on the doctrine of traditional justice in

[33] This theme was spoken of at length before the submission of the proposals for the amended Local Courts Act. For example through a speech in Nkhata bay, 22nd August 1965 and 7th October 1965, recorded in the MBC transcripts.

February 1984. It was only after international condemnation that their sentence was commuted to life imprisonment (Chirwa, 2007).

This case offers support for the argument that although the system had the facade of legality it was paradoxically corrupt. The formal system for justice was manipulated for illegitimate ends to assuage the whimsical demands of Dr Banda. There was an unequivocal conflict of interest in his personal and official capacities due to the fact that he was associated with the case as the Minister of Justice, the President of the Republic and also privately as a political adversary to Mr Chirwa.

9.5 Conclusions

The transfer of political authority from the British to the indigenous leaders was not only the replacement of colonisers with African elites, but consolidated clientelism under neopatrimonial rule as a mode of governance in the new dispensation. The methods for the consolidation of power in the respective political hegemonies of colonial and post-colonial administrations were similar. These influenced subsequent economic and political strategies for the benefit of some groups over others.

The misuse of laws, regulations and procedures was evident in the preferential treatment that leaders had for members of their own ethno-regional grouping. Government services and resources were apportioned to cronies, family members and sycophants for maintaining patron-client relationships. Banda protected these interests by prohibiting competition through extra-judicial methods.

In Heidenheimer's (2002) distinctions of black, grey and white corruption, corruption in Banda's era has the characteristics of grey corruption. "Grey" corruption meant that the selected number of political elites viewed corrupt public servant behaviour as contemptuous but the public reaction was that of ambivalence with regard to grand corruption. Banda succeeded in forming an administration based on the principals of the ruling elite. Gramsci's (1971) argument that a ruling class consolidates and perpetuates its power by influencing others to adopt its moral, political, and cultural values clearly applies in Malawi during the one party era. Central to Banda's politics was the utilisation of ideology, culture, traditions and norms of the ruling system of *Kamuzuism*.

The elite misappropriated government resources with impunity for their own private gain and for political mobilisation. Utilising Amundsen's (2000) typology of corrupt practices, it is observable the *abuse of power* depended on legal instruments, however degenerated the process to draft these may have been, to legitimise political action for the undue preferential treatment and unfair advantage of specific groups or individuals. The incumbents benefited in general, through a legislative process that used intimidation and violence, a judiciary that was partial in interpreting unjust laws and the dominant elite that ensured that the flawed regulations were complied with. Coercion to ensure compliance was akin to legislated *extortion* as violence and punishments usually followed. The endorsement or rubber-stamping of already known outcomes of the legal and legislative processes rendered the actions of these governments corrupt in that the process was not authentic and legal-rational. The legal framework had effectively disguised illicit benefit and accumulation and the protection of this system of extraction from political and personal contestations by other actors. In reference to the post-independence Malawi, the acknowledged blurred boundaries between Banda's official position as President and the private person provided the mechanism where legitimate structures were utilised illegitimately for private gain and power preservation.

Banda gained privately from these transactions. "Private" in this case denotes a political structure that was highly personalised by and for the benefit of his patron-client relationships. His mode of operation introduced the culture of hero worship and the illegal (and legal) utilisation of public structures and resources by political leaders.

Although there were negative effects of this system of political mobilisation, there were also positive attributes in accordance with the theories of functionalism. For instance, patronage had created relative peace for thirty years. The different political factions had reached an uneasy equilibrium that minimised acrimonious contestations. Secondly, corruption was not evident at the lower levels of the administration. The president controlled the levers of government to such an extent that petty corruption was minimal as compared to grand corruption. The totalitarian nature of the state ensured that grand corruption by the elites and clientelistic political mobilisation were financed by illicit wealth accumulation and redistribution (Moody-Stuart, 1994; Szeftel, 2000; Fjeldstad *et al*, 2003: *xi*). Borrowing from Gramscian logic, Banda's political economy derived its legitimacy through his personal rule

of ideologically driven idiosyncrasies that propelled his brand of ethno-regional politics that in turn maintained a peaceful co-existence amongst groups.

Chapter Ten

Clientelism and Neopatrimony under the UDF

10.0 Introduction

John Mbaku's (1976) assertion that corrupt transactions follow rules of the game that determine the direction of political action is illustrated by the dynamics of reconstituted patron-client relationships after the elections of 1994. The perception by the public was that corruption in the decade after the multi-party elections had expanded to unprecedented levels (Cammack, 2004; Brown, 2008; Chirwa, 2008). This thesis argues that the post-1994 administration reconfigured the rules of the game of political mobilisation to correspond with the prevailing political context. The discussion below aims to answer why and offers insights into the political processes during the transitional period that contributed to this. It contends that corruption was far from arbitrary and incidental. The governance model followed by Malawian political elites in consolidating and validating their authority was the reinvention of earlier methods of neopatrimony in the democratic dispensation. What had changed was the adaptation of patron-client relationships by restructuring these rules into new interactions.

10.1 Background to the Transition and Governance Reforms

Banda's economic policies together with external shocks rapidly weakened the financial position of the Government of Malawi in the 1980s. The real compensation in the public sector declined by over 50% between 1986 and 1987 and the real GDP had declined significantly and the resultant inflation accelerated the deterioration of fiscal and financial accounts until there was a change of government in 1994 (Valentine, 2003:5). Botchwey*et al* (1998) inform us that by 1993 the government was forced to divert resources from other budgetary plans to the importation of food to minimise the effects of a severe drought that had reduced the staple maize output by 60%. The deteriorating production of the agricultural sector contributed to a 20% devaluation of the currency and eroded national wage levels more. The resultant effect was unprecedented riots and labour unrest in the country's major cities that accelerated the call for the change of government. The administration responded by increasing the public sector wage bill by 68% to pacify public servants who were at the forefront of the social unrest (Botchwey*et al*, 1998:75). However, the patron-client economic opportunity differentials were still evident when senior officials received an increment of up to 80%

compared to mid-level government employees who received increases of 50% and the vast majority of government workers in already low-paying clerical and technical positions received an inclement that was pegged at the devaluation rate (Page, 1992: 30). The deteriorating political and economic situation necessitated the withdrawal of aid by the donor community to force political changes.

10.1.1 The Change: Toward Good Governance

The inability of good governance to take hold on the continent is a matter of constant academic scrutiny (Dia, 1996; Bayart, 1996). The political changes that occurred in the 1990s in Africa have raised questions as to whether these were genuine or cosmetic. For example, Smith (1986) has criticised these reforms by explaining that they "deprive local histories of their integrity and specificity thereby making local actors little more than the pawns of outside forces" (Smith, 1986:35) while Joseph (1998) posits that the political changes were "virtual" in that they were not really embedded into the traditions of democratic political processes.

Although the 1992 civil unrest is often portrayed as internally driven, the initial sparks however had a very strong exogenous dimension (Brown, 2004). The drivers for reform eventually took on a "top down" elitist characteristic that neglected local political and social realities. This lack of imbeddedness for a popular ideological revolution had long lasting consequences and contributed to misrule and elite corruption under democracy.

The push toward democracy was encouraged by Western institutions, which after the disintegration of communism, had no need for supporting the Banda regime as a strategic ally. From the late 1980s, international pressure became relentless for change and by December 1991, most of the donor community had either reduced or withdrawn their financial assistance to Malawi altogether. The government weathered the storm until the donor Consultative Group meeting held in Paris from 11 to 13th May 1992, under the auspices of the World Bank, denied the Malawi government US $800 million in balance-of-payments support until significant political reform had been implemented (Brown, 2004:712).

The pressure from the clergy, the most vociferous civil society group, also intensified. The first noteworthy attempt was Pope John Paul II's visit to Malawi in 1989. Following the failure to secure a commitment to the reforms from the leadership, the Pope instructed

Catholic bishops to take a more aggressive and critical stance on social and political issues. Cullen argues that the continued silence and lack of action by the Bishops prompted the Pope to summon them to a meeting in Rome where he again reiterated the need to push for action. This pressure prompted the Catholic Bishops to write the "Lantern" letter to the congregation (Cullen, 1994: 36). The Catholic Church diocese, on instruction from the bishops, read the "Lantern" in all Catholic churches on 8 March 1992 simultaneously. The letter criticised the government for its human rights record, social inequalities and lack of democratic freedoms. It further emphasised on the problems associated with elite corruption, abuse of power and neopatrimonial rule in Malawi. All letters were confiscated and labelled "seditious" by the security apparatus. The indirect protest by the bishops fizzled until University of Malawi students staged a protest against the regime on 16th March 1992.

Following a donor sponsored meeting of approximately 75 exiles in Zambia in March 1992, Chakufwa Chihana, a trade unionist from the Northern Region, was mandated to lead the internal opposition to Banda's rule in Malawi (Brown, 2004). The reform process had led to the formation of two pressure groups, the United Democratic Front (UDF), chaired by Bakili Muluzi and comprising mostly businesspersons from the Southern Region and the Alliance for Democracy (AFORD), led by the relatively unknown Chakufwa Chihana, with a membership comprising mostly of intellectuals from the Northern Region. The configuration of AFORD'S executive committee also played a contributory role in its later marginalisation and identification as party from the "North". The Phwezi Group, as they were known, included notables such as Denis Nkhwazi, an educator turned businessperson, law lecturer McNight Machika, and Mupa Shumba, a university lecturer. By nature, these networks excluded the rural and the less educated, a factor later that later limited AFORD's Central and Southern Region penetration (Lwanda, 2006:532).

The UDF on the other hand comprised of a business petit bourgeoisie whose members had been incarcerated at one time or another by the Banda regime. This group, known as the *Zomba mafia*, had deep ties and an extensive countrywide network that followed trading routes and posts. For this reason, they were able to arouse popular support especially in the populous Southern Region where the leadership originated.

The formation of the pressure groups set in motion events that would divide the country along ethno-regional lines-one of the most considerable reasons for politics of clientelism that

existed in the perpetuation of Malawi as a neopatrimonial state. When Banda finally acquiesced to political reforms, there was still some reluctance to embrace multi-party politics. The MCP, with pressure from the international community, called for a referendum in October 1992 for the country to decide on the system of government. In the June of 1993, voters expressed a preference for multiparty politics when more than four-fifths of the registered electorate from the Northern and Southern Regions combined voted for a multiparty system. It is notable that almost two-thirds of the voting population in the Central Region expressed a preference for continued single-party rule under the MCP. Politicians capitalized on this to build regional and district support that often channelled ethnic frictions and antagonism of various factional groups (Khembo, 2006, 3). The referendum results exposed the emerging dynamics under multi-party politics that would associate ethnic dominance and economic relationships with power, authority and access to resources that were characteristic of the grand corruption scandals by political elites in the post-1994 period.

When AFORD and UDF finally registered as political parties and contested the Presidential and Parliamentary elections of 1994, ethno-regional political identities that had emerged during colonialism and had been manipulated by Banda were now correlated with political parties. This played a key role in grand corruption and illicit redistribution of public resources in the post-1994 years [Interview: Nkhulande].

The problem with this top-down approach was that the everyday bread and butter challenges that faced the ordinary Malawian were not prioritised and emphasis was placed on structural and institutional integrity as had been highlighted by international actors. The result was that the new agendas were received as novel "foreign concepts" which were misunderstood at best by the locals and at worst openly ridiculed [Interview: Liwonde]. The absence of a nationwide uprising that corresponded with a collective stance meant that the ideological significance behind the concepts of change were lost to the majority of Malawians, although voters did vote for multiparty democracy. The ideological transformation was confined to the urban areas and more specifically to those that had some level of education, status and exposure in line with Mamdani's thinking of a bifurcated state (Mamdani: 1996). The leadership of the main body of the protests comprised of the clergy, university staff and students, workers and professionals and businesspersons who had left the masses to their own devices. To the majority, the discourse of multi-party politics and democracy was equated to notions of "war", disorder and ethnic divisions as the Banda regime had often presented them

to be [Interview: Kabondo]. This would eventually prove to be a problem in the operationalisation of concepts such as good governance, rule of law and the enactment and enforcement of the Corrupt Practices Act. As Jack Mapanje (2002) recalls:

> Of course, nobody knew what freedom and democracy meant. Banda, his inner circle and the entire MCP had taught the country, particularly the politicians, to hate multiparty politics and hunt down political opponents. They had taught the people to treat political and other rebels, dissidents and radicals as outcasts, or as the dregs of society, not as its useful and necessary members that other countries would gladly embrace (Mapanje, 2002:179).

Democracy and the reforms that followed were more as alternatives to a *status quo* that had become painful to the majority of the population, rather than a particular system of government with positive attributes. Most Malawians opted for change against continued MCP domination rather than the vote for multiparty politics *per se* (Brown, 2008:187-227).

10.2 The Governance Model: Reconfiguring the Rules of the Game

10.2.1 Structural Reforms and the Reconstruction of the Political Economy

The direct intervention by international governments and global institutions to effect change in the 1990s created the foundation for the establishment of democratic reforms pertaining to political, economic and institutional models. The structural reforms that had commenced intermittently during the 1980s were now being seriously implemented by the new government in exchange for the much needed aid. From 1994 the World Bank-and IMF-supported structural adjustment process gained momentum with the installation of the Muluzi government. The years under review showed a marked increase in the implementation of a number of Fiscal Restructuring and Deregulation Programs (FRDP) supported by the World Bank and a series of Enhanced Structural Adjustment Facilities (ESAF) supported by the IMF to revive the economy and improve efficiency in the public service (Malawi Poverty Reduction Strategy Paper 2003). The government was streamlining business registration processes, deregulating and enhancing land lease procedures with the view of eliminating barriers to investment. The transformation of domestic financial structures permitted new banking institutions such as INDEBANK and Malawi Savings Bank to increase competition in the domestic banking sector. Another keystone of the reforms was the acceleration of the privatisation programme of state sponsored institutions. ADMARC was split apart and two of its subsidiaries sold while there was partial divestiture in two others (Ng'ong'ola, 1996: 48).

The main reforms included the following:

- The repeal of the special crops act in 1995 which lifted restrictions on smallholder production of burley tobacco and allowed smallholders to generate income;
- Enactment of the Privatization Act in 1995; liberalization of banking laws and strengthening of the independence of the Reserve Bank of Malawi in 1998/99;
- Flotation of the kwacha and elimination of exchange rate restrictions in February 1994;
- Adoption of the Medium Term Expenditure Framework (MTEF) in 1997 (Malawi Poverty Reduction Strategic Paper, 2002: 1-11).

Pertaining to the transformation of public sector management, the World Bank financed an Institutional Development Project (IDP2) that was the mainstay for developing and improving upon transparency and accountability measures. The project commenced from 1994 and committed the government to the following objectives:

- Improve the effective and accountable use of public expenditures through capacity building and institutional strengthening for budget implementation and oversight and increased transparency of government institutions.
- Improve human and institutional capacity for expenditure accountability that would strengthen frontline service delivery performance, and thereby contribute to poverty reduction (Freeman, 2005).

10.2.2 Good Governance and Political Transformation

From these steps other structural reforms were soon implemented that related to deregulation, anti-corruption measures, improvements to the public procurement sector and those related to economic policy change. With regard to political transformation, the repeal of Forfeiture Act, Public Decency Dress Act, the acceptance of freedom of worship and the abolition of the Life Presidency were amongst the major reforms that opened the political space for the development of a democratic system of governance. The passing of the Registration of Political Parties (Registration and Regulation) Bill in 1993 into an act of parliament ensured that political parties were free to form and register. From a one party state in 1994, there were 29 registered by 2004 (Office of the Registrar Statistics, 2009).

A constitutional symposium held in February 1994 captured the aspirations of a cross section of Malawians on the nature of the prospective democratic dispensation. The resolutions

formed the basis for the constitution that became law on 8th May 1997.[34] The constitutional symposium had resolved to introduce the principles of a democratic state with the emphasis on the rule of law as the basis of government conduct and eradication of corruption. The constitution expressed the state's commitment to public trust and good governance which under Section 13 (o) committed the state to:

> "introduce measures that would guarantee accountability, transparency, personal integrity and financial probity and which by virtue of their effectiveness and transparency will strengthen confidence in public institutions" (The Malawi Constitution, 2002).

The new constitution contained a bill of human rights, succinctly established the separation of powers, and implicitly promoted good governance in all organs of the state. The preamble contained the following words:

> The people of Malawi-recognising the sanctity of human life and the unity of all mankind; guided by their private consciences and collective wisdom; seeking to guarantee the development and welfare of all people of Malawi, national harmony and peaceful international relations, desirous of creating a constitutional order in the Republic of Malawi based on the need for an open, democratic and accountable government: hereby adopt the Constitution of the Republic of Malawi (Malawi Constitution, 1995).

The new constitution reflected these sentiments and placed the public sector at the centre of the transformation. As Mugore (1997: 4) has pointed out, an efficient government needs an accountable and professional public service. The crucial role that public servants play in the provision of services is central to the administration of an efficient and transparent government (Amundsen, 1999:2-3). In general, the reforms reorganised how government representatives used their role as primary agents between the state and the population. Administering government policy was to have new features such as personal responsibility and discretional authority by the public servant, but under improved structures of accountability. Whereas the Banda regime was command oriented and hierarchical, the democratic systems encouraged initiative and self-restraint by state agents in accordance with the rule of law. Therefore, various laws, rules and regulations guided the proper behaviour of

[34] The first Constitution was adopted on 17th May 1994. The Constitution was provisional for one year and was redrafted with the final version being adopted in May 1997. The first Constitution was hurriedly drawn and had numerous shortfalls.

public servants in Malawi in accordance with the good governance agenda. For example, Chapter 1 (Section 7) of the Malawi Constitution declared that:

> The executive shall be responsible for the initiation of policies and legislation and for the implementation of all laws which embody the express wishes of the people of Malawi and which promote the principles of this Constitution (Malawi Constitution, 2002:8).

Despite the establishment of all these laws, procedures and institutions, the reality was to the contrary. The transitional period was characterised by rampant corruption, financial mismanagement, excessive executive dominance and overall bad governance by the ruling elite. Contrary to the principles of democracy, the incumbent political elites acted with impunity and illegitimacy. There was a conscious effort by the UDF to erode the state institutions of accountability for the preservation of its leaders. The executive arm of government was an instrument of extraction and misappropriation of public resources for private and party gain.

10.2.3 Clientelism and Neopatrimony in the Democratic Dispensation

10.2.3.2 Executive Dominance and the Personalisation of Power

The 17th May 1994 election results were indicative of the significance that ethno-regional sentiments would have in directing policy positions of government and the conduct of its agents as well as that of the opposition. Banda's MCP had succeeded in acquiring one-third of the votes for its president but this was not enough to defeat the UDF, which had 47%. AFORD on the other hand had acquired 19% of the cast votes (Kaspin, 1995). Again, the regional segmentation, as it had been with the referendum, was evident. The composition of parliament reflected this with seats demarcated along regional lines that corresponded with specific parties. It was common for all political party leaders to make decisions without subscribing to internal democratic processes. For example, in the ten years since the advent of multi-party politics, the major political parties held national conventions infrequently and only did so after pressure and criticism from its members. The UDF for instance held only three national conventions in ten years, compared to AFORD and MCP that held four each instead of the yearly conventions as the party constitutions stipulated (The Daily Times, March 1, 2005). Party politics dictated that all office bearers complied with the position of the leadership on matters of national importance. The strong cohesion of factions in the legislature and allegiance by individual members to their parties ensured voting blocs were

along regional lines. Boycotting of parliamentary sessions throughout 1996 and 1997 by opposition MPs and partisan positions held by members undermined the democratic process by changing the level of debate and due process in parliament.

Even though the UDF in 1994 had more seats in parliament than the MCP and AFORD, it was four members short of a clear majority. AFORD and MCP often used this for political purposes. They voted against the government and frustrated its efforts by boycotting parliament and frequent walkouts. The combined efforts by the two parties were a formidable challenge that presented as deliberate attempts to outmanoeuvre the government. The opposition occupied all major positions in parliamentary bodies. From May 25th to September 24th 1994, this was the position until the government utilised incentives to entice some AFORD members of parliament and its president into a coalition government. The government offered Chakufwa Chihana and five of AFORD members of parliament cabinet positions on September 24th 1994 for the UDF to have the requisite numbers to control parliament. Chihana was appointed as the second vice president, a position that had been non-existent prior and was created specifically for him without the necessary mandate from the electorate.

Although the formation of a coalition government is normal in a democracy, the difference in this case was that those that were co-opted did not really contribute much to government business. This gave credence to the argument by the media that these were "virtual" appointments that only served political ends (Joseph, 1998). This argument was strengthened when it is considered that in May 1996, Chihana pulled out of the coalition government because of rampant corruption by the UDF. However, seven AFORD MPs refused to vacate their offices because of the incentives that they were receiving from government (Meinhardt and Patel, 2003: 40). Charles Kamphulusa, a defector from the MCP once asked the nation *ndani angakane mpando wonona*? (Who can refuse a lucrative position?). The question was in response to allegations of having been "bought" by the UDF government [Interview: Kabondo].

The government thus attained the necessary numbers in parliament to effect the changes that would maintain its position of leadership and secure the Southern Region UDF as the dominant group in factional politics. The most infamous case occurred in 2002 and involved the bribery of members of parliament from all the parties in the legislature to vote for the

change of Section 83(3) of the constitution that would permit Bakili Muluzi to stand for a third term in office. The bribes ranged from MK 50,000 to MK 100,000 and were passed from Bakili Muluzi to the members of the legislature through Chakufwa Chihana of AFORD, John Tembo of MCP and some executive officers of some parastatal organisations [Interview: Anonymous]. A majority of members voted for the amendment of the constitution, but the motion was defeated because the Assembly did not have the required amount of votes to carry the motion forward. There were 128 votes needed for the amendment to pass through and 59 MPs (or 30.7%) who voted against while 125 MPs (or 65.1%) voted for the motion therefore narrowly missing the required votes [Interview: Dzayipa]. This repeated in 2003 when the Open Term Bill, a modification of the previous Third Term Bill, was presented to the House after a massive bribery campaign by the UDF. Fortunately, this was also withdrawn after universal condemnation from the population.

The co-optation of AFORD was the beginning of subverting the democratic process by compromising opposition figures in parliament through bribery. Thus, the process of inclusion in the democratic system was undermined. In 2003 alone, more than twenty-two MPs had been "abducted" (Hussein, 2005:95). From these initial acts, co-optation through corruption soon extended to other structures and soon became the main feature of multi-party politics. President Muluzi used this method very well and would often point out at public meetings that in the UDF *kaya kulikuno,* meaning that the UDF was where you could find "food" and those who resisted *atha ngati makatani;* they would lose out and wear and tear like curtains (that is, they will become poor) [Interview: Nkhulande]. In one particular case that had become widely known, the UDF Publicity Secretary was forced to admit that Muluzi had "supported" an opposition candidate "with cash and material assistance" because the opposition candidate was "a boy from home" (Englund, 2002). The population was disenfranchised by corruption when the elected representatives received bribes, a process that was contrary to the procedures and practice of a democratic government. As Warren (2006) has observed:

> [f]or an elite or group or individuals to be corrupt in the democratic sense, he or she must both profess and violate the democratic norm of inclusion. Thus, corrupt exclusion is distinguished by duplicity, a characteristic that implies not just the possibility of condemnation, but also the possibility of imminent critique: the corrupt can be called to account by their own standards. Corruption of democracy is about actions being taken out of the public eye, as a means of excluding those who have rightful claims to be included. The very

> covertness of corruption pays tribute to the violated norms (Warren, 2006: 802).

Again, as with the previous administration, largesse was associated with political stature and power. The democratic structures facilitated the dispersal and decentralisation of patronage. The practice of *kugula anthu ngati mbuzi* (buying people like goats) became the standard for political mobilisation from the highest offices of parliament all the way down to local elections; from the president down to a village chief [Interview: Nkhulande]. This form of patronage also affected the bureaucracy where resources were embezzled or fraudulently acquired to finance political elections and for self-serving. The statutory bodies were particularly vulnerable to corruption because the appointments of senior personnel were politically motivated. Appointees carried the strategy of illicit wealth accumulation for the benefit of the President. Booth (2006) noted that corruption in the bureaucracy was prevalent with examples of:

> an executive officer…[renting] his own car on behalf of his office, staff taking allowances for fictive field trips, bribes for the distribution of a deceased's estate and store clerks were selling stationery, headmasters were selling government issued exercise books for their own private benefit. These practices spread from the top of the public machinery to bottom 'with disappointed junior officers imitating their superiors" (Booth *et al*, 2006: 25).

In a review of income for various grades within the public service, Durevall and Erlandsson (2005: 14) have commented how the top echelons of the government dispensed allowances to supplement salaries at the expense of the organisation. They point out that during 2003 only 35% of the wage bill was of salaries and wages while 66% was allowances. All but the top-four levels, the allowance share varied between 69% and 74%.

Towards the third elections in 2004, deep fissures emerged in the political parties as contestations for powerful positions and access to the sources of patronage, power and status became acrimonious. In the UDF, the members of the administration that were powerful status group reference members and some who had been instrumental in resource extraction and dispensing largesse such, as Harry Thompson, Brown Mpinganjira and Aleke Banda, had withdrawn their support for the president and formed their own power centres in preparation for the 2004 elections (Chingaipe and Leftwich, 2007: 27). There were offshoot parties that branched from the UDF and MCP in the names of Congress for National Unity (CONU), People's Transformation Party (PETRA), People's Progressive Movement (PPM), Movement

for Genuine Democracy (MGODE), National Democratic Alliance (NDA) and Republican Party (RP).

The proliferation of the parties from the south diminished the influence of the UDF and with this; the president lost some of the power of patronage.

Table 8. Distribution of Seats in Parliament in 1994, 1999, 2004

Political Party	Year of Elections		
	1994	1999	2004
AFORD	North: 33 Centre: 3 South: 0	North: 28 Centre: 1 South: 0	North: 6 Centre: 0 South: 0
CONU	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 1
MCP	North: 0 Centre: 51 South: 5	North: 0 Centre: 0 South: 0	North: 0 Centre:56 South: 0
PETRA	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 1 Centre: 0 South: 0
PPM	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 5 Centre: 0 South: 1
MGODE	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 3 Centre: 0 South: 0
NDA	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 7
RP	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 6 Centre: 0 South: 9
UDF	North: 0 Centre: 0 South: 0	North: 0 Centre: 0 South: 0	North: 3 Centre: 7 South: 39

Source: *Meinhardt and Patel (2003), Malawi Electoral Commission Report (1994, 1999, 2004)*

When the personalised power by Muluzi was beginning to wane by the end of his second term, the executive subscribed to undemocratic methods to maintain its monopoly. The UDF had the control of the executive and of parliament. It proceeded to act without regard to countervailing measures. It flouted standing procedures of the legislature as in the Press Restructuring; it threatened judicial independence, and enacted laws that were beneficial for the preservation of the regime. In the later stages of the administration, the party encountered any challenges to the leadership with violence from the party's youth wing the Young Democrats [Interview: Nkhulande].

The political elites breached the constitution in a number of ways that contravened Section 12 (vi) which required agents of the state and public personnel to act within the precepts of the rule of law in public procedures and professed the equality of all citizens before judicial processes. The monopolisation of power by the executive ensured that undue influence over the judiciary and the legislature continued unabated on numerous occasions. Bribery of court justices was not so visible on a grand scale, but questionable decisions by some judges in favour of the ruling party led to the conclusion by some that they had been compromised [Interview: Chikuta]. Some of these judges were political appointments that were employed without reference to the Judicial Services Commission (JSC) as required by law (International Bar Association, 2005: 83).

The executive utilised other means to undermine the judiciary. For example, in 1997 a High Court ruling that Fred Nseula, as a Member of Parliament, could not serve as a Deputy Minister. The interpretation behind this was it was unconstitutional for an individual to hold two public offices concurrently that belonged to two separate branches of government. Even though the High Court ruled that cabinet ministers could not simultaneously serve as MPs, the government opted to ignore the ruling (Brown, 2008).

The party leadership would not tolerate any challenges to the carefully orchestrated image. By utilising power levers of control, in 2001 Justices Dunstan Mwaungulu, Anaclet Chipeta and Chimasula Phiri were suspended for acting in contravention of the executive's interests. They were accused of passing judgments that were not been favourable to the United Democratic Front government. UDF Members of Parliament moved motions to impeach the Judges for conduct unbecoming of their office. It was argued, inter alia, that Judge Mwaungulu should be removed for questioning the presidency while analysing the 1999 general election results. This, it was alleged, demonstrated political interest as his judgment revealed his partisan thinking. Judge Chimasula Phiri was accused of being a sympathiser of the breakaway political party National Democratic Alliance (NDA) president and Judge Chipeta "had lowered the dignity of parliament" by reversing the suspension order against MCP president, Gwanda Chakuamba, from parliament for "disrespecting the state president". The MPs that had introduced the motions were given cabinet posts as a reward with the attendant symbols of status and economic opportunities such as luxury cars and preferential treatment.

These actions by the ruling party were reversed only when there was international condemnation and some internal resistance (Khembo, 2004: 92).

10.2.3.2.1 Deconstruction of former Systems of Clientelism

While the anti-corruption legal framework of the post-1994 democratic state was at par with international standards, the problem was in the implementation. Weaknesses in the systems of administration were arguably exploited to benefit those in power and to maintain the UDF dominance. The creation of life chances through patronage and the resultant particularistic opportunities for economic growth were a continuation of biased policies that facilitated the dispensing of gains according to party affiliation, and in effect, according to ethno-regional lines. Not only did the bureaucrats have their own motives to engage in corrupt practices, but they were complicit in incidents that involved the political heads of departments as well. Cartier-Bresson (1997) has pointed out that when social networks mobilise a set of political, economic and social resources, they coordinate competition, hierarchy settings and solidarity to offset undesirable and unforeseeable effects of politics (Cartier-Bresson, 1997: 470). The two-part process first deconstructed the previous patron-client networks that had been developed under Banda in his thirty-year-old reign. The networks were dependent on the revenue generated by the Press group of companies and therefore the removal of Banda from politics and his control of the conglomerate would curtail his sources of legitimacy. In other words, this diminished the MCPs political standing, social legitimacy and economic positions in the clientelistic processes.

The second part was the development of favourable economic opportunities for the benefit of individuals who were affiliated to the UDF as the governing party. This was of particular significance in that the multi-party environment was conducive to the politics of domination and factional competition.

Fundamentally, after the installation of Muluzi as president in 1994, the government was determined to curtail the propagation of the portrayed image of Banda as the "big man" of Malawian politics that had developed over the 30 years of his power. His sycophants were also stripped of status and reverence to indicate the political impotence of the MCP. There was an intensive and deliberate campaign to demolish his image by denigrating Banda in the eyes of the population and therefore weakening his allure. Immediately after the elections,

Muluzi ordered Kamuzu to vacate his official residence and the press was invited to take pictures of government officials strewing beddings and personal effects on the floor. The once omnipotent former president and his cohorts were repeatedly derided on national radio as *okupha* (murders), *akuba* (thieves), *a ziphuphu* (corrupt) and immoral by the new President and his sycophants. Banda himself, now advanced in age and sickly, was ridiculed as *nkhuku ya chitopa* (a sick chicken) who was confined to his residence [Interview: Kabondo].

Within the first three years of the administration, the government removed the former presidents' name from state infrastructure such as bridges, airports and streets. The government confiscated his properties when it transpired that he had not paid for them in full. The residences of Chikoko Bay and State Lodge were transferred back to the state. These images were produced to have the profound effect on those that had lived in fear of the "great lion" presenting him as a weak human being and not as great as the party had portrayed him to be. In addition to this, there were numerous court cases against the MCP leadership. For example, on 2nd September 1996 John Tembo, his son John Tembo Jr. and former president Kamuzu Banda's confidante Cecilia Kadzamira together with three alleged assassins Chimwemwe Mputahero, Adamson Chunga and William Phakamisa were charged for conspiracy to murder (The Malawi News, September 6th 1996). In February 1997, John Tembo and four prominent MCP politicians were arrested for conspiracy to murder the six Malawian bishops who had written a letter of protest in March 1992 against the Banda regime; later the charges were withdrawn. In the same year, Banda, Cecilia Kadzamira, John Tembo, Louis Chimango (the former finance minister) and Sattar Sacranie (Banda's accountant) were arrested and charged by the Muluzi administration for defrauding the Malawi government out of US $ 5.6 million and embezzling US $ 3.7 million from Press. Dr Banda was alleged to have amassed an illegal personal fortune of GB £ 200 million during his reign as the country's president (The Sunday Herald, 2005). This was never proven in a court of law.

With the removal of the grand image, the UDF government proceeded to take control of Press that was Banda's source of patronage and wealth. The process of transferring the group of companies from the MCP to the government was very suspect and bordered on the abuse of power. The Press Reconstruction Bill was presented in Parliament on 6th November 1995, and the then Minister of Finance, Aleke Banda, urged members to dispose of the 21 day requirement for a notice to members because this was in the national interest. The Bill was

passed despite there being no quorum. Although the MCP attempted to have the judgement reversed and was initially successful in having it overturned on November 15th 1995, by January 31st 1997, the Supreme Court had sustained the earlier judgement and thus Muluzi sympathisers replaced the directors and trustees of Press. From this ruling, the MCP and Kamuzu Banda were dispossessed of their source of patronage and resource for honour and status.[35]

10.2.3.2.2 Reconfiguring the Neopatrimonial System

In trying to curtail political corruption, Section 88 of the new constitution provided that "Any business interests held by the president and members of the cabinet shall be held on their behalf in a beneficial trust". The constitution also instructed "the President and members of the cabinet shall not use their respective offices for personal gain or place themselves in a situation where their material interests conflict with the responsibilities and duties of their offices" (Constitution of the Republic of Malawi, 1994). The reality soon became evident that apart from the legal mandate that the election had conferred upon it to govern, it was imperative that they generate a system of social legitimacy for political survival.

The political environment had changed dramatically from that of Banda's government. The media was more investigative, political pluralism offered alternatives and dissent was acceptable under democracy. Since the statutory instruments of oppression that had regulated social dynamics in Kamuzu Banda's Malawi were no longer legally available or politically acceptable in the new dispensation, Muluzi's solution was to create a grandiose persona that had to equal or supersede that of the "lion of Malawi" as Kamuzu was known. Apart from associating himself with the obvious symbols of the statehood, the persona was to appeal to the majority of Malawians, a majority who were illiterate, poor and thus not acquainted with intricate issues of politics. He was *kuchitunda or kuchikweza* (a very important man) or *woyenda m'malilo* (a man of the people).With this fabricated disposition, Muluzi had the impetus to authenticate that indeed he was the important person. To achieve this validation patronage was dispensed on a grand scale. Muluzi was the benefactor of the political party and was in direct contrast to Kamuzu who demanded gifts from the population. Chirwa *et al*

[35] The way in which the political system was manipulated to dispossess the MCP of Press was captured in the case MCP and others *versus* Attorney General and Speaker of the National Assembly, High Court Civil Cause No.2074 of 1995

(2000) observed this phenomenon in reference to corruption during the Muluzi era. They state:

> Paradoxically, the government seems to be in good control of the rural population- especially in the southern district where the ruling party has the largest support. This is not because the government is effective, but rather because it has been good at buying support and deceiving the unsuspecting rural communities through the provision of agricultural inputs, especially during campaign times (Chirwa *et al* 2000:77).

Once in power, the regime proceeded to purge state institutions of personnel that were associated with the previous government. Although the process of reconstituting the public service was initially subtle in the first years of the administration, the process came to the fore in 1996 with a warning from Vice President Justin Malewezi in a speech during the installation ceremony of Bibi Abiti Chapola as Chief in Salima in September 1996. He cautioned all public servants that the government would dismiss Principal Secretaries and District Commissioners that were supporters of the opposition. Malewezi justified the replacement of opposition sympathisers by stating that the UDF had discovered that there were some public officers in the government supporting the opposition parties. He threatened that any public servant who did not support the government would have their services terminated (The Malawi News Online, 6 September 1996). One of the earliest examples reported was the unlawful substitution of the Inspector General of Police with a retired police officer from the president's home area (The Malawian News, July 14^{th,} 1994). Then followed other institutions such as ADMARC whose General Manager, Mr Kadzako was removed and replaced by Mr Makina from the Southern Region.

This trend gradually progressed to almost all senior positions in government departments and political structures that sequentially affected junior positions through a domino effect. A substantial number of Principal Secretaries, embassy personnel and departmental heads had their services terminated [Interview: Dzayipa]. The heads of key government agencies such as the national broadcaster Malawi Broadcasting Corporation (MBC), the army, the National Intelligence Bureau (NIB) Police, the civil service (SPC) and parastatals such as, ESCOM, the MDC, Press Corporation and ADMARC amongst others. This was confirmed when pubic officials were asked in the Baseline Survey (2006:22) how often in their organisation the most qualified applicant gets a job, only 45% indicated that the most qualified applicant always or usually gets the job.

Therefore, part of the corruption problem was a result of creating a grandiose image of a benevolent leader who could dispense patronage and partly by the placement of allies in key positions. The resources were illicit gains from government finances leading to incidents of corruption. Other forms of corruption, such as nepotism and favouritism, were contributory.

10.2.3.2.2.1 Formation of New Patron-Client Relationships

In chapter nine, the researcher presented the argument that factional political competition and resource accumulation had entrenched the ethno-regional contestations in politics and facilitated the abuse of power for private gain. Under multiparty politics democracy had bound together different groups in configurations via which they sought protection and benefits from each other. Van de Walle (1994) postulates that survival for this type of system depends on the utilisation of public resources by a party government to maintain the network. He contends that the leader:

> ...rules personally by controlling the flow of public revenues and selectively disbursing rewards to a narrow entourage of familial, ethnic or factional clients. He takes exclusive charge of policymaking (rather than relying on technocratic planning) and implements instructions through personal emissaries (rather than formal institutions) (Bratton and van de Walle, 1994: 474-75).

While Banda's regime had the "holy trinity" the Muluzi administration had the "Zomba mafia" as the primary status group. The Zomba Mafia (or Southern Region Mafia) was a cohesive group mostly made up of former businesspersons and victims of Banda's arbitrary detentions. The majority of members were from the Southern Region, specifically from Machinga, Mangochi, Zomba, Chiradzulu and Mulanje Districts that were instrumental in the formation of the UDF in its early stages.

Most of these detainees were former members of the Chamber of Commerce and/or were social acquaintances. Names such as Brown Mpinganjira, Bakili Muluzi, Dumbo Lemani, Patrick Mbewe, Collins Chizumila, Dennis Kambalame, Friday Jumbe, Humphrey Mvula, Clement Stambuli and Bob Khamisa and others that were later incorporated into the group often featured as primary figures implicated in the most infamous cases of grand corruption and mismanagement of resources (Lwanda, 2006: 535). These so-called senior ministers defined the agenda of the party, guided the policy direction of the government and set the pace for patron-client based political mobilisation in the multi-party era. More instrumentally,

members were conduits of corrupt transactions between the president, politicians and the public. Political corruption became so systemic and decentralised that it *was* the system of political mobilisation. For example, it was alleged in the media that in June 1995 President Bakili Muluzi, through Brown Mpinganjira, had bribed each of the 122 UDF and AFORD members of parliament with MK 50,000 to ensure block voting in parliament. Brown Mpinganjira initially denied the allegations but the president contradicted him and acknowledged that the members of parliament received the money from the poverty alleviation fund for developmental purposes. According to a key informant who was a member of parliament at the time the transaction cost the government MK 6.1 million and the funds have never been accounted for [Interview: Anonymous K].

With these early incidents, the administration had opened the floodgates. The Zomba mafia and other connected individuals used bribery and co-optation as the method of choice for political mobilisation. Those that were part of the network and affiliated to it became extremely wealthy and were reference points in exhibiting the benevolence of the party to its members. Just as the colonial administration had used patronage for promulgating the colonial philosophy, and Banda had extensively used patronage and neopatrimony; the UDF used bribery and co-optation to assimilate the opposition.

10.2.4 Democratic Governance and the Economics of Clientelism

10.2.4.1 Decentralised Systems of Illicit Wealth Accumulation and Redistribution

For clientelism to function in a politically plural society, the elites had to decentralise the accumulation and dispensing of patronage to incorporate the clientelistic system into the realities of democratic governance that advocated for the delegation of power. The basic structure for the looting and redistribution of state resources consisted of the dual processes of inclusion and exclusion; the "ins" who had the control or opportunities to access patronage and the "outs" who were unconnected to power (van de Walle, 2001; Gibson, 2002: 6). In this duality of existence, the regime exhibited the attributes of a neopatrimonial state with a legal facade. Muluzi's management of the country was, to paraphrase Advig *et al* (2001), a pyramid of upward extraction where corruption in high places was contagious to lower level officials as they followed the predatory examples and even took instructions from their principals (Andvig *et al,* 2001: 11). As a World Bank (1998) review of Malawi's anti-corruption institutional structure pointed out:

> [i]t may be that the establishment of competitive democracy has increased the scale or changed the nature of corrupt practice without strengthening countervailing political or institutional capacity either in Government or in civil society. The advent of competitive democratic practice may even have increased the incentives, and perhaps the opportunities for corrupt behaviour—a higher level of political uncertainty, the much heavier costs of multi-party election campaigns, and the need to compensate for political uncertainty by building up a capital stake through corrupt practice (World Bank, 1998: 12).

The party was highly indebted to many and the regime accepted the realities of patronage politics that demanded reciprocity of favours to those that had played their part in its ascendancy (Oliver de Sardan, 1999: 43). For this reason, Muluzi increased the number of cabinet posts from 12 during Kamuzu's reign to 34 by 1997 in addition to the employment of personal assistants to the ministers (Cammack, 2004: 69). Because factional intrigues retained their ethno-regional characteristic, opportunities such as bureaucratic appointments or government contracts went to those with political connections and familial ties. For example, an assessment of the cabinet and civil service in 1997 noted that only 20 ministries were sufficient for the country but many ministries had been deliberately duplicated and overlapped their responsibilities (*Ibid*: 64).

The example of the Ministry of Education loss of MK 187 million to elite corruption is illustrative of how Minister Cassim Chilumpha manipulated his authority for illicit wealth accumulation and redistribution (Oliver de Sardan, 1999). A syndicate of government officers, party affiliates, senior public servants, members of parliament and cabinet ministers colluded to defraud the Ministry and channel funds to supporters of former president Bakili Muluzi for use in political campaigns for the 1999 elections (The Mail and Guardian on Line, 3 August 2006). The syndicate manipulated completion certificates, invoices and receipts to award payments to ghost contractors for non-existent projects. Most notorious were Jeff wa Jeffrey, a political ally of the Minister, who was paid MK 80, 355,230.89 and Mr and Mrs Kathumba who had been given MK 24, 075,233 [Interview: Anonymous H]. As a public servant observed:

> They had to make themselves rich and they couldn't do this on their own, they had to [use] public servants whose salaries/wages were very poor/low. Now as the leaders were enriching themselves through corrupt ways, likewise, the public servants [who] were processing the payment[s] were also enriching themselves [Interview: Chipenda].

UDF members mismanaged finances with such efficiency that it led to the collapse of some parastatal organisations. The case of ADMARC and the affiliated NFRA is a case in point. By 2004 for example, ADMARC alone had lost over MK 1 billion to Muluzi in illegal transactions that negatively affected the cash flow of the institution (The Sunday Dispatch, March 21st 2004). Chief Executive Officer Friday Jumbe presided over the illegal disposal of company assets and widespread fraud in the purchase and sale of the maize stock by politicians who unlawfully benefited from the mismanagement. An investigation by the Anti-corruption Bureau, Public Accounts Committee and the audit firm Mwenelupembe, Mhango and Company discovered that connected persons sold 30,000 metric tonnes corruptly. Results indicated that by the end of 1999 ADMARC had purchased 153,739 metric tons of maize while an assessment of physical stocks showed a weight of 153,338. ADMARC's book balance showed 154,237 metric tonnes signifying an overpayment to suppliers of MK 9,592,895. In the end, over 167,000 metric tons of maize worth MK 2.9 billion was illegally sold leading to a massive famine that killed over a thousand people in 2001/2002 (The Daily Times, October 1st 2002). The NFRA was implicated in another scandal where the award of a MK 98 million tender for the repair of its grain silos in the capital Lilongwe was given to a fictitious company that had no capacity to carry out such work. The company, GWC, was awarded the tender by beating 10 other bidders including Equity Trading Company (ETC) that had been maintaining the silos since 1993. The government did not consider that GWC did not have the expertise and ETC submitted a bid of MK 98 million as well. GWC eventually supplied incorrect parts that meant that the government would need to change the whole plant at a cost of an estimated MK 300 million (The Weekend Nation September 21-22nd, 2002). Consequently, the government borrowed US $35.7 million locally to pay off NFRA debts in circumstances bordering on abuse of office and criminal negligence (The IRIN News, August 6, 2002).

Another notable case that suffered a similar fate to the point of insolvency was Shire Buslines. According to an audit report by the firm KPMG (2004) Mr Humphrey Mvula, the Executive Director and a senior UDF member of the parastatal company, had presented his own house to Shire Buslines to accommodate company personnel at a cost of MK 32, 000 a month for a year. He hired his furniture to the company's guesthouse at MK 20, 000 per month and donated of MK 5.5 million to Bakili Muluzi's Presidential Charity Fund and MK 400, 000 to the UDF party. These dubious payments were part of a number of questionable

transactions that auditors failed to verify. The total estimated cash payment during the year under audit was MK 61 million of which 50% was estimated to be payments to foreign suppliers in cash. The other 50% related to petty cash and other payments, including a transaction of MK 5.9 million that the auditors were unable to verify and had been paid to bus accident victims in 2004. "As a result of the matters observed above, we are unable to form an opinion on whether the financial statements give a true and fair view of the state of affairs of the company as of March 31 2004 and of its results for the year (then) ended," said the report (The Nation, February 3rd 2007).

As illustrated in the Table 9 below by a World Bank (1998) Country Review, the prevalence of political corruption was high leading to massive losses of public resources.

Table 9. Classification of Corruption Risks and Effects

Location of Corruption	*Prevalence*	*Information Source*	*Perceived Risks and Effects* [a/]
⇒ Buying political influence/political manipulation	High	Media, interviews	Alleged to affect political and civil service appointments, procurement, and allocation of concessions (duty-free goods, under-estimation of import taxes).
⇒ Manipulation of monetary policy	Low	Interviews	Reserve Bank described as professional but willing to misrepresent inflation rates and foreign exchange reserves.
⇒ Manipulation of fiscal policy	Low	Interviews, WB reports	
⇒ Influence the outcome of legal processes and law enforcement	Medium	Media, interviews	Medium, especially within the magistracy and the police.
⇒ Public Procurement, including contracting and privatisation	Medium	Media, interviews, WB reports	Rife throughout civil service where Malawian funds are used to purchase goods—common in project administration.
⇒ Licenses, permits, land, and concessions	Medium to High	Media, interviews	Common at the petty level—licences, permits, and land; High with respect to the allocation of import quotas (for example, sugar).
⇒ Public revenue system: —customs —taxation	High and pervasive Medium	Media, interviews, donor reports	Common at the petty level with a negative impact on, for example, foreign investment. Medium
⇒ Patronage	Medium	Media, interviews	Related with respect to civil service appointments and retention, for example, ghost workers and teachers.
⇒ Corruption at the service delivery level	High	Media, interviews	Widespread in practice, but medium in effect although if continued unabated, could have negative effect on the social contract between the governors and the governed.
⇒ Theft of state property, embezzlement or fraud	Low	Interviews	Low
⇒ Influence upon allocation of government benefits (subsidies to enterprises, access to pension funds, exemptions from taxation)	Low	Interviews	Low

Source: *The World Bank, (1998: 11)*

10.2.4.2 Particularistic Policies and Political Mobilisation

The extraction of state resources by the leadership created an environment that tolerated self-serving behaviour. The creation of opportunities for UDF members in general and specifically the elite as status groups had a policy dimension. The party utilised the voting pattern of the ethno-regionally inclined 1994 and 1999 elections to its advantage. The president openly declared in the 1999 presidential election campaign that the government would allocate development programmes only in UDF controlled areas (The Nation, March, 22nd 1999).

10.2.4.2.1 Economic Strategies and Clientelism

10.2.4.2.1.1 Access to Wealth and Redistributive Accumulation

As indicated in chapter three, Olivier de Sardan's (1999) view on the politics of redistributive accumulation that influences the behaviour of elites underscores the reasons why political actors engage in corruption for political ends. His observation is that the redistribution of resources serves the function of acquiring social legitimacy by sharing the bounty as a form of gratitude to those who in the past, when you were unimportant, weak and in need provided help assisted you (Oliver de Sardan, 1999:43). In transitional states, this is significant when the political system is establishing itself with regard to the development of networks and sharing of the loot.

Targeted redistributive accumulation through access to capital for a select group motivated much of the corruption that occurred in the transitional period. Programmes such as the Poverty Alleviation Programme (PAP) were a rich source of funding that facilitated this political mobilisation. The programme was established in 1995 from a credit-financing scheme and was a major policy shift that aimed at creating an enabling environment for the development of small and medium sized enterprises. The programme followed the recommendations by the World Bank for the government to create an entrepreneurial class of individuals that would stimulate the economy through private enterprise (Anders, 2005). Although the design of the programme was to be a revolving fund, access to credit was highly politicised with the bulk of the financial loans given to UDF supporters with no procedures for collecting repayments. The regional variances that the legacy of colonial rule had established in the existence of Small and Medium level Enterprises (SMEs) meant that the outcome of the programme would transfer resources from agriculture to commerce and the Southern Region would benefit from the diversion of resources at the expense of the

North and Central Regions. Of the 570,000 SMEs that were in existence, 54% were in the south, 31% located in the centre and 15% in the north[36] (The Daily Times, October 16th 1996).

The source of the funds was the PTA Bank line of credit of US $10 million administered by the Reserve Bank of Malawi in addition to other small amounts identified. In total, the start-up amount was MK 54 million and the Reserve Bank recommended printing more money if the demands exceeded the supply of credit. Within the first few months of its existence, more than MK 74 million was dispensed to party loyalists and ministers. The structures that were utilised to distribute the funds were the Development of Malawian Traders Trust (DEMATT), Small Enterprise Development Organisation of Malawi (SEDOM), MDC, the National Association for Business Women (NABW), the Women's World Banking (WWB), the National Association for Small and Medium Enterprises (NASME), and the Finance Company of Malawi (FINCOM). The maximum amount that an individual could get was MK 250,000 but this was often circumvented with a series of fictitious names. Strategically placed UDF loyalists headed these institutions. For example, Eunice Kazembe, the head of FINCOM, Nyandovi Kerr, the head of WWB and Victor Likaku of SEDOM were personal acquaintances of the president. The president personally guaranteed most of the substantial loans and they became unrecoverable because people simply did not pay back. For example, between 1995 and 1998, DEMATT disbursed a total of MK 33 million without the necessary paperwork to facilitate fund recovery (The Daily Times, January 19th 1998) and a DEMATT report summarised in a Daily Times article of 6 August, 1997 pointed this fact and mentioned ministers and politicians as the main beneficiaries. In the case of the MDC, by 2004 it had accumulated a debt of MK 1.07 billion to Development Bank of South Africa (DBSA), MK 471 million to the Reserve Bank of Malawi/European International Bank (EIB) and MK 157 million to EIB. Most of this debt consisted of bad loans to politicians (Ng'oma, 2010: 237).

The involvement of the state in the improving the economic and political opportunities for loyalists of the ruling party also took the turn of providing credit from semi-autonomous government entities. The Malawi Rural Finance Company (MRFC) relied on capital from the repayments of farmers who had borrowed under the Smallholder Agricultural Credit Authority (SACA) administered by the Ministry of Agriculture. During the campaign period

[36] Mzumara, G., Experts Draft Way Forward for SMEs", Daily Times, October 16, 1996.

prior to the 1994 elections, the UDF campaigned on the platform that they would forgive all debts once they ascended into power (Chirwa *et al*, 1994). This led to a rush for loans that were highly difficult to collect after the elections [Interview: Situsi Nkhoma].

The ruling party and its members had consequently destroyed these institutions by developing a culture of corruption, embezzlement and non-payment that trickled down to the lower levels of the administration. One by one, the credit facilities went under because of bad loans. FINCOM was declared insolvent in 1997. The MDC was liquidated in 2004 due to unrecoverable loans amongst other reasons (Ng'oma, 2010: 237). The political loans disbursed to UDF supporters, ministers and co-opted politicians were in essence grants.

10.2.4.2.1.2 Predatory Authority and Economic Opportunities

The system of political mobilisation was predatory with the minority preying on the majority by using the state as its engine of predation (Leftwich, 2007:100). According to the Baseline Survey, at the lower levels, 26.88% of corruptly extracted funds were shared with superiors, 20.96% with colleagues in the organisation and 24.61% was shared with politicians or political parties (MGCBS, 2006:6).

The creation of economic and political opportunities for party stalwarts was not confined to access to credit schemes alone. Government institutions such as parastatal organisations, especially those that were under the portfolios of the Zomba mafia, were systematically stripped of their assets prior to them being sold under the privatisation programme. The programme in the period under review, for example, lost over MK 360 million (US$ 3.6 million) to fraud by elites. Media reports noted "hardly any money from privatisation programme had been deposited with the Treasury as required by law" (The Daily Times, September, and 7th 2005). This was also the case of Malawi Telecomms Limited (MTL) which lost close to MK 800 million by the time it was sold [Interview: Anonymous E]. MTL executives "cooked the books to present a rosy picture of a company [that] decay[ed] to the point beyond redemption" (The Daily Times February 7th 2007).

There were also a number of cases where the Zomba mafia, other members of the party and even the president himself would intervene in the tender process to facilitate the award of contracts between individuals and the government. The abuse of the Malawi Social Action Fund (MASAF) is a case in point. MASAF was a World Bank funded self-help project

created to stimulate economic growth in communities. The project funded communities who took the initiative to provide for public infrastructure such as health centres, roads, water boreholes, and school blocks. The second phase of the project with a budget of MK 2.7 billion commenced in December 1998 and included small scale credit lending. The design of the project facilitated the timely dispersal of funds to contractors outside from the red tape of central government. A tender requirement of projects worth more than MK 1.5 million was placed to protect the project from mismanagement and the corrupt dispersal of financing. Despite these regulations, the project became a source of income for the ruling party and the president in particular. The president personally identified his preferred contractors to undertake construction work. Administratively, the processes of accountability were circumvented by awarding a series of contracts to some individuals that were each below the prescribed MK 1.5 million tender ceiling. There were about seven contractors in all who had access to the contracts [Interview: Anonymous]. Another interviewee surmised this in this way:

> [a] lot of people had the perception that there was a certain sector of the Malawian society which benefited under the one party state and so that these people had been pushed out of the government or out of control of the state resources, now it was seen to be their time, their time to now have their share of the state cake...so now, then there was a kind of a compensation. [Interview: Chalunda]

The result was massive economic plunder and the unchecked defrauding of the government of its resources motivated by top authorities. These activities did not pass the observations of multilateral institutions such as the World Bank. In its observation in the Malawi Financial Management, Transparency and Accountability Project Report, the Bank mentioned that the government continued over-spent, with discrepancies associated variations between planned and actual expenditures. The government was non-compliant with regard to financial rules and regulations (World Bank, 2003b).

10.2.4.2.2 State Capture and Vested Interests

Unlike the previous regime of Kamuzu Banda that promoted farming to its senior public servants, Bakili Muluzi encouraged public servants to supplement their income through business. Although most attempts at enterprise were legitimate, this period also witnessed the emergence of "briefcase companies," i.e. companies that existed only as legal entities with no physical infrastructure or administrative support. The liberalised economy promoted private enterprise and politicians controlled access to contracts. Public servants provided services to

the departments that they worked for, sometimes fraudulently collecting payments for services that were not legal or delivered (Lwanda, 2006: 530). Procurement fraud extended to donor-funded projects. For example, MASAF contracted a drilling company owned by a government minister to provide boreholes in rural areas. The company deliberately delivered substandard and unusable boreholes to save costs. Considering the contract was for 360 boreholes and each cost the government MK 209,000; this was a huge loss (Cammack, 2004: 110; The Weekly Chronicle, 10-16 July 2000).

The extraction of resources was so conspicuous that there was absolute disregard for procedures in all government departments. For example, when the restructuring of Malawi Post Office into three separate entities commenced, the government set a transitional measure where the Post Office was a collection point for cash deposits on behalf of Malawi Savings Bank (MSB) until it had established its own structures. All deposits were transferred to MSB in cash. A former presidential advisor alleged that Bakili Muluzi instructed personnel in the accounts department of the Post Office, namely a Mr Makawa, to collect the days' cash deposits and transfer them to his residence by bypassing the Postmaster General, Mr Mijiga and his deputy Mr Mtunga.[37] This embezzlement continued without hindrance that it affected the very programmes of good governance and compromised the privatisation programme.

Since the Malawian political system is very vague on party funding, many politicians indulged in these acts to fund patronage in their constituencies. AFORD as a party (then a pressure group) had depended on external sources of finance while the UDF fundraised internally. At the onset, the UDF leadership fundraised amongst its vast network of businesses with the promise of a return on their investments once UDF came into power. As Posner notes, Mr Muluzi's UDF was "literally born in the Chamber of Commerce" (Posner, 1995:137). The Chamber leadership was reflected the associated between prominent politicians and business. The list below illustrates the connection between the Chamber and political parties:

- President Bakili Muluzi was a member of the MCCCI before he was elected the UDF president;
- Harry Thomson was Chairperson of MCCCI form 1984 to 1993 before he became UDF senior cabinet minister;

[37] Mimeograph by Dr Kalonga Stambuli based on his secret records of Muluzi's corrupt transactions (Private Mail from Lwanda, 2011)

- In 1997, Mr Mark Katsonga became the leader of MCCCI until 2001 when he joined active politics on a PPM platform;
- Mr Koreia-Mpatsa took over the leadership in 2001 and withdrew in 2003 in preparation for the 2004 elections under the banner of the PPM;
- Mr Martin Kansichi succeeded Mr Mpatsa at the chamber from 2003 to 2005 and was Minister of Industry, Trade and Private Sector Development under the DPP.
- Mrs Agrina Mussa, wife to Henry Mussa (Minister of Transport and Public Works) was appointed as Chairperson of Electricity Supply Commission of Malawi, took over the MCCCI leadership from Mr Kansichi before Dr Mutharika appointed her to a diplomatic post in South Africa on the DPP ticket (Chingaipe and Leftwich, 2007: 27).

This history facilitated the collusion between business and politics. Some business entities that were members of the Chamber such as Kalaria (Wholesaler), Bashir (Apex Company), Sabadia (City Motors), Tayub and other UDF financiers had been consistently implicated in cases of grand corruption between ministers and the private sector after UDF came into power [Interview: Anonymous A] . For example, Apex sold 110 second-hand Land Rovers as new to the government with the assistance of senior party officials. The bypassed the necessary procedures and processes of public procurement. The transaction had a total value of MK 152 million. Apex was involved in other illegal dealings. For instance on routine audit inspection of the Ministry of Defence in September, 2002, it was discovered that there were anomalies in the procurement process of a VX Toyota Land Cruiser by the Ministry in the year 2000. The purchase price that Apex quoted was MK 4,286,000 as duty paid and they paid the amount on August 23rd 2000. However after the payment had been effected, Apex demanded without explanation a further payment of MK 314,000 that was again paid in September 2000 (National Audit Report, 2003: 69). The audit enquiry revealed that Apex fraudulently demanded and was paid MK 5,520,570 with Cheque No. 526111 on September 1st 2002. Despite various attempts to recover the money, no legal action and political pressure was forthcoming from the relevant authorities for the recovery (*Ibid*: 69).

In yet another case, the Petroleum Control Commission (PCC) in 1998 lost over US $ 14 million through dubious awards of fuel contracts to Europetrol. The Executive Officer Dennis Kambalame and the Minister of Energy were involved in the fraudulent transactions. In total, Europetrol gave over US$ 2 million in bribes to acquire the tender (ACB Annual Report, 2000-2001: 8). A further example is of SECUCOM Holdings that was awarded a contract to provide the Malawi government with identity documents. The Minister of Home Affairs and Internal Security awarded the contract outside the normal tender process and had it been that the contract was not intercepted by the Anti-corruption Bureau the government would have

lost US $ 6 million in excess (ACB Annual Report, 1999-2000: 7). The president was either a facilitator or was directly involved in the fraud and embezzlement. In 1998, one of his companies by the name of Farmers World was embroiled in one of the most bizarre acts of corruption. The company co-owned by President Muluzi and Kalaria, an Asian financier of the party, was alleged to have sold rocks mixed with very low fertiliser content to unsuspecting Malawians. Further, under the instruction of Aleke Banda who was the Minister of Agriculture and Irrigation, the company collected 15 trucks of fertiliser from the Small Holders Farmers Revolving Fund and smuggled fertiliser which had been earmarked for distribution to Malawian farmers into Zambia. The trucks were intercepted at the border and detained. In all, more than MK 127,210,770 was unaccounted for (ACB Annual Report, 2001-2002: 9).

The criminal case of Sam John Lemos Mpasu, a former Minister of Education in the Muluzi administration was convicted of abuse of office in 2005, ten years after the fact. This case illustrates how the system of patron-client extraction and state capture circumvented formal obligations in favour of clandestine and informal contacts for private or party gain. In 1994, the Malawi government entered into a contract for the purchase of exercise books for its free primary education with a company based in Leicester. The suppliers (Fieldyork International) were British Asians who had financed the ruling party during the 1994 election campaign. Sam Mpasu inappropriately procured education materials for the Ministry at an inflated cost (of as much as 700% for some materials) from the British concern disregarding the Central Tender Board and professional advice of his team of public servants. The cost was GB £ 1.93 million for materials that were priced at GB £ 300,000-500,000. Following the exposure of this incident, the president curiously removed the responsibility of the Central Tender Board from the Ministry of Finance to the Ministry of Works and Supplies and tender fraud continued unabated.

In his defence, Mr Mpasu indicated that he was part of network that included the president, an assertion that the judge concurred.[38] The Chief Resident Magistrate Chifundo Kachale concluded that it was evident that Mr Mpasu was part of a long chain of individuals that were involved in the corruption including the former president Bakili Muluzi and former Finance

[38] The Judgement by the Chief Resident Magistrate Chifundo Jairus Kachale of 8th April 2008 was monumental because it set the pace for the prosecution of former president Muluzi. (High court record, Criminal case No 17 of 2005: The State *versus* Sam John Lemos Mpasu).

Minister Aleke Banda. He is quoted as saying, "the court wants to acknowledge that in a queer sense, the prisoner [Mpasu] is correct that he is part of a chain. As the court has already observed, the conduct of the state president, Mr Bakili Muluzi, in this whole matter raises serious eyebrows about the extent of the rot" (The Daily Times, April, 10, 2008). He observed that although Mr Mpasu was a "proverbial lamb...suffering for the crimes of the rest" the case was against him and should evidence be submitted against Muluzi and Aleke Banda, then they should be brought before the courts as well. The court sentenced Mr Mpasu on April 8th 2008 to serve six years in prison.

State capture also affected the policies that directly affected the economy. Tobacco farming, as Malawi's cash crop and the top earner of foreign exchange, was one area that was vulnerable. Booth *et al* (2006: 13) have argued that government policy was hi-jacked by vested interests that corrupted the leadership to manipulate important policy positions. Bakili Muluzi and his party associates are alleged to have been bribed in 2002 by international tobacco leaf buying companies to create a policy that would allow for the purchase of tobacco by bypassing existing processes to buy tobacco directly from the producer. According to the US Securities and Exchange Commission, between 2002 and 2003, Universal Subsidiaries paid a total of US $850,000 to high-ranking Malawian government officials as bribes.[39] The tobacco buying policy in the farming year of 2002 to 2003 was that followed had compromised by a presidential directive that permitted companies to bypass the point of sale at auction floors. "Needless to say, no analysis was done either of the implications for marginal smallholder tobacco growers of a move to contract growing, or of the consequences for the government of the loss of the auction as a point of control over the tobacco sector" (Booth *et al*, 2006: 25).

10.2.4.2.3 Commodification of Customs and Traditions for Political Mobilisation

Chapter five in part illustrated how the traditional system of administration as an institution accounted for some of the highest levels of corruption. The significance of money as a means for patronage in the clientelistic process of political mobilisation did not escape the traditional structures in the democratic dispensation.

[39]The Securities and Exchange Commission *versus* Universal Corporation, Inc details how .the political elites were compromised to effect policy, *Civil Action No. 01:10-Cv-01318 (Rwr) (D.D.C.) (Filed August 6, 2010) Accounting and Auditing Enforcement Release No. 3170 / August 6, 2010*

There had been precedents in the use of largesse to gain the confidence and the power of traditional leaders by the previous regimes. The bifurcated nature of Malawian society and the structure of traditional systems placed a monopoly of social power at the discretion of traditional leaders meant that these institutions still wielded tremendous influence on society. As authority figures and custodians of cultural practices, they were in a position to influence their subjects on particular political courses. Competitive democratic governance intensified this level of abuse to rates that were unprecedented. Therefore, the status of traditional leaders increasingly became a commodity that was sold and bought in exchange for support. Political candidates were aware of this and offered inducements to facilitate block voting in their favour.

Traditional leaders derive their authority from customary practices that are mostly informal and socially oriented rather than legal-rational. They can ostracise or even banish members of their social organisation from the village as *persona non grata*; they have the influence to withdraw or dispense land rights in their areas of jurisdiction and may even punish public officers with social sanctions. The social legitimacy that politicians sought from traditional leaders invariably rendered these positions of authority vulnerable to corruption.

The Native Authority Ordinance of 1933 formalised the basic structure of the traditional system. The Chiefs Act (1967) after independence established the role of chiefs as:

- to preserve the public peace;
- to carry out the traditional functions of his office under customary law in so far as the discharge of such functions is not contrary to the Constitution or any written law and is not repugnant to natural justice or morality;
- to assist in the collection of tax;
- to assist in the general administration of the District in which his area of jurisdiction is situated and for such purpose to carry out such functions as the District Commissioner may require; and
- To carry out and enforce any lawful directions of the District Commissioner (Chiefs Act, 1967: Section 7).

The organisational arrangement of traditional institutions begins with a government mediator at the top that serves in between traditional structures and the government. This is usually a district representative. Below this are Paramount Chiefs (PC) or alternatively for communities without a PC, the Traditional Authority (TA). There are many TAs within each ethno-linguistic group and they cover all parts of the country. Below each TA are Sub-TAs (STAs), Group Village Headmen, and Village Headmen (VH). Finally, these as supported by

a group of counsellors (*nduna*), usually relatives or acquaintances, who act as assistants (Kayambazinthu, 2000). Although the Chiefs Act does not officially recognise GVH and VH because they are appointees by those above, they are still an integral part of the system and have the respect and reverence of their subjects. Only PC, TA and Sub-TA have the title Chief in the act because of their hereditary origins. Malawians however refer to all traditional leaders as *mafumu* (chiefs).

Although senior positions are supposed to be hereditary, the Chiefs Act mandates the Office of the President and Cabinet the authority to recognise (or decline) the chieftaincies. This was a useful tool that the colonial government had utilised to dispense patronage and punish dissenters, and was used exceptionally well by Kamuzu Banda.

An audit by the Ministry of Local Government and Rural Develeopment (MLGRD) in 2009 identified that there were more than 1800 villages in Malawi with 2400 Village Headmen. There were 61 Sub-Traditional Authorities, 171 Traditional Authorities and 28 Senior Chiefs (MLGRD, 9 March 2009). Currently, there are seven Paramount Chiefs and these are: Inkosi ya Makosi M'Mbelwa of the Northern Ngoni, Inkosi ya Makosi Gomani of the Southern Ngoni, Chief Lundu of the Mang'anja, the recently created (in October 2008) Chief Mkhumba of the Lomwe, Chief Chikowi of the Yao (from March 2009). Kyungu of the Ngonde and Chikulamayembe of the Tumbuka Paramount chiefs were promoted in 2007. The Chewa/Nyanja Paramount Gawa Undi is based in Zambia.

The offering of incentives to chiefs on the pretext of acting in accordance with tradition and culture was a major factor in the political mobilisation at the grassroots level. This was related to the custom of deference to authority-*kulemekeza* (respect) the local traditional leadership-through the quality and quantities of this "respect" one gained the admiration of the leaders (Médard, 1998:308)[Interview: Situsi Nkhoma].Materials in the form of money, bails of sugar, fertiliser, bags of maize, T-shirts and even vehicles which were given to particular chiefs. These practices degenerated into bribery.

The use of bribery to mobilise traditional leaders was unprecedented during the campaign for the amendment of the constitution to facilitate Muluzi to run for a third term in 2002. As an inducement, the government elevated or promoted the positions of seventeen TAs to Senior Chiefs, 42 Sub-TAs to TAs and 38 GVH to Sub-TAs and reinstalled eight who had been deposed by the Banda regime (Situsi Nkhoma, 2003: 148). The government built and

furnished houses for a select few that presided in areas that were politically sensitive such as the former presidents' home area and the MCP stronghold of Kasungu. For example, Senior TA Kaomba, T.A. Mwase and T.A. Chulu were given vehicles to assist them in campaigning for the government while T.A. Lukwa, Santhe and Kapelula openly endorsed the government after receiving bribes. On May 16th 2002 a letter written by Senior TA Kaomba to the president was leaked to Pride Magazine. In the correspondence, Kaomba solicited bribes in the following amounts to continue with the campaign effort: a Senior TA was to receive 25,000; a TA was to receive MK 10,000; a GVH was to receive MK 5,000 and VGH was to receive MK 2,000 to continue the campaigning effort (The Pride Magazine, 2002). At the height of the political mobilisation for the Third Term Bill, these leaders were instrumental in organising violence against those that were against the government agenda. They formed gangs of youth that disrupted public meetings of MCP MPs that contradicted the government position on the Bill. On 25th January 2003 for example, Member of Parliament S.J. Nkhoma, A.M. Chimpamba and D.J. Gulule were assaulted at Bua Trading Centre by a gang that had been organised for the purpose and they were warned not to attend any government function [Interview: Situsi Nkhoma].

In essence, the role of traditional leadership as gatekeepers was politicised and positions of status and authority were commodified to the extent that corruption increased (Yehoue, 2007: 5). Those that complied were rewarded and those that refused were deposed of their positions. In particular, T.A. Santhe of the Kasungu South Constituency deposed any GVH that defied his orders to ban any mass rallies in his constituency of the opposition. This decision was rescinded when his subjects complained bitterly.

Within the structures themselves, the government awarded largesse in the form of subventions that the chiefs received on a monthly basis to alleviate their poverty. The stipend, which was more than the chiefs received during the Banda regime, was enough to motivate for nepotism, bribery and fraud to take hold at unprecedented levels. A Paramount received MK 50,000 and a Senior TA MK 30,000. A sub-TA received MK 18,000, a GVH MK 5,000 and a VH, MK 2,500 (Situsi Nkhoma, 2003: 156). The effect of these incentives was that individuals "bought" positions from those higher up in the hierarchy to secure the positions, who in turn extracted periodic rents from those below. Failure to pay often led to the replacement of the person from the position. In addition, the traditional leaders created fictitious villages to promote favoured candidates who in turn would fraudulently draw

subsidies and relief items from the government. This was particularly common during the famine of 2001-2002. Apart from these acts of embezzlement and fraud, bribery also permeated the structure of village elders as arbitrators in social disputes and the buying of influence increased.

10.3 Conclusions

The post-1994 period was of decentralised and illicit wealth accumulation in the context of democratic governance. Malawi had all the institutions of a democratic system; in practice these were selectively or superficially applied. The separation of powers, universal suffrage, the rule of law and transparent administration were compromised to accommodate multiple principals who were part of the structure of extraction. In an environment of official predation such as described above, political actors normalised improper transactions in their quest for the control of the state machinery and the preservation of their power in a multiparty dispensation.

This political leadership reinvented itself and integrated a plethora of instruments that had been inherited from past governments such as nepotism, favouritism, bribery, fraud and embezzlement to legitimise power the post-1994 environment. Democratic reforms had strengthened factional competitions. Since the UDF did not have the majority of numbers in parliament during the early stages of its administration, the opposition parties of MCP and AFORD had persistently frustrated government business in the legislature (Meinhardt and Patel, 2003b). In turn, the government utilised incentives co-opt members of the opposition (Chirwa *et al*. 2000). Patron-client relationships were maintained through money, cabinet positions and other benefits that were offered to opposition members to maintain an advantageous position.

The accumulation of capital to fund this system increasingly assumed illegal forms and patronage drove policy to a certain degree. The "spoils," apart from being utilised for private benefit, also funded the party (Booth *et al*, 2006: viii). According to one international observer, meetings of international companies openly discussed bribes to the president. If a business license was required, the president used to smooth the process (SAIIA, 2004: 39; Tambulasi and Kayuni, 2005). Historical patterns of patronage resurfaced and Muluzi was the "big man" who presided over a decentralised system of illicit accumulation and redistribution to remain in power.

The political elite involvement into commerce led to state capture when powerful actors used the processes of administration for their personal advantage and that of the party. The transformative policies of good governance were therefore "empty" as the attitude toward formal institutions and public resources between the years of 1994 to 2004 was one of indifference. The shift in attitude of public servants toward public resources from *zonse ndi za Kamuzu* (everything belongs to Kamuzu) to *zatonse zilibwe mwini* (public goods do not belong to anyone) [Interview: Chipenda] created a sense of entitlement that was used to justify illegally acquired resources. As one interviewee observed in his review of the post-1994 corruption situation:

> The other problem maybe as a country... we don't have that national ownership or accountability that we are a nation...if I take out this money today, after all its government money so it's not going to be me only me suffering but everyone else suffering so there is no national consciousness that whatever happens from my cause shall have an effect to the whole nation, I don't know how to put that one in clear context [Interview: Phombeya].

In summary, elite political corruption manifested as a well-structured patron-client pyramid through which the extraction of public resources was utilised as a funding scheme for patronage, being a vehicle for creating social legitimacy in both formal constructs of the administration and the informal institutions of traditional social organisation (Andvig *et al,* 2001: 11). The game had changed but the same rules applied.

Chapter Eleven

Evaluation of Malawi's Anti-corruption Effort during the Transitional Period

11.0 Introduction

Corruption in Africa seems to be unrestricted despite the existence of institutions of good governance (De Maria, 2007, van de Walle, 2001, Bissessar, 2009). According to Joseph (1998), African states are "virtual democracies" with superficial institutions without the necessary subsequent action or political will.

The following discussion follows the progress of the anti-corruption measures that Malawi adopted. It evaluates whether they had been adequate in an environment of clientelistic political mobilisation. Considering the plethora of challenges that the Malawian state has endured since the political transformation of 1994; this chapter questions whether the operationalisation of anti-corruption efforts during transitional periods in Africa in general and Malawi in particular can reproduce the positive outcomes of their Western counterparts. It further assesses whether corruption can be controlled through repairing the distorted principal-agent-client relationship that is based on Weberian legal-rational precepts of a model public service (Rose-Ackerman, 1978; Klitgaard, 1988).

The chapter has three objectives. The first is to evaluate the legal instruments enacted to curtail corruption, principally through the Corrupt Practices Act (No. 18 of 1995 and as amended in 2004). The second objective is to illustrate how political actors impeded the efficiency and effectiveness of anti-corruption institutions by manipulating structural weaknesses for their own benefit. Finally, the last part reviews how this nexus interacted with the political economy to develop a loop that created more corruption. This further rendered the anti-corruption efforts inefficient. A brief review of the post-2004 period places the discussion of the transitional period in context.

9.1 Experiences in Africa

Political elites in a clientelistic system are cautious of anti-corruption programmes. Properly functioning anti-corruption institutions threaten the delicate balance of power amongst contending actors or groups (Bratton and van de Walle, 1997: 20; Szeftel, 2000: 428).

Political factions in a neopatrimonial system subscribe to personalities rather than ideological positions; and as such, the dynamics of politics become personalised. Institutions of the state are tools for game playing rather than organs that should be respected for their functions (Médard, 1996: 383). This fragile equilibrium may be destabilised if powerful offenders are reprimanded by the government and in so doing alienate a segment of the constituents in the process (Szeftel, 2000, Bissessar, 2009).

As already stated in chapter six, the success of anti-corruption systems in Africa has been disappointing. The presence of corruption on the continent illustrates how resistant it has become. For example, De Maria's (2007) audit of the Global Index data on 15 African Anti-corruption Agencies showed that in the first 10 to 15 years of their inception:

- 10 out of the 15 ACAs scored 50 or less out of 100 on the indicator *practical protection from political interference*;
- 9 out of the 15 ACAs scored 50 or less out of 100 on the indicator *practical protection against removal of ACA head without relevant justification;*
- 9 out of the 15 ACAs scored 50 or less out of 100 on the indicator *ACA makes regular public reports;*
- 8 out of the 15 ACAs scored 50 or less out of 100 on the indicator *appointments to ACA based on professional criteria;*
- 8 out of the 15 ACAs scored 50 or less out of 100 on the indicator *ACA has sufficient powers to carry out its mandate;*
- 8 out of the 15 ACAs scored 50 or less out of 100 on the indicator *ACA able to independently initiate investigations;*
- 5 out of the 15 ACAs scored 50 or less out of 100 on the indicator *ACA has a professional, full-time staff;*
- 5 out of the 15 ACAs scored 50 or less out of 100 on the indicator *ACA receives regular funding* (De Maria, 2007: 13-14).

He concludes with the statement: "these dismal results show that African ACAs have a high vulnerability to the politicised appointments and terminations of their most senior officer and staff. There are many examples in Africa of ACAs being tethered to presidential power" (*Ibid*: 13-14).

All across Africa, examples exist of executive influence in institutions that are supposed to be independent. For Kenya, De Maria (2005) alludes to the neo-colonial mentality of such institutions. He cites how the IMF in 1997 suspended US $220 million worth of aid to Kenya to force the government to accelerate the privatization programme, create an independent tax

collection agency and an anti-corruption authority. He quotes Amos Wako, Kenya's attorney general, who claimed that the IMF team flew to Nairobi and "forced his office to draft the *Prevention of Corruption Bill* within one week. The bill was cleared by the IMF and rubber-stamped by the Kenyan parliament only to be successfully challenged in the constitutional court due to its inapplicability in December 2000; attracting further aid suspensions in 2000" (De Maria, 2005:8). In 2003, President Mwai Kibaki appointed John Githongo as the new Kenyan Anti-corruption Authority (KACA) chief. However, by February 2005 he resigned, citing a lack of government commitment to anti-corruption reforms as his reason. By the mid-2005, the situation was that corruption remained widespread due to Kabuki's government failure to combat it (*Ibid:* 9).

The Zimbabwean Anti-Corruption Commission is another example. It was established in 2005 as an executive government organisation. The ACC Act gives extensive powers to the president such as of termination of services or suspension of commissioners. The President determines the conditions under which they work and due to these powers. Mugabe has been criticised for interfering in the functions of the institution.

The South African experience with anti-corruption agencies is one of intrigues and overt executive interference in their operations. There are a number of organisations that had been established prior to and after the 1994 elections that were mandated to control corruption. These included the Standing Committee on Public Accounts (SCOPA), the Special Investigating Unit (SIU), Public Protector (PP), the Police Service, Investigating Directorate for Serious Economic Offences, (IDSEO), the Auditor General, Public Prosecutions and the Independent Complaints Directorate amongst other law enforcement agencies. Examples of political interference are plenty. In January 2001, President Mbeki directed the exclusion of the SIU from taking part in the investigation into the controversial 1999 ZAR43 billion arms contract. Under the threat of disbandment, the Unit was sidelined for its insistence in taking part in the investigation. Mbeki is quoted to have stated that "it is ... clear that we cannot allow the situation to continue where an organ appointed by and accountable to the executive refuses to accept the authority of the executive" and to "run out of control... this situation of ungovernability will not be allowed to continue" (Sebudubltdu, 2002:173). Further interference can be observed in the way that MPs were controlled and manipulated to tow the party line with regard to the issue. For instance, Andrew Feinstein was an outspoken ANC leader on the Parliamentary Public Accounts Committee and as a result, he was "demoted,

silenced and replaced" by the deputy chief whip, Geoff Doidge (*Ibid*: 172, 196-197). The ANC as a party and its individual members privately and improperly gained from the arms deal during the transitional period and the public officers were protecting these patronage networks interests from scrutiny (Camerer, 2009: 149).

9.1.1 The Malawian Anti-Corruption Regimes

Malawi's anti-corruption regimes fall into two parts, the general policy interventions of Structural Adjustment Programmes and the efforts of dedicated institutions that had been established by acts of parliament to control corruption. These were constitutional bodies established in response to Section 13 (o) of the constitution such as the Auditor General's Office, the Office of Ombudsman, the Human Rights Commission, the Law Commission, the Electoral Commission, the National Compensation Tribunal and Parliamentary Committees such as the Public Accounts Committee.

The government also collaborated with international institutions and ratified a number of conventions to adhere to the principles of best practice in controlling corruption. The ratification of the AU Convention on Preventing and Combating Corruption, the UN Convention Against Corruption (UNCAC), the SADC Protocol against Corruption as well as the New Partnership for African Development (NEPAD) elevated the level of anti-corruption values to international standards.

11.1.2 Origins and Operational Structure of the Anti-corruption Bureau

Malawi's anti-corruption law was initiated by an executive decision by former president Bakili Muluzi in 1994 for the development of an institution that would have powers to curtail the excesses of the former regime in line with democratic reforms. Pursuant to the commitment by the incumbent government for a transparent administration, the Corrupt Practices Bill was presented before parliament and the Act received Presidential assent on the December 1st l995 as the Corrupt Practices Act No. 18 of l995. There was very limited public consultation or debate in the legislature on the Act.

The main objective for the enactment of the Act was to make corruption as a very serious offence in compliance with international conventions and sentiments of good governance. It established the Anti-Corruption Bureau as an autonomous government body comprising a

Director, a Deputy Director and such other officers as would perform the functions of the specialised institution (Corrupt Practices Act, 1995). Although public debate on the design of the institution was very limited, the legal framework and institutional set up were adapted from similar continental and regional bodies such as the Kenya Anti-Corruption Authority, the Directorate for Control of Economic Crimes in Botswana and the Anti-Corruption Commission in Zambia. This basic structure was the design of the Independent Commission Against Corruption (ICAC) [Interview: Russell].

11.1.3 Jurisdiction, Independence and Powers

The CPA specified individual corruption offences that public officers could be prosecuted for and further criminalised the possession of unexplained property on the presumption that it was corruptly acquired. The act viewed corruption as a serious enough offence that it warranted the reversal of the burden of proof for the accused, and not the state, to explain the origins of his property.

In following with the tradition of ICAC's draconian powers, the Bureau has a wide mandate. The Bureau's Director is deputised by a Deputy Director, both of whom are presidential appointees and are engaged on such terms and conditions as the president determines. For accountability purposes, these positions were subject to confirmation by the Public Appointments Committee (PAC) of parliament (CPA, 1995).

The institution has three core functions: to prevent, educate on and to investigate/prosecute incidents of corruption with the intent of prosecuting offenders (Pope, 2003). Section 10 stated that:

> 10 (1) The functions of the Bureau shall be to:
>
> *(a)* take necessary measures for the prevention of corruption in public bodies and private bodies, including, in particular, measures for
>
> (i) examining the practices and procedures of public bodies and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Bureau may be prone or conducive to corrupt practices;
>
> (iii) disseminating information on the evil and dangerous effects of corrupt practices on society;
>
> *d)* investigate any alleged or suspected offence under this Act.

A number of programmes ran under these functions. The Prevention Section deals with guiding institutions on policy changes, identifies areas of vulnerability in organisations through institutional inquiries and audits and partners with organisations to devise interventions. Apart from these, the section conducts overt and covert surveillance and assists in developing laws and regulations. Notable achievements included joint ventures with the Malawi National Examinations Board, the Malawi Police Service, the Road Traffic Directorate and the Malawi Social Action Fund. There were attempts to boost its analytical capacity by developing its intelligence capability in 2002 but this stopped in 2003 due to financial constraints. The Public Education Section engages the public to change attitudes and perceptions on corruption through radio, television and outreach mechanisms. The investigation Division can affect an arrest on a judicial warrant after establishing the facts. It does so with or without the assistance of the Malawi Police Service as the other law enforcement institutions empowered to prosecute offenders. There are thirteen categories of offences proscribed by the CPA, which include the corrupt use of official powers and procuring corrupt use of official powers, misuse of public office and possession of unexplained property. The offences are listed below:

- Corrupt practices by or with public officers;
- Corrupt use of official powers and procuring corrupt use of official powers;
- Public officers performing functions corruptly;
- Misuse of public office;
- Dealing in contracts;
- Disclosure of interest by public officers
- Corrupt transactions by or with private bodies
- Corrupt transactions by or with agents;
- Corruption of members of public bodies with regard to meetings;
- Advantage for giving assistance, etc., with regard to contracts;
- Advantage for procuring withdrawal of tenders;
- Advantage with regard to bidding at auction sales and;
- Possession of unexplained property.

Technically, the Bureau is independent on all operational matters from the influence of persons or institutions, but is required to report to the Minister of Justice and Attorney General on administrative and policy matters and the Ministry of Finance on financial obligations. In theory, the Bureau is accountable to the people of Malawi by providing reports to the legislature (through the minister) on an annual basis. Although the Bureau has the internal capacity to prosecute offenders through its legal section, it is required by law to seek the consent from the Director of Public Prosecutions (DPP) before proceeding. Before 2004,

the DPP had the authority to decline consent and withhold the reasons for his decision. Due to legal amendments of the Act in 2004, it refers any queries or disagreements to the Legal Affairs Committee of Parliament.

Apart from the CPA, the Bureau's mandate also follows from other laws, rules and regulations that were enacted to guide public servants in accordance with the good governance agenda. For example, provisions in the constitution such as Section 12 (vi) direct agents of the state to act within the precepts of the rule of law and promote the equality of all citizens before judicial processes. This theme is also contained in the Malawi Public Service Regulations that denounce maladministration and corruption in the public service. Section 20 is especially relevant in that it states that a person shall breech the regulations when:

> [h]e commits any of the following offences and is convicted thereof by a court of law: (a) Extortion, bribery, corruption; (b) Theft, theft by false pretences, receiving stolen property knowing it to have been stolen; (c) Fraud, forgery, uttering a forged instrument knowing it to have been forged; or (d) Attempt, incitement or conspiracy to commit an offence under this subsection (MPSR, 2001).

The other institution that significantly complemented the work of the Anti-corruption Bureau in its work is the Office of the Auditor General. Until 2003 when the Public Audit Act was passed, the 1994 constitution and the Finance and Audit Act (1962) provided the legal basis for the mandate of the Auditor Generals' office (Durevall and Erlandsson, 2005: 29). Sections 184 (2) of the constitution of the Republic of Malawi and 15 (1) of the Public Audit Act compel the Auditor General to submit an audit report on the accounts of the Government of Malawi for the financial year ending to the National Assembly and the president. In conjunction with and through the Public Audit Act, the Bureau provides services of *inter alia* the inspection of the administration, control, and audit of all public finances to aid in its investigations and preventative measures. Apart from the above, the Bureau's powers were widened through amendments to the Act in 2004. Section 10 (1) (e) allows the institution to investigate any offence under any written law that is discovered in the course of investigating any alleged or suspected corrupt practice under the CPA.

11.1.3.1 The Law on Corruption: An Endogenised Tool or Ineffectual Transplanted Technology?

There is a growing debate as to whether the design and application of the law on corruption have an undertone of a transplanted framework. The debate centres on the argument that Western institutions have questionable functional attributes when they are adopted by developing nations (Bayart, 1993; Dia, 1996; Ekeh, 1975; Chabal and Daloz, 1999). The failure of cloned anti-corruption institutions developed from the ICAC model has been equated to "carpet-bombing" transplanted institutions across an entire continent without the appreciation of the local internal forces (Doig *et al*, 2005: 41). This debate is very valid in the analysis of Malawian anti-corruption regimes. Historically, the conceptualisation of corruption had been from the legal rational/public office standpoint. In other words, it had been conceptualised as behaviour by a public servant with another actor that digressed from formalised rules (Friedrich 2002). To the general public, matters related to corruption were synonymous with acts of theft, embezzlement, misallocation of public funds and other transactions that were clustered under the phrases *kusakaza ndalama za boma* (mismanagement of government resources) or *kuba ndalama za Kamuzu* (stealing from government) [Interview: Liwonde]. As stated in section 10.3, there was a public perception that everything belonged to Banda and the government propagated this perception. Corruption in the public service, as it is known today, was therefore almost non-existent at low levels of authority due to the fact that the identification of offences and the application of penalties for "stealing from Kamuzu" were often politically motivated, arbitrary and severe. Since nepotism, favouritism and the general abuse of office such as influence peddling were not included in the list of offences, corruption was therefore associated specifically to illegal financial transactions that collectively were known as "official corruption" under Section 90 of the Penal Code. The Malawi Police prosecuted such offences. In this way, the pre-1994 view also had a market-oriented emphasis where official corruption was behaviour for maximising an income contrary to the legal-rational framework (van Klaveren, 1970:39).

The Penal Code did not define corruption, but described acting corruptly as occurring when any person who:

> a) being employed in the public service and being charged with the performance of any duty by virtue of such employment, corruptly solicits, receives, or obtains, or agrees or attempts to receive or obtain, any property or

> benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done by him in the discharge of the duties of his office; or
>
> b) Corruptly gives, confers or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any other person, any property or benefit of any kind on account of such act or omission on the part of the person so employed [shall be guilty of an offence] (Malawi Penal Code, 2007).

Attempting to create a specialised institution with a specific mandate, the law limited the jurisdiction of the Bureau to probe only acts of bribery. As such, the Bureau's authority was restricted to investigate only the offering and receiving of an "advantage" (bribery) with regard to the use of official authority for private gain. The disadvantage of this was that any the Bureau could not prosecute behaviour that fell outside this mandate, even though it contravened other criminal statutes, such as fraud and embezzlement. Investigations that had uncovered such activities were immediately terminated and/or referred to other law enforcement institutions such as the Police.

As can be deduced from this, the Bureau transferred cases to institutions that had their own priorities, resources and caseloads, thereby effectively ending or delaying investigations that had reached an advanced stage. This was a consistent problem especially with matters pertaining to fraud. In most cases, fraud is facilitated by bribery and bribery sometimes is facilitated by fraud, therefore muddling any clear boundaries between the two transactions. The following are the sentiments expressed by the former institutional Technical Advisor who lamented at the impotence of the institution during the first years of operations.

> Fraud was very prevalent within the bureaucracy and it was true that many cases that appeared to be corruption, ended up to be fraud. The ACB was initially unable to continue to prosecution stage, and had to hand over the dockets to the Police. Inevitably, evidence got lost [Interview: Russell].

There were other structural weaknesses with the law. The most notable were that the hastily enacted Act had contradicted the constitution. For example, the provision for the reversal burden of proof under Section 32 of the Corrupt Practices Act was incompatible with Section 42(2) (f) (iii) of the constitution that stated that individuals had the right "to fair trial which includes the right to remain silent during plea proceedings or trial and not to testify during

trial".[40] Legal challenges to this and similar inconsistencies delayed cases-sometimes for years. Upon application, suspects would be released from custody and the cases dismissed on the basis that the delays were inconsistent with the Criminal Procedure and Evidence Code and the constitutional right to a free and rapid trial [Interview: Chalunda]. The Corrupt Practices Act (1995) extended the parameters by which corrupt behaviour could be identifiable including offences with and by private sector employees. Secondly, it explicitly expanded the offences that the government could prosecute and thirdly it placed a *minimum* of 5-year mandatory custodial sentence upon conviction for any offence regardless of the amounts involved that differed from the Penal Code that considered it corruption as a misdemeanour that attracted a *maximum* 3-year sentence.

The first cases to emerge exposed the limitations and the ambiguities in the concept of corruption after the political transformation. One such case involved the prosecution of Minister Abdul Pillane. Pillane in his capacity as a Minister of Works and Supplies was prosecuted in January 1998 for having received a bribe as an inducement for him to offer a contract to a construction company named Bonila Construction. The bribery was in the form of campaign materials such as footballs and dinners that were for his personal consumption. The court subsequently acquitted Pillane on the basis that the advantage that he received could have in fact been a conventional gift and the state did not prove beyond reasonable doubt that the incentive he received was a bribe intended to influence his judgement in his capacity as a public officer. In another case, the Minister of Information and five staff members were arrested by the Anti-Corruption Bureau for illegally benefiting from transactions at Malawi Telecoms Limited (MTL), a government entity. Justice Hanjahanja ruled that the men were responsible for a "simple theft" which need not have led to a case of corruption. This was an understatement considering that over MK 800 million was misappropriated by former MTL managers and politicians in the course of the Muluzi administration for campaigning purposes and for personal use.

[40] A landmark case of Hon. Friday Anderson Jumbe and Others *versus* The Attorney General; clearly showed the inconsistencies of this provision. The High Court of Malawi, Principal Registry, Constitutional Cases Nos. 1 and 2 of 2005.

11.1.3.1.1 Polarity of Conceptualisations: Dual Register of the Law?

The conceptualisation of corruption by the public was at variance with the law. Some practices that were perceived as corruption did not qualify to be classified as such under the law and some activities that were socially acceptable were illegal under the CPA. Oliver de Sardan (1999) has noted that in Africa "corruption…is as frequently denounced in words [but] is practiced in fact" (Oliver de Sardan, 1999: 28). Much as there were definite improvements to the Penal Code in the CPA, it soon became apparent that the reliance on the public office/legal rational approach was too rigid to be practical. The reality was that impetus for many illegal transactions was socially determined. In this regard, limiting corruption to acts of bribery was problematic because bribery was extremely difficult to prove owing to the fact that the transactions were often committed in secret, social etiquette demanded reciprocity and parties were reluctant to confess [Interview: Liwonde]. The second and most significant was that there were two types of legal frameworks in operation; the customary applied to the traditional system of organisation and took into account social norms and values. The official law applied to the formal state and had precedence over the other. This made corruption a highly contested concept because the criteria utilised were multiple; such as prevailing social mores, institutional norms, or publically endorsed standards. These binary configurations had exposed major deficiencies in the design and application of the law because the legal route was inaccessible for the majority of the population and the rural areas largely left to their own devices (Baeur, 2005:1; Migdal, 1988:33). Chirwa *et al* (2000) observed that:

> People have little confidence in the formal legal system to deliver fair and effective justice. The system is generally inaccessible because it operates in a foreign language, is prohibitively expensive for the majority of Malawians and, unlike traditional customary legal systems, is not based on values and principles which are indigenous (Chirwa *et al,* 2000:28).

The inability by the government to create a conceptual consensus had contributed to both the perception and incidents of the proliferation of corruption. Although the Anti-corruption Bureau had vigilantly attempted to address this through prevention campaigns and even law enforcement, this was still largely through the enacted legal-rational perception of proper behaviour in accordance with the law. The practices of the majority of the population who lived in the villages were discordant with the legal framework. The discordance gap between the consideration of corruption in repulsive terms as a legally identifiable offence that by its

very criminality was something insidious *versus* the social perception and understanding of corrupt behaviour that was generally tolerated, acceptable and extensively practiced had widened with the application of the law. The majority of those interviewed were of the opinion that in most cases corruption was considered as inclined toward its negative social consequences (in most would attract a rebuke) than the legal definition with its "hard" penalties. Behaviour that was socially acceptable was even encouraged without regard of the law. The urban environ followed a more procedural and bureaucratic tradition that was legally inspired leading to the co-existence of both positions. The perception of corruption depended on the context and one easily jumped from one conceptual platform to another depending on the circumstances thus creating confusion.

This is a very important observation in that it had a bearing on how the law enforcement agencies conducted their activities and how this constrained their operations. Considering that the majority of communication on the subject of corruption by state agencies is predominantly through the official language of English, the understanding of the concept was lost by the majority of the population who spoke native languages. Referring to Heidenheimer (2002), the perception of corruption in rural areas was mostly through the public opinion/interest approaches (Heidenheimer 2002; Collier, 1999; Gardiner, 1993). Villagers perceived it in terms of general immoral behaviour associated with the disregard of social norms and with negative communal interactions such as *opanda umunthu (lacking of humanity) or wosathandiza* (does not help) [Interview: Kabondo]. The outcome of investigations was therefore inconsistent and dependent more upon the subjective perceptions of the investigator in his or her personal understanding of the law and social relationships than the objective interpretation of the law [Interview: Munthali]. Some would turn a blind eye toward a magistrate who received a "gift" *post facto* after acquitting a suspect while others would pursue this as a *bona fide* case. A TI Country Study Report (2004:62) supported this view. It reported that the public associated corruption with *opanda chilungamo* (lack of fairness) and *kusowa chikondi* (lack of love) in reference to it.

The analysis of corruption cases offered evidence that persons often perceived corruption as such only if they "lost out" on an illegal transaction with co-conspirators. In reference to the "lack of fairness" for instance, it was regarded as corruption if the expected and agreed upon outcome did not materialise and one person felt cheated. In these instances, corruption was

conceptualised in terms of being taken advantage of rather than as an offence. This was most common amongst low-level cases of petty corruption.

As such, the mandatory 5-year sentence, regardless of the amounts involved, had been very problematic for magistrates to convict offenders. For example, if a person was arrested for having received/given as little as MK 5 would be sentenced to a far more severe custodial sentence than a person convicted of larceny under a different statute for having stolen MK 5,000 [Interview: Munthali]. Associating the conduct, motive and the circumstances with the subsequent corrupt action by or with a public officer was almost impossible in a society that often relied on informal transactions as the norm. As a result, the judiciary found loopholes in the application of the law and more often than not were inclined to acquit offenders. It was evident that the magistrates had taken into consideration situational circumstances that might have led public officers to commit the offence. For this reason, there were difficulties in establishing the intent (*mens rea*) or motive of the actors of a corrupt transaction in a court of law. In these incidents, the standard of proof *beyond reasonable doubt* was detrimental to the success of prosecutions. The mitigating circumstances emanated from the fact that the legal route was an inadequate measure for identifying corruption in a society that was mostly parochial and had a high illiteracy rate with high levels of poverty and unemployment.

11.1.3.1.1.1 The Quagmire of Concepts

The CPA was very definitive in describing what constituted corrupt behaviour. Although this was in line with the formal legal frameworks, the use of legal terms limited the comprehension of the offences under the law by a majority of the population.

The most popular terms in formal communication within the local language were *katangale* and *ziphuphu,* which related to bribery. Technically *katangale* had and has been the closest and acceptable term utilised in the communication between government agencies. It described methods employed by public servants in unofficial transactions for private gain. In other words, a person who is involved in *katangale* sought to convert public resources for private gain. Other definitions that were used to describe corrupt behaviour included the following: *madilo* (deals), *ya Fanta* used interchangeably with *kangachepe,* (money for Fanta, or a small amount), *kuponda* (literally translated as stepping on someone's toes-fraud) and *kuba/kusakaza katundu wa boma* (misappropriation of government property). *Kuhonga* was the practice of thanking in appreciation of a service rendered. Although there were no

words in the vocabulary to refer to incidents of nepotism and favouritism, the closest translation is *kukondera*. This word is a derivative of *kuponda* (to love) and represents a deep affection or adoration for someone or something. This does not necessarily have negative connotations but within the context of corruption, it implies biased decision making in favour of family, tribal and ethnic affiliates.

Ya Fanta and *kangachepe* are acts associated with *kuhonga* that has its origins in the widely practiced indigenous tradition of gift giving as a symbol of gratitude and respect in acknowledgement of the assistance rendered. *Madilo* is reserved to describe the process of conceptualising and implementing elaborate schemes for the benefit of an individual and usually at the expense of another. The term stems from the English word "to deal" and is associated with cases of grand corruption such as tender fraud and manipulation of policy for private gain.

The inconsistent and negative consequences on the operations of the Anti-corruption Bureau by this dichotomous conceptualisation of corruption can best be illustrated by the interview the researcher had with the Assistant Director of the Bureau. It must be kept in mind that this practice has a historical origin and its legitimacy is based on its social-cultural practices that are imbedded in tradition. An interview with the Assistant Director of the Anti-Corruption Bureau, Mr Victor Banda, supported the observation that the Malawian social organisation with traditional institutions initially conflicted with the law, therefore creating confusion especially in rural areas. In the first year of the Bureau's operations, many complaints were concerned with this practice in the traditional settings. Mr Banda explained it in this way:

> In the first year...we received over 3500 complaints of alleged corrupt practices and when we analysed, less than 800 were actually [legally identifiable cases] of corruption… but I wanted to mention that I think generally those elements/complaints that touched on corruption, it largely centred on...areas [concerning] the traditional apparatus [related to gift-giving as a form of respect]. [Interview: Banda].

The CPA was tested in court on several occasions by the arrest and prosecution of persons who had reciprocated in kind when public officers had provided a service; a common practice amongst chiefs. In Victor Banda's opinion, this placed customs in conflict with the law. In concurrence, the former Technical Advisor commented how the glaring contradictions had posed challenges for the Bureau. There was an attempt to reconcile these two seemingly

separate views. The original CPA (18 of 1995) took the practice of gift giving into account in an attempt to synchronise the culturally legitimate practices by including a provision for the giving or receiving of "a casual gift" in the statute. This was legal as long as the amount paid did not constitute any offence stipulated in the Act [Paul Russell]. The casual gift was:

> Any conventional hospitality on a modest scale or an unsolicited gift not exceeding MK 500 or a gift offered on festive occasions but which is not in any way connected with your official duties so as to constitute an offence (Corrupt Practices Act, 1995).

This proved highly contentious in court cases as the provision for the minimum amount for a gift was often ignored. The Bureau was cognisant of the fact that there was a duality that there were major discrepancies in the conceptualisations of corruption. It had undertaken periodic assessments on the reported cases in order to identify the determinants of this problem. For example, as early as 2000, the clause on the mandatory custodial sentence was criticised by the institution and subsequently steps commenced for its removal. This gave magistrates the opportunity to impose fines and other lesser punishments on offenders. The CPA amendments further strengthened the law to align it with the apparent public opinion conceptualisations. Behaviour related to influence peddling, nepotism, favouritism and abuse of power that had a social-cultural dimension were now offences.

Again, the revised Act did not define corruption. Section 3 of the Act described what constitutes corrupt behaviour as doing or engaging in any corrupt practice that included "the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person". The Act further explained an advantage as:

> Any benefit, service, enjoyment or gratification, whether direct or indirect, and includes a payment, whether in cash or in kind, or any rebate, deduction, concession or loan, and any condition or circumstance that puts one person or class of persons in a favourable position over another (Corrupt Practices Act 1995, amended 2004).

After the amendments, there was a discernible improvement in the number of prosecutions and convictions attributed to these changes. Magistrates were no longer confined to mandatory custodial sentences. However so, the Bureau still faced challenges due to its operating political environment. Political elites utilised the dual register to legitimise action that was socio-politically correct but legally questionable. During elections, for example, all

political parties without exception demonstrated to the public their ability to govern by their aptitude in the distribution of "campaign materials" known locally as *mahandiawuti* (hand outs), incentives that were offered when canvassing for votes [Interview: Nkhulande]. The extent of this practice was such that it created a sense of entitlement amongst the electorate, therefore corrupting the process of political mobilisation and electioneering. An interviewee gives the following account of his experiences during elections:

> I had passed a group of people at a market on my way to address a public meeting when we were campaigning in 1999. As usual, people in the crowd had stopped my vehicle and begged for hand outs and when I mentioned that I was late for a meeting, I was called *chitsiru* (stupid) and was foolish to think that they would vote for me. I did not have enough money to dish out during my campaign and I lost [Interview: Nkhulande].

Not fulfilling these obligations resulted in negative sanctions such as social isolation, and in the case of politicians, it cost votes. The direct consequences were that the government protected this form of patron-client relationship under the guise of tradition, further constraining the anti-corruption effort.

Politicians abused the use of patronage to appeal to the sentiments of the rural population in exchange for social legitimacy and favourable positions in competitive politics. President Muluzi and his ministers would literally throw gifts of money at crowds of people during national functions. It was estimated that the president distributed on average MK 10 million in cash and over 100 metric tonnes of maize at his village level gatherings through village chiefs (The Nation Newspaper, May 4th, 2004; The Daily Times, June 23rd, 2003; Tambulasi and Kayuni, 2005:153; The Chronicle, 4th June 2001). Those that could not afford this form of campaigning could not compete with individuals who had the means or had the backing of a high-ranking patron.

11.2. Effects of Clientelistic Political Mobilisation on Accountability

The established legacy of strong patron-client relationships for Malawi's decentralised neopatrimonial rule had proven to be one of the major weaknesses of the newly instituted anti-corruption effort. Interview results illustrated that since the UDF had a majority of members in the legislature, lines of accountability were manipulated for maintaining the "impunity syndrome" that Amundsen had observed in corrupt regimes (Amundsen, 2006: 7).

It would have posed a serious challenge to the patron-client system of political mobilisation and illicit wealth accumulation that the party depended on for its political advantage if anti-corruption efforts were effective. In the most politically sensitive cases or those that involved affiliates to the powerful actors, the Director of Public Prosecutions (DPP) refused to grant the consent for the Bureau to prosecute. By 2004 for example, the Director of Public Prosecutions had declined for the Bureau to prosecute individuals in 37 high-level corruption cases, almost all involving ministers, business associates and their relations. This number represented 5% of all cases but was the equivalent in monetary terms to 90% of the high-value cases (SAIIA, 2004).

Politically connected individuals that escaped the judicial process due to the DPP's refusal included:

- Cassim Chilumpha for his role in the embezzlement, fraud and misappropriation of MK 187 million from the Ministry of Education;
- an Asian businessman and financier of the UDF by the name of Farook who evaded customs duty to the amount of MK 250 million (US $ 3.5 million);
- a former Attorney General who fraudulently mismanaged government funds amounting to US $ 7.6 million and;
- the former Minister of Local Government and Rural Development who orchestrated the National Identity scandal and misappropriated US $ 32 million ([Interview: Anonymous H]; ACB News, 2000, vol.3 (3) and 4(2); The Nation, September 22nd 2004).

The efficiency of the Bureau was further compromised by periodic interference from the Attorney General's office. In one such case, the Attorney General had written a letter to the Director of the Anti-corruption Bureau in 2000 expressing his frustration at the growing numbers of political arrests and demanded that the Director seek permission in every decision for any prosecution that the institution was to make, which by far exceeded his mandate according to the CPA. The High Court resolved this conflict by ruling that:

> Besides the abnormalities surrounding this case, we see that by his letter of 2nd March 2000, the Attorney General tries to intimidate the Director of the ACB. He tells him that for whatever the Director does under the Corrupt Practices Act, he must seek legal advice from him. I do not subscribe to that idea.[41]

[41] This is explained in the court case Kumange J in Secucom International Holdings Ltd. *versus* ACB Civil Cause No 225 of 2000 (High Court) (unreported).

In cases where administrative action was required, the government often ignored the recommendations of the Anti-corruption Bureau. One such case involved a business partner and colleague of Muluzi by the name of Yusuf Matumula. Matumula owned Y.B. Enterprises that supplied sundry to the government. In 2001, the President directed the Government Contracting Unit to award six items on Tender No. 031/2001/02/01 to Y.B. Enterprises despite the company being an unregistered concern in line with government regulations. The Bureau's advice against the transaction was ignored. The outcome of the presidential order was an additional cost to the government of US$ 228,780 (MK 16,979, 720). [Interview: Anonymous H] (ACB Annual Report, 2002/2003: 18).

In other cases, the government circumvented the law through the payment of compensation to business enterprises that, on recommendations by the Bureau, had their contracts terminated or withheld due to irregularities. In total, the budget line for compensating these businesses in the 2001/2002 budget represented a staggering 6650% increase from the previous budget. These included compensation on major scandals such as the following:

- Apex MK 300,000,000
- SECUCOM MK 528,000,000
- Land Rovers MK 168,000,000
- MPs' Vehicles MK 72,000,000
- TATAs MK 939,000,000
- ADMARC Overdraft MK 1,000,000
- General Compensation MK 650,725,600 (MEJN, 2002: 10).

This seriously undermined the anti-corruption efforts in curbing government financial mismanagement. The president and members of his inner circle further compromised the Bureau through other government processes. For example, the president dismissed the first Director of the Bureau Gilton Chiwaula in November 2002 without following the proper procedure [Interview: Banda]. His deputy, Alexius Nampota, did not have his contract renewed. The Director's successor Michael Mtegha was dismissed in 2004 and the position of Deputy Director was vacant for some time without valid reasons. It is alleged that the top officers had attracted the ire of the president when they refused to compromise the Bureau operations by closing corruption cases that involved top-level ministers. Mtegha in particular is said to have disobeyed direct orders from the president to cease and desist from an investigation into the bribery of MPs to manipulate the voting on the Third Term Bill

(Khembo, 2005:7). The removal of individuals from office who took the initiative to expose corruption was not confined to the Bureau alone. In similar incidents, parliamentary committee chairpersons were removed from their portfolios when they were deemed too independent and thus a threat to the regime and the prevailing political system. For instance, when the Parliamentary Committee on Agriculture and Natural Resources investigated the illegal sale of grain by country's National Food Reserve Agency, the president in September 2002 ordered the removal of Committee Chairman Joe Manduwa. The same fate befell the Public Accounts Committee Chairman Situsi Nkhoma who was accused of political interference when his investigation into the MK 187 million Ministry of education scandal proved massive collusion and fraud by government agents [Interview: Situsi Nkhoma]. Executive dominance therefore limited the efficiency of parliamentary committees. By the end of 2003, only seven of the thirteen committees were functional and only three (Agriculture, Legal Affairs and Public Accounts) had produced noteworthy results (Meinhardt and Patel, 2003a: 46).

The diplomatic corps, civil society, the Bureau and the Law Commission in 2000 urged the government amongst other changes to remove the requirement for the DPPs consent in the Act as a measure for improving the Bureau's prosecution turnover and efficiency (Kamanga, 2005). The Bureau's attempts were opposed vehemently by the government. On September 18th, 2003 Minister of Justice Peter Fachi announced that it would not accept the proposals in their entirety (The Nation, September 18th 2003). Instead, the government replaced this with Section 42 of the Corrupt Practices Act of 2004 where the DPP still retained the power to decline consent to prosecute but was to furnish reasons in writing and on the basis of fact and law. The DPP was to inform the Legal Affairs Committee of Parliament these reasons within thirty days of the decision. Failure to do so entitled the Director of the Bureau to proceed with the prosecution. Moreover, the DPP still had powers to withdraw any prosecution by the Bureau at any time [Interview: Chalunda].

The failure of these initial policy and operational attempts shaped the public perception on the inability of the Anti-corruption Bureau to handle cases associated with high-ranking political actors and therefore the institution lost credibility. Public confidence in the ACB quickly eroded from positive expectation to negative perceptions of its inability to control corruption. With each acquittal or discontinued investigation, the Bureau confirmed the idea that corruption was a crime that was worth the risk to gain the rewards. Within the first three

years of its inception, the Bureau had struggled with negative labels of being a "toothless bulldog" unable to bite the hand that fed it [Interview: Chilongo] (Durevall & Erlandsson, 2005:32).

11.2.1 Lack of Political Will and Complicit Leadership

Institutions that control corruption rely on the political will of the leadership to execute their mandate effectively (Pope, 2000:31). Interviews with the officers from security institutions of the Malawi Police Service and Anti-corruption Bureau identified the lack of political will to empower the anti-corruption effort by the political leadership as one of the reasons why the anti-corruption effort faltered. It was stated that political will was non-existent in the transitional period due to the nature of factional neopatrimonial politics. Schedler (2004) points out that where political will is lacking, systems of good governance will not succeed. Corruption flourishes without the vigilance and effort of the political leadership. Recent research by Bissessar (2009) examined the persistence of corruption in a sample of 110 countries over a period from 1984 to 2006. The study concluded that in Sub-Saharan Africa specifically, corruption did not only persist, but was on the increase. This is despite of the existence of anti-corruption institutions in these countries to contain it. Likewise, the 2007 Global Integrity Report on Malawi identified the country as enacting excellent laws comparable to the standards of Western countries such as the United States, France, Italy, South Africa, Poland, Korea and Canada. Malawi had a rank of 90 out of 100 in terms of the quality of laws but there was a lack of commitment in the implementation. The rating on implementation was 56 out of 100 signifying a big gap between the quality of law and its implementation (http://report.globalintegrity.org/Malawi/2009).

There were numerous examples that elite interviewees and media reports gave on incidents where the lack of political will was one of the most significant factors for undermining the mandate of the ACB and other measures during the years of transition. A World Bank (2003b) assessment on the budget process identified weak political commitment to the objectives of budgetary reform and that in certain line ministries the managerial power of ministers distorted incentives to follow sound financial management.

The reason for this was that the president presided over a government that undermined the very institutions that it had established to promote good governance and the rule of law. The president abused the executive's strong vertical systems of administration for the benefit of

persons of status in the party and its general members. The response by the government to allegations of corruption was likened to political musical chairs; the shifting and rearrangement of portfolios without holding those responsible to account. For instance, the executive officers who had been instrumental in the extraction of wealth from the government were transferred to other posts. For example Sam Mpasu, the former Minister of Education, was removed from office and given a senior party post after the Fieldyork bribery scandal. Mpasu was later elected the Speaker of Parliament by the ruling party. Dr Cassim Chilumpha, a former Minister of Education, was removed from office and transferred to be the head of Blantyre Print and Publishing, a parastatal conglomerate under the control of the state. Chilumpha was later selected by Mr Muluzi to run for the vice presidency in the elections of 2004 (Cammack, 2003: 80). In cases that went before the courts, politically connected individuals were acquitted on dubious technicalities. This particular ruling prompted the Anti-Corruption Bureau to complain publically that such rulings undermined the integrity and eroded the public's confidence in the judicial process (*Ibid*).

The party compromised the anti-corruption effort further by threats made by the president to those who reported incidents of corruption. As early as 1996, a year and a few months after the government was formed, the president was threatening those who reported "without evidence" with reprisals including arrest and labelling informers "enemies of the state" (The IPS News, October, 15th, 1996). With incidents such as these above, there was a domino effect in the wanton disregard of anti-corruption measures. As Bayart (1993) has argued, governments use or misuse the very facilities of anti-corruption measures to restrain radical queries on the abuse of public resources for patronage from opposing groups. In this way, the institutions become instruments for maintaining the delicate political balance of clientelism. The protection of allies and the condemnation of antagonists has been a main feature of Malawian transitional politics since 1994 with regard to anti-corruption measures. Popular politicians such as John Tembo, Gwanda Chakuamba, Cassim Chilumpha, Brown Mpinganjira and many others have had a history of arrests on corruption charges at some time or another when in opposition and had been reintroduced into mainstream politics on the governing party ticket [Interview: Anonymous K].

Another example: the Declaration of Assets and Liabilities Act (2003) made the declaration of assets mandatory for politicians and public servants. The punishments according to the bill were the "impeachment of the president if he does not declare his assets" and "loss of seats

by MPs, dismissal of top civil servants, parastatal organizations chairs and executives who fail to indicate how much they are worth after being reminded twice". By 2004, more than 75% of MPs including the President had not declared without any serious consequences (The Nation, November 1, 2002).

The decentralised nature of patronage under democracy pressured politicians to rely on "corrupt" transactions to generate revenue for "taking care" of their constituents above and beyond their official duties [Interview: Nkhulande]. Politicians provided for transport, funeral expenses, financial assistance, and even school fees for those in need; a situation that was unsupported by their income [Interview: Nkhulande]. Taking care of constituents correlated with the ability to dispense patronage which in turn related to the legitimacy one had within the community [Interview: Kabondo]. Known as the power of consumption by Amundsen (1999:10), this relativity of the estimations of status implied that political candidates set themselves apart from their counterparts by displaying symbols of prosperity and financial stability that were comparatively better those of their contemporaries.

The president in his private capacity benefited as well. For example in 2003 it was alleged that he had ordered Sophie Kalimba, the Chief Executive Officer of Blantyre City Assembly, to award his company Atupele Properties Limited a plot number CC1157 where he planned build Keza Building Complex. He further instructed Minister Thengo Maloya to authorise the construction of the building's car park on reserved land earmarked for the construction of Masauko Chipembere Highway. The president then ordered Mr Ernest Mtingwi, the CEO of Malawi Revenue Authority, to pay Keza rent in advance for 10 years and occupy the building once construction was completed. In all, the Malawi Revenue Authority lost MK 63 million on a building that was under construction and an additional MK 2,746,318 for the inaugural ceremony (Principal Registry Miscellaneous, Civil Cause Number 286 of 2005; ACB Annual Report, 2005-2006:11). In another case, the arrest of the former Malawi Ambassador to Japan, John Chikago, on May 31st 2006 exposed the embezzlement of MK 5.9 million while he was serving at the Malawi Embassy in Japan. Chikago is on record to have confessed that he received instructions to use the money to buy 111 vehicles on behalf of the former president Muluzi for use by UDF party members (The Daily Times November 1st 2006).

11.2.1.1 The Contested Space of the Anti-corruption Strategy

The data from the Bureau and information from the interviews indicates that the anti-corruption effort was severely constrained by the lack of a coherent and consistent strategy, the lack of adequate resources, a political and economic environment that was not conducive and shortfalls in the law. Comparative data across Africa confirms that this was isolated to Malawi (De Maria, 2007; Doig and Watt, 2005:4; Mbaku, 1996). The African state according to Harris-White and White (1996) is an environment full of deep-rooted corruption that is resistant to preventative measures (Harris-White and White, 1996:1).

In 1998 the Anti-corruption Bureau commenced its operations. From the beginning the Bureau's first director Mr Gilton Chiwaula declared that his institution would have a "zero tolerance" approach toward corruption. This broad strategy meant that, resources permitting, all acts of corruption would be investigated and perpetrators prosecuted [Interview: Phombeya]. The Bureau conceptualised corruption as a legal and administrative rather than a social problem. In the absence of verifiable indicators, the main emphasis was to track and measure operational efficiency through counting the number of successful conviction from investigations completed [Interview: Chalunda]. The Bureau's stance from the onset therefore prioritised the investigative function at the expense of prevention and education. This pursuit proved to be unattainable. By 2000, the management had come to the realisation that an investigative approach was not an appropriate method in tackling the problem. The institution announced that, "realizing that [prevention was] the only long-term solution in the fight against corruption," it would focus on corruption prevention (ACB Annual Report 2002/2003:1). However so, the pressures that political dynamics had placed on the institution still promoted investigations over prevention activities. In effect, the demands by a weary public and the donor community pushed for more investigations and prosecutions were of prominent individuals who featured repeatedly in media reports for the abuse of public resources. Even though the investigation division had increased from two officers in 1998 to 39 officers in 2003/2004 (compared to five corruption prevention officers and four public education officers), the results on cases were extremely modest.

The negative consequences of this strategy are illustrated by the comparative statistics of the Bureau's first years and that of the ICAC and Botswana's DCEC. Between 1997 and 2004,

the ACB registered 11,384 complaints out of which 27% had either been authorised for preliminary or advanced investigations. The organisation closed or completed 1,616 (53%) cases and 1,409 (47%) were carried forward. Of these cases, 58 suspects had their cases prosecuted, of which 41 (71%) were acquittals and 17 (29%) suspects were convicted. In comparison to the first year of its operation in 1974, the ICAC investigated 2,466 corruption cases out of 6,368 reports received. The number of cases brought to trial increased from 108 in 1974 to 208 in 1975. The institution prosecuted 108 cases and almost doubled this to 208 in 1975. The DCEC's conviction rate was 95% in 1995, and between 1995 and 2003, it averaged 71%, indicating that ACB comparatively underperformed in its first years of operations (Kamanga, 2005; Camerer, 2001:7).

When comparing the ratio of cases allotted to individual investigators, ACB investigators were the most encumbered with cases out of the three institutions. As an illustration, from 2000 to 2003 the ICAC consistently had a caseload ratio of one investigator to five cases per year. Investigators completed on average up to 70% of the allotted cases. The DCEC's investigations caseload varied from 1:7 to 1:18 and the case completion rate varied between 27% and 49%. The percentages for the ACB on the other hand were the most extreme of the three institutions. Investigator to case ratio averaged 1:60 within the same years and the case completion rate was 18% in the financial year of 2002/2003 (Kamanga, 2005).

Interviewees pointed out that the reason for this state of affairs was mostly due to ambitious planning that aimed to placate donor demands even in the absence of solid government commitment and strategy. There was a consensus amongst the interviewees that anti-corruption measures were instruments created by a government under pressure from aid-providing partners without the input of Malawians.

Malawi's aid dependency in the period under review, which in 2005 was 80% of the development budget and 40% of the recurrent budget, was one of the highest in the world (Cammack, 2006). Massive donor grants to all institutions including the Anti-corruption Bureau supplemented government funding. International bodies such as DANIDA, the Department for International Development (DfID), the Norwegian and Swedish Governments (NORAD), European Union and the World Bank assisted the Bureau in managing its financial requirements.

In many cases in Africa, anti-corruption agencies are dependent on the donor support for a substantial part of their budgets. This renders them susceptible to donor influence (Doig *et al*, 2005: 22).[42] During Muluzi's terms of office, the media frequently reported on public perceptions that corruption was on the increase. The reports compelled the country's diplomatic corps to weigh in on the discussion. Newspapers reported on the unprecedented expressions of disappointment on the conduct of public officers to influence the government into taking a tougher stance. Norman Ling, the British Ambassador to Malawi in 2004, was reported to have warned the government that "corruption [was] getting worse and gradually eating away at the fabric of Malawi society" (The News 24 .Com 2004) and the American Ambassador Steven Browning had mentioned that Malawi was plagued by widespread greed and graft (The Sunday Herald 30 October 2005). The donors pressured the ACB to focus on specific approaches and strategies in controlling corruption. NORAD for instance advocated for a more preventative approach, DANIDA focused on education and DfID and the World Bank pushed for improving the Bureau's capacity to investigate and prosecute those involved in grand corruption (ACB Annual Reports, 1998-2008). The Wold Bank in 1998 subtly advised the government to redirect its attention from cases of petty corruption to cases of grand corruption in its strategy. It stated that:

> [t]he view in the Bureau is that allegations of petty corruption must be investigated, to demonstrate that it is tackling the complaints of the general public in a serious manner, thereby building confidence amongst the general public to come forward with information on larger scale corruption, in due course. The drawback of a gradual approach is that the ACB will be seen primarily as an institution that addresses petty corruption, and lacks the capacity or willingness to confront middle and grand corruption cases. The latter are more damaging to Malawi's economic prospects and reputation in the eyes of investors. To fill the gap, the ACB should be prepared to contract the services of specialist financial fraud investigation firms as required (World Bank, 1998: 22).

Although donor community was forthcoming in providing the Bureau with financial assistance, a 2003 NORAD/DFID review acknowledged that Bureau had limited strategic ownership of its operations in relation to donor priorities. It stated that:

> "in the case of the ACB, the evolution of donor support has tended to accentuate, rather than abate, ACB's difficulties. Compartmentalized funding by donors

[42]Of the five countries that U4 had studied in a research of Anti-corruption Institutions in Africa, only the two countries of Ghana and Uganda were principally reliant on government funding. The others were dependent on aid as supplementary source and as such governments acquiesced to the demands of their international benefactors or risked losing the much needed financial assistance (Doig *et al*, 2005: 22).

> division-by-division has, albeit unintentionally, held back the development of internal ownership of corporate strategic management, Bureau-wide priority setting and inter-divisional collaboration. It has cultivated (and exposed) divisions unequally…Effectively, ACB priorities remain determined by donors through their individual funding choices" (Doig and Watt, 2005: 36).

The high levels of corruption and the inability of the Bureau to contain it eventually led to the suspension of aid to the government in 2001/2002 by a consortium of donor nations (The IRIN, November 20th, 2001).[43] The aid would only resume after the government demonstrated commitment to conclude major cases of grand corruption and reinvigorate institutional change (SAIIA, 2004; Kamanga, 2005). Even so, aid soon resumed but not because of improvements, but because of political dynamics. This attitude by the donors was very inconsistent, rendering the overall effects of the punitive action unproductive. The IMF for example admitted that financing under the Poverty Reduction and Growth Facility (PRGF) was not government-driven and that they were under considerable pressure from their shareholders to present Malawi as part of the millennium countries. They accepted Malawi despite knowing that the Muluzi government was not committed to good governance and that the budgets approved by parliament were fictitious (Booth *et al*, 2006: 21). Former technical advisor Paul Russell likened the Bureau to a "political football" that was kicked around by various actors to achieve their own ends [Interview: Russell].

11.2.1.2 Inadequacy of Administrative, Political and Economic Resources

Successful anti-corruption interventions usually have their origins in contexts where domestic political pressures within a state instigate the transformation rather than as a response to external demands. The ICAC and DCEC for example developed when domestic crises compelled leaders to undertake reforms. The citizens supported these interventions as legitimate and positive move (Heilbrunn, 2004: 14).

The economic and administrative factors, political context, and the quality of the legal infrastructure often predict the success or failure of an anti-corruption drive (Andvig *et al*, 2000: 64). Comparatively, anti-corruption institutions that followed the Hong Kong model in much of Africa were established during hostile political and economic environments. They had cultural, political and social imperatives that were fundamentally different from the Hong

[43] IRIN Malawi: Suspended AID to resume soon –- government Johannesburg, 20 November 2001

Kong of the 1970s (Doig *et al*, 2005: 41). Hong Kong was a developed country with a strong political drive by politicians to achieve positive economic growth that would attract investors. Politically, it is important to bear in mind that Hong Kong is a homogeneous territory with regard to of its citizenry; a situation needed for stable political systems and absent in much of Africa. The government had the political will to enact and implement draconian laws with the support of a well-staffed and equipped bureaucracy. It had access to the financial capital to implement its anti-corruption strategy (*Ibid*: 41). These conditions also exist in Botswana. The country has a robust and stable economy that is boosted by its natural resources, a relatively small and largely homogeneous population and has been successful with general economic and administrative reforms in the public sector (Kamanga, 2005). Clientelistic political mobilisation based on ethnic political factions is almost non-existent. van de Walle *et al (*1997) agree that other Africa countries cannot be compared to Botswana. They note that after its independence the country has had a sustained economic growth rate to emerge as a middle-income country contrary to most countries. These elements ensure that the pressures on the activities of the DCEC that are common in other countries are minimal.

i) Constrained Political Environment

Articles 35, 36 and 37 of the constitution guarantees freedom of expression to every person, freedom of the press and freedom for every person to access all information held by the state so far as it is required by him for the exercise of his rights (Malawi Constitution, 2002). As Clapham (1996) indicates, the drive to survive politically motivates policy formulation more than the necessity of providing public goods in Africa (Clapham, 1996:5). The Malawi experience during the transition had been of a harsh economic and political environment that was not conducive for the replication of the ICAC model. Politically, the lack of ideologically driven political mobilisation contributed to the abuse of power in government and the manipulation of the anti-corruption effort for factional intrigues. Politicians used corruption to remain in power under this clientelist system.

The Electoral Commission (EC), for example, was utilised as an instrument for perpetuating the executive dominance of the UDF. The EC ignored complaints about the utilisation of government resources for party activities and allegations of vote buying, intimidation, violence and corruption. In both the 1999 and 2004 elections, factional political violence culminated into the destruction of property and loss of life (Hajat, 2004: 4).

Further, the Commission had been accused of partisanship in the provision of its services such as electoral campaigns to sensitise the population on the voting process. Its commissioners were accused of directing the public on whom to vote for. The fact that the National Elections Consultative Forum (NECOF), a body established to disseminate information, was reconfigured to include UDF stalwarts and supporters supported these allegations. The EC replaced original members such as the non-partisan Public Affairs Committee (PAC), the Media and the Law Society of Malawi with members of the Chiefs Council, the Inspector General of Police and the National Intelligence Bureau (NIB) (Chirwa, 2000: 106).

In January 1999, the Commission proposed 40 new constituencies in the south, 17 in the centre and 13 in north, thereby giving an advantage to the UDF. This was revised in 1999 because of pressure from civil society groups, to accommodate the creation of eleven constituency boundaries in the south and five in the centre (Cammack, 2004: 75).

The compromised Commission was a reflection of the overall political situation that favoured factional demands on policy over technocratic solutions in the administration of the state. Political loyalties dictated the direction of policy and as already indicated most reform initiatives tended to be top-down (Therkildsen, 2001: 34). Towards the end of Muluzi's term of office, political rights as indicated by the Freedom House reports had deteriorated considerably.[44] (Freedom House, 2000-2004). In this way, government processes were increasingly politicised by personal power, leading to an ineffective bureaucracy.

Like their MYP predecessors, the youth wing of the UDF, the Young Democrats, harassed and intimidated journalists, opposition members of parliament and supporters of other parties. During elections, this youth group assaulted and allegedly murdered those that opposed the president's absolute authority. Numerous examples exist such as that of Charles Way who, in 1997, was an MCP candidate in a by-election in Ndirande, Blantyre. It was rumoured that he was murdered when he refused a bribe from Mpinganjira to defect to the UDF [Interview: Anonymous]. In April 1995, General Chigawa, the commander of the army, was shot dead under suspicious circumstances when it was reported that he had been investigating alleged

[44]The published annual assessment of state of freedom assigns each country and territory the status of "Free," "Partly Free," or "Not Free" by averaging their political rights and civil liberties ratings. Ratings that average 1-2.5 are generally considered "Free," 3-5.5 "Partly Free," and 5.5-7 "Not Free".

corruption in the armed forces. This was followed by the death of Colonel Njoloma who had claimed that had been poisoned while in custody for mutiny in July 1998 (Cammack, 2004). In yet another case, a hired assassin wrote to the media in March 1998 that he was hired by ministers Brown Mpinganjira and Patrick Mbewe to murder John Tembo. He claimed that he had received MK 500,000 for the assignment [Interview: Anonymous]. Kalonga Stambuli, a former party functionary and presidential advisor had exposed the excesses of the president and his followers in a mimeograph in 2004 after he had fallen out of favour. He found was murdered in his home by person's unknown.

ii) Economic and Resource Constraints

The relationship between bad governance and high levels of corruption was evident in the first few years of multiparty politics. It had been estimated that the *g*overnment lost MK 7 billion ($6.5 million) to corruption that involved cabinet ministers and senior controlling officers in the first seven years of its administration. The MK 7 billion lost to graft was only MK 3 billion short of the amount for budgetary support required from donors in the 2003/2004 budget (The Nation, November 24th 2003).

Although there are some other factors that contributed to the bad economic situation such as drought and external shocks, bad governance by the UDF had exacerbated a very volatile financial situation during the period under review, which in turn created more corruption. The Human Development Index had indicated that the population was relatively worse off at the end of Muluzi's terms than they were in 1993 (UNDP HDI Report, 2005). Government excessive borrowing amounted to MK 45 billion in 2002 that increased the government deficit to 12.1% in 2002/2003 according to the IMF estimates (IMF, 2004). The wealthiest 10% of the population accounted for 42% of expenditure and income compared to the poorest 10% that accounted for 1.9%. This economic situation translated to 72% of the population living on less than US $ 2 per day (UNDP, 2005: 269). From 1999 to 2003, Malawi's GDP grew by an average of 1.6%, which translated to a GDP-per-capita decline of over 1% per year (Whitworth, 2004; IMF, 2004).

Clearly, the environment was unfavourable for the effective implementation of an anti-corruption system. The direct result of the economic environment was the reduction in the amount of funding earmarked for the anti-corruption effort. The consequences of this were that there were persistent problems with hiring or retention of staff, especially of operational

staff, due to financial constraints. To add to this, the cash budget system that the government had introduced in the early 2000s to offset donor aid inconsistencies seriously hampered state operations. Individual ministries and departments were unable to attract the requisite professional accounts staff to assist with auditing [Interview: Nthengwe]. In the case of the Bureau, the harsh economic environment particularly affected the recruitment and retention of lawyers thereby compromising its prosecutions. For a large part of the decade, the Bureau relied on the Deputy Director as the only consistent lawyer to try cases. By 2004, the Ministry of Finance had reduced the budget to the Anti-corruption Bureau by two-thirds due to the harsh economic environment (SAIIA, 2004). The institutional strength to budget (in dollars) ratio declined from 1 to 22,154 in 1998/1999 to 1 to 15,125 in 2003/2004, considerable amounts for its operational activities (Kamanga, 2005). This political and economic situation led to a cycle where corruption bred poverty and poverty bred corruption in a loop that curtailed anti-corruption efforts.

iii) Limitations in the Judicial Environment

The general deterioration of the economy and political environment had a very significant effect on the judicial sector. The 1995 constitution transferred the mandate of traditional courts to magistrate courts, with the High Court and the Supreme Court of Appeal as appellant courts. The traditional courts had previously provided a legitimate means by which cultural and civil disputes were resolved at the lowest levels of society. Their closure placed upon an already resource constrained and antiquated formal court system with additional cases.

With minor exceptions, all criminal cases, including those of corruption, were sent to magistrates as courts of first instance. The problem with this was that anti-corruption law is a highly complex and specialised field and there was an overwhelming shortage of officers with the legal qualifications to either prosecute or judge the cases. For example, Section 110 of the constitution provided for the establishment of subordinate courts to be presided over by professional and lay magistrates. By 2005/2006, there were only 193 magistrates in post. Magistrates fell into two categories: resident magistrates, who had a minimum of a law degree, and lay magistrates, who had basic legal qualifications below the level of a law degree. Out of the 193 magistrates in place, 30 were resident magistrates (four of them chief

resident magistrates, eight, principal resident magistrates and 18, senior resident magistrates) while 163 were lay magistrates (Kanyongolo, 2006: 31).

The constitution also guaranteed that every person had the right to be represented by a lawyer of his or her choice; or, where it was required in the interests of justice, be provided with one at the expense of the state. However, due to staff shortages in the Ministry of Justice and high private lawyer costs, this was not possible. As an illustration, from 1967 to 1995, only 215 lawyers graduated from the University of Malawi, a country that had a population of 10 million at that time. By the same year, the Ministry of Justice had only 27 lawyers out of an establishment of 65 posts of which only 10 were permanent employees. As such, the formal judicial sector could not cope with the large volumes of cases that were referred to it after the transformation of the judicial sector, leading to bottlenecks in the system for most detainees who were awaiting trial. It was estimated that less than 10 % of criminal defendants had a legal representative (World Bank, 1998: 8).

Partly as a result, statistics indicate Malawi's prison population more than doubled in the 10 years from 4,685 in 1993/1994 to 10,232 in 2004/2005 with 2 368, or over 26 per cent, awaiting trial. The Malawi Prison Service concurred with the view that the strains placed on the judicial system had led to the rapidly deteriorating situation (Kanyongolo, 2006: 17). Therefore, the anti-corruption effort was only part of an overburdened and under resourced judicial system.

11.3 Conclusions

The success of the Hong Kong ICAC motivated the replication of the model in developing African countries such as Malawi, Swaziland, Sierra Leone, Zambia and Botswana with varying degrees of success (Heilbrunn, 2004; Doig *et al*, 2005). Corruption is still pervasive in African countries and the trends indicate that it is a growing problem despite the existence of anti-corruption bodies (Doig *et al*, 2005: 40). The transferability and legitimacy of these institutions is questionable when local conceptualisations of corruption and political and social realities are taken into account. With the exception of the Botswana Directorate on Corruption and Economic Crimes (DCEC), the efficacy of these agencies has been mixed.

The differences in the results between the ICAC and the institutions that replicated the model can be explained by the operational contexts and historical differences between the two

entities. Institutions in Africa operate in hostile environments that are not conducive to their success. The reality is that competing demands for resources by various factions, uncoordinated efforts between complementary institutions, bad strategic decisions and lack of human capacity have led to ineffective institutions in a majority of cases. It is by examining the multifarious nature of the demands that are placed on public officers, political institutions and social structures that this can be analysed and understood (Alatas, 1990).

This explains why depending sorely on defining corruption through the legal framework is an ill-advised exercise in the Malawian context. For the majority of the of the population cultural practices embedded in traditional imperatives are as much "legitimate" as the institutions of the government-more so in rural areas where the penetration of state institutions is nominal and established legal instruments are hardly comprehended.

The perpetuation of patron-client relationships during the transitional period not only contributed to the existence of corruption but also negatively affected the implementation of the anti-corruption efforts. The political and economic environment had a very profound effect on how corruption was identified, conceptualised, and the efficacy of formal remedial institutions. Politicians formulated policies with the chief aim of coordinating the diverse requirements of the political system and often carried them forward within the realities of resource limitations. The level of success of anti-corruption measures is also determined by an environment where a strong political will exists. These measures succeed where they enjoy high levels of political and public support, have sufficient resources, adequate research capabilities, and have robust accountability processes that monitor the effectiveness of their operations. Therefore, the entire political system should be analysed if any countervailing measures are to have an effect.

Chapter Twelve

Conclusions and Findings

12.0 Introduction

This study has attempted to illustrate why attempts in delineating corruption and the dynamics of anti-corruption efforts in transitional states should include analyses of the political context. The usual approach has been to evaluate the status quo through structural and legal perspectives without considering the political dynamics (De Maria, 2007). The findings suggest that some of the theories on the perceptions, conceptualisations and causative factors on corruption are applicable to Malawi as a state in transition. Clientelistic political mobilisation in the democratic era of post-1994 was evident in Malawi as political elites attempted to recreate neopatrimonial systems of the past despite the existence of the good governance agenda. Social and political organisations in similar states have certain group dynamics, which depend on the creation, development and sustaining of networks to consolidate power. The dissertation has to some extent challenged the often quoted structutral, institutional and personal reasons as to why corruption exists. The researcher posits that politics matters in the existence of corruption and recommends that studies of corruption and anti-corruption measures will benefit from a more indepth look at socio-political interactions.

The dissertation explains how political processes in the colonial administration had corroded the legal-rational system of administration through the manipulation of social and official institutions for political ends. This created the precedence of a particularistic governance model that had a strong executive. Without countervailing interventions to contain the monopolisation of power, the system was vulnerable to wealth accumulation for personal and political ends. After independence, the neopatrimonial and autocratic system of the one party state permitted the existence of the "big man" in the case of Kamuzu Banda, and "big men" in the case of the Muluzi government. As power became increasingly decentralised in the multiparty period, corruption developed into an instrument to contain factional contestations. Politicians looted, and so did bureaucrats, leading to massive loss of government revenue.

The main questions that this study sought to answer were, "what characteristics did corruption manifest in Malawi from 1994 to 2004 and what insights can a study of the

sources of corruption in Malawi throw in understanding the failure of initiatives to suppress it?" The research therefore sought to find answers to the following:

- What preconditions and precedents existed in Malawi prior to the election of the democratic government in 1994 that permitted the proliferation of corruption?
- How did these "coalesce" with the political environment of post-dictatorship Malawi to create an enabling environment?
- How did these forces undermine anti-corruption efforts instituted by the government?

In addressing these questions, I specifically tried to find answers to the following questions:

- What were the characteristics of corruption in Malawi during the period under review?
- What political, economic and social processes contributed to high levels of corruption in Malawi?
- What overall strategies did the government institute to curb corruption and how effective were these?
- How successful was the Anti-Corruption Bureau in achieving its goals of curbing corruption?
- What role did politics play in the operations of the Anti-Corruption Bureau?
- What were the structural/institutional impediments to the anti-corruption initiatives?

The thesis posits that corruption has had negative effects in that it debased the normal processes and procedures of government. Its effects included political instability, poverty and other social-economic ills (Shleifer and Vishny 1993; Kaufmann *et al:* 2005). The thesis further concludes that the quality of the political leadership has a profound effect on the existence of corruption. Political will affects the efficiency of anti-corruption regimes and their ability to contain it.

12.1 Chapter Summaries

12.1.1 Part One: The Corruption Complex

Chapter one placed the research in context. It presented the political, economic and social realities of Malawi. Chapter two introduced major approaches toward corruption. The phenomenon was viewed from three main perspectives of individualistic/personalistic, institutional and systemic approaches. Incidents of corruption can be understood from whether institutions, public servants or the polity overall have challenges inherent in them that would create the necessary conditions for corruption to take place. The chapter illustrated how neopatrimonialism as a model explains how the three approaches can intersect. The discussion centred on how social, economic and political interactions lead to the existence of

"big men" in African politics. The significance that corruption plays in managing group dynamics for the purpose of political mobilisation in Africa was also discussed with regard to how formal and informal power motivate actors within the political system to perpetuate clientelism and patronage.

Chapter three assessed the major theoretical and definitional challenges in disaggregating corrupt transactions within and without formal institutions of the state. The chapter explained that mostly corruption is often viewed as legally/institutionally inclined flawed relationship between an employee and employer in disagreement with formal rules, laws and procedures as indicated by the ideal Weberian bureaucratic model (Rose-Ackerman, 1978). However, it is also necessary to define it in other ways because it is a multi-faceted and complex phenomenon. These other definitions included those that identify it as a market interaction where the public office is abused as a maximising unit that provides the supply of goods against unrelenting and insatiable political demands (van Klaveren, 1970:39). The public interest and public opinion approach were applied to explain why corruption occurs with the complicity of the general population. The chapter introduced forms of corruption state capture, bribery, fraud, abuse of office, nepotism and favouritism that are extensively used in its study.

Chapter four identified the deficiencies in governance systems that create the necessary preconditions for the exploitation of institutions for private gain. These included the economic, political, administrative and traditional institutions that have been identified in literature as determinants. The chapter introduced the topic of how networks ensure that the system of collective corrupt action is maintained to consolidate the monopolisation of power. The chapter also illustrated how African polities have a dual existence of formal institutions of the state and those of informal social organisation, which have facilitated and entrenched the abuse of office for private gain.

Having identified the various approaches, causes, effects, definitions and conceptualisations of corruption in the preceding chapters, chapter five discussed the historicity of the nexus involving economic, political and social drivers of corruption. The chapter argued that the transplanted nature of the modern capitalist state which was placed upon a pre-existing social order created the conditions for economic differentials and social stratification. Sandbrook (1985) for example, questions the legitimacy of the postcolonial state that is viewed as

artificial and weak due to its exogenous nature that lacks universal penetration of its institutions in the ordinary lives of people. These inherited African states were weak, unstable and not structurally viable, as Mbaku has surmised (1998:237). In this line of thinking, the state became both an instrument for social stratification and social mobility. Wealth determined the individual's position within social strata and social strata determined the composition of status groups. From these relationships, the dynamics of political mobilisation related to the acquisition and disposal of wealth ensured. Therefore, the institutionalisation of the state machinery became highly ineffective because the process of its establishment was not thorough when African states attained their independence

The methods and strategies for controlling corruption were outlined in chapter six. The chapter expounded on the politics behind the evolution of good governance as a policy and anti-corruption instruments that are widely adopted in developing countries to control corruption and financial mismanagement. The chapter elucidated on the approaches of control and reinforcement, institutional reforms, social interventions, political and structural changes as well as an integrated strategy. The chapter concluded with an evaluation of both the good governance model in general and anti-corruption institutions in particular in controlling corruption. Assessing the various anti-corruption regimes, it deduced that these methods were not as effective as they should be due to their exogenous nature and inability to incorporate contextual political realities in their design.

Chapter seven presented the results of an empirical analysis of the characteristics of corruption in post-1994 Malawi. The evaluation of authorised complaints supported the view that public perceptions on corruption indicated that political machinations during this period affected the number of incidents as well as the characteristics of corruption. Corruption occurred in all sectors of society, but more so in public institutions. Most cases were of bribery and fraud, were incidental and occurred at the lower levels of administration. Grand corruption involved senior public officers and politicians who mostly abused their authority to access government tenders.

12.1.2 Part Two: Explaining Causality

Part Two examined the determinants of political corruption. In chapter eight, the thesis explained how determinants of political corruption correlated with the exigencies of expedient political action and the existence of interconnections between the monopolisation

of power by the executive and the absence of countervailing institutions. Chapter eight provided evidence that the political economy of Nyasaland was regimented and promoted differentials of privilege. Government policies ensured that access to economic opportunities and political power were determined by policies that divided society along ethno-regional and racial factions. The executive determined the direction of the political economy and political mobilisation was through particularistic regulations and policies. These favoured European interests over those of the indigenous population. This is a major characteristic of clientelistic forms of corruption and precursor to neopatrimonial rule where a dominant executive abuses power to maintain an advantageous position above other actors (Lambsdorff, 2006:10; Gerring *et al*, 2005; Kunicova, 2004).

Through indirect rule, the government introduced institutional hybridity that used informal and formal modes of authority for political control. In reference to Mamdani (1996:8), the features of the political economy that were created exhibited all the hallmarks of a bifurcated state where the presence of established legal frameworks of modern governance co-existed with the traditional systems of political mobilisation therefore exacerbating the abuse of personal power for private or group gain.

Chapter nine expanded on this theme and illustrated how Dr Banda's one party state consolidated this political economy. The transfer of political authority from the British to the indigenous leaders replaced colonisers with African elites. However, the institutional legacy of colonial rule had bequeathed the significance of strong vertical relationships and the monopolisation of power by the executive without the attendant accountability and transparency mechanisms in the operationalisation of power. The consolidation of strategies that perpetuated economic opportunity differentials entrenched disparities in terms of access to government resources. Again, ethno-regional politics played a significant role in determining the guidelines for political action when Banda proceeded to establish his autocratic rule through the advancement of his Chewa political base in a convoluted patron-client system. A select number of political elites privately benefited from corruption at the expense of the government and state. The population was largely ambivalent to its existence at the highest levels of authority.

Chapter ten looked at neopatrimonial rule in a democratic system of governance and explained the reasons why the historical legacy contributed to the perception of post-1994

proliferation of corruption. Multi-party politics and democratic reforms had removed the statutes and security restrictions that had been utilised for the brutal suppression of dissent. For this reason, there was a steady rise in incidents of abuse office in the absence of an extensive security apparatus that pervaded the public service as was in the past. Following Mbaku's (1976) theory on the existence of rules of the game that determine political relationships with regard to corruption, the realignment of Malawi's political economy within the realities of a liberal democracy and the reconfiguration of political relationships had decentralised patronage, ethno-regional factional contests and thus the misuse of state resources for personal or group gain. The chapter explained that the paradigm shift of post-1994 provided new opportunities for the misuse of monopolised power by a new set of political actors that adapted the rules to an old game. Patron-client relationships took on a new importance with the existence of multiple power centres. Unlike autocratic rule, democracy rendered the tenure of political office unstable and the cost of maintaining advantageous positions increased. The resources were acquired illegally from public finances to finance political mobilisation.

Corruption also occurred when illicitly gained resources were utilised for legitimising social standing. To counter the years of Kamuzu's Chewa dominated 30-year-old political economy, Muluzi focused on improving the economic standing of his constituency that, due to regional politics, was comprised mostly of members from the Southern Region. Oliver de Sardan's (1999: 36) thesis on cultural logics explains how solidarity networks, gift giving, predatory authority and redistributive accumulation motivated the abuse of power. The "politics of appeasement," as he called it-worked outside of the democratic principles of good governance and this new construct depended on the development of life chances for individuals that served as patrons by proxy on behalf of the president. Thus, this method of accumulation was more apparent in direct contrast to Kamuzu's centralised network of extraction that concentrated political corruption in the hands of the political elite. This shift had prompted a free for all mind set; meaning that people created their own opportunities to accumulate wealth from within and outside the law; adding to increased cases of bribery, fraud, embezzlement, nepotism and favouritism. What emerged was the general deterioration of the political economy that fed back to more corruption.

Finally, chapter eleven presented the difficulties that were faced in applying anti-corruption laws and regulations in the Malawian context during the transition. The thesis further

identified constraints on the anti-corruption efforts that operated within a neopatrimonial system of political mobilisation. The chapter concluded with an assessment of the efficacy of good governance and the transferability of anti-corruption measures into an environment that does not have the necessary economic, political or administrative resources to ensure their success. The chapter reminds us that reforms are only as good as the political environment permits them to be. The commitment by the public and the existence of political will from the highest public offices could have a positive effect of the outcome of anti-corruption efforts.

12.2 Overview of Key Findings and Conclusions

Major findings of this thesis are that corruption is inimical to development. It negatively affects the socio-political and economic systems of a state. These effects hamper the anti-corruption effort. The thesis sought to explain why there was a general perception of increased incidents of corruption undergoing rapid transformation from dictatorship to democracy under democracy. In examining this, the research also aimed at understanding why anti-corruption measures were ineffective to contain it. The thesis adopted a broad analytical framework to correspond with the multidimensional nature of corruption. It provided insights on how political dynamics interact with the Weberian legal-rational logic to reproduce past methods of political mobilisation. The research also challenged the wisdom of adopting anti-corruption measures wholesale from the West without taking into account the local political contexts. So why did corruption exist in post-1994 Malawi and what were its characteristics? Why were anti-corruption measures ineffective? The discussion below outlines the key findings.

The historical experiences of state formation have indicated that quality of rules and regulations has a bearing on the efficiency of the state institutions and propensity for corruption to occur. Where regulations are wanting, corruption becomes rife (Lambsdorff and Cornelius, 2000). The quality of regulations has had a major influence on the effectiveness of the political and bureaucratic systems in Malawi since colonial rule. The British colonial executive had negative consequences. It promoted factionalism and entrenched the institutionalisation of ethno-regional/racial polarisation of society for political and economic power consolidation. During this period, the absence of a parliamentary system and an independent judiciary that could serve as countervailing systems of accountability aided in the abuse of power (Klitgaard, 1988; Kunicova, 2004). The executive passed regulations that

aimed at restricting African commerce, limiting indigenous cash crop production and encouraging public/private cronyism for European enterprises. This contributed to a distorted administrative system that curtailed investment and competition in one area (i.e. the north) and expanded markets in others (i.e. the south). When markets are restricted by the absence of competition corruption often surfaces (Henderson, 1999). The economic power differentials between the "haves" and "have nots" allowed the system of patronage to prevail and was exploited by political actors for control.

The Malawian economic regime was not different to that of a majority of African states. The colonial government had concentrated on the production of primary raw exports and this transferred to the post-independent administrations (Mutahaba *et al*. 1993:17; Doig *et al*, 2007; Baeur, 2005:1). For example, the transfer of power to Kamuzu Banda's government in 1964 shifted the focus of economic strategies from European settlers who were predominantly settled in the Southern Region to the predominantly Chewa Central Region which was the political base of Banda's government.

In the transitional period, the advancement of the free market economy and policies of liberalisation in the post-1994 era of Muluzi had exacerbated, instead of curtailing, particularistic strategies for market competition. Muluzi's economic policies tended to incline toward his political base of the Southern Region as the area identified for development in line with the politics of patronage that the clientelistic system of governance demanded. Again, the development of life chances and positive life situations for his constituents determined the outcome of the economic policies that advanced commerce over agriculture and identified persons who would carry this forward.

The findings also supported the contention that the quality of political leadership matters as a determining factor in the existence of corruption during transitional periods. When competing factions jostle for favourable positions, the ideal would be that the political will of the leadership should uphold anti-corruption drives. This establishes a political context that constricts illegal accumulation of resources. In the Malawian political system, the patron-client system of political engagement had survived previous political transitions.

The transfer of power at independence did not alter the system. Banda abused institutions of the state to consolidate a hegemonic leadership. Rules and regulations were used to create an

autocracy that had similar wide-ranging powers of the colonial administration. The use of government departments and ministries for self-serving was common, but was restricted to the uppermost levels of authority. For example, government policies inclined toward the benefit of Press Holdings and economic activities that promoted the Central Region.

Dispensing of patronage in a democratic system required resources that were acquired from public institutions by illicit means. This process is known as predatory and redistributive accumulation (Oliver de Sardan, 1999).North (1981) expounds on this relationship through his "predatory state theory" which posits that dysfunctional economies create a system that artificially distorts resource allocations within the market and diverts public goods unproductively from one group to another. Neoliberal reforms that existed during the transitional period had the consequence of limiting the ability of politicians to monopolise power and neutralise opponents with force as the previous administrations had done. The politics of the 1990s had illustrated that presidentialism still survived. Patron-client relationships were adapted to work within the framework of good governance. Thus, the government administration had a legal facade but was patrimonial in nature. Although the dispensing of patronage was the prerogative of the president, he carefully positioned a select few of relatives and cronies into positions of authority as proxies of this patron-client political system. This system of control decentralised the centres of power and patronage. In the new dispensation, major power centres co-opted political rivals by bribery and patronage. In this way, political corruption increased in direct proportion to the emergence of the number of political actors from different factions that could be "compromised" by the executive. The legitimising of questionable political action by co-opting ethno-regional power brokers, the monopolisation of power, the appropriation of traditional institutions and the collusion of public servants and private interests took a new relevance in a dispensation that normalised the legitimacy of illicit wealth accumulation and redistribution for clientelistic politics.

The dissertation provided evidence that particular bureaucratic features affect the levels of corruption. Overstaffed, politicised and underpaid are common characteristic that lead to corrupt and inefficient public sectors (Diamond, 1987). The thesis illustrated that institutions with the highest numbers of "grabbing hands" also had the highest numbers of incidents of corruption. Ministries such as the Ministry of Education, Ministry of Health, the Malawi Police Service and Traditional Authorities had the most cases.

The public service in Malawi has a long history as a welfare institution that had been utilised for political purposes (Anders, 2005). Under Kamuzu Banda, it was used to balance the inequalities between the ethno-regional groups in favour of his Chewa political base. The bureaucracy was used to absorb the working-age population in the absence of a viable private sector. For this reason, the public sector, especially parastatal organisations, grew to correspond with the political demands. The increment in bank credit allocations for parastatals had arisen from only 2% of the share of bank credit allocated in 1973 to 26% in 1978 while private sector credit suffered a corresponding reduction from 76% to only 51% of total credit (Stambuli, 2002b: 14: 27). During the transitional period, Muluzi used nepotistic appointments, especially at the higher levels of government to counter this reality for the benefit of the Yao and Southern Region power base. For this reason, the public service has remained large and has resisted structural reforms that would challenge its response to clientelistic political mobilisation. It has also remained as a sector for access to illicit resources for private gain.

The structure of the economy also contributed to the incidents of corruption and perceptions of its proliferation during the transition. There were two parts to this equation. The one party government over relied on a command economy which emphasised agricultural production in the capital-intensive estate sector. This contributed to the vulnerability of the financial system to the vagaries of the weather and international price inconsistencies. As such, Malawi remained a poor country in the 1980s to early 1990s adding to the fiscal burden despite the introduction of structural reforms. The situation in the 1990s had an impact on corruption levels in that corruption existed when the controls on the economy were relaxed and the market was liberalised.). The net effect was increased inflation, unemployment, salary erosion and increased poverty levels. These effects on the economy were devastating, which in turn led to more corruption. The economy contracted in the first 10 years of democracy, corresponding with incidents of corruption. Although other variables had factored in to create the status quo, all indicators had supported the strong correlation between corruption and reduction of GDP, high poverty levels and low ranking in the HDI (World Bank, 2007; IMF, 2004; Whitworth, 2004; UNDP, 2005: 269. Therefore, there was an intensification of the struggle for limited resources, which motivated political actors to commit acts of corruption to support the system of clientelism. Corruption at lower levels of the administration occurred when employees supplemented their salaries with illicit gains.

This indicated that the reforms of 1994 were not ingrained in the political system, consistent with empirical evidence which suggests that democracy in itself does not reduce corruption (Montinola and Jackman, 2002; Amundsen, 2006).

Finally, the dissertation found supporting evidence that traditional structures, values and norms had a significant influence on corruption. The manner in which the public in Malawi was mobilised indicates that society was and is highly collectivistic (Sandholtz and Taagepera, 2005; Lambsdorff, 2006: 17; Grief 1994: 913). This means that traditional, cultural and social values still maintain a bearing on the ethos of formal institutions. In reference to political corruption, political behaviour becomes indeterminate when informal relations guide both vertical ties of power accumulation and horizontal ties of social cohesion that are financed by illicit transactions of corruption. By legitimising their status through charisma and appeals to cultural and traditional practices, political actors alternated between traditional values and the legal-rational principles to achieve positive results in political mobilisation. This had been exacerbated by the use of divide and rule in a democratic dispensation. The misuse of public office was evident in the preferential treatment by leaders of members from their own ethno-regional power bases. Since bribery was often used, the manipulation of the bifurcated state to gain social legitimacy (especially in rural areas) under the pretext of culture and tradition directly affected the ability for the Malawi government to contain administrative shortfalls. The politicians could not claim moral superiority to eradicate inadequate supervisory and management shortfalls, unresponsive oversight mechanisms and inconsistent punitive measures for cases of nepotism, favouritism, fraud, bribery and abuse of power when they were engaged in the same activities.

12.2.6 The Effects of Politics on Anti-corruption Measures

The Malawian experience has illustrated how facsimiles of Western institutions do not relate to the prevailing political context and social environment on the African continent (De Maria, 2007: 8). The state/society institutional interactions exposed deep divergences between what was considered as corruption in relation to the adopted law and what was considered as proper with regard to social conduct. The law was very deficient in reconciling public opinion and public interest conceptualisations with the legal framework, as is mostly the case (Heidenheimer, 2002; Collier, 1999; Gardiner, 1993). This was subsequently abused by

political interests to validate political action by taking advantage of people's misperceptions of corruption.

In essence, clientelism led to protectionism and protectionism led to a compromised anti-corruption regime. In effect, political action created a feedback loop that negatively affected the economic development of the country that in turn created more corruption. In the end, the Anti-corruption Bureau as a flagship of the anti-corruption effort was inundated with cases that it had neither the resources nor the technological capacity to resolve.

The basic institutions of a modern state are lacking on the continent (Doig et al, 2007: 2; De Maria, 2007). In Malawi, this incapacity is further constrained by the general deterioration of supportive infrastructures in the judicial sector, across government departments and parliamentary oversight mechanisms that attract differences in funding priorities. Although the Bureau was independent in terms of the CPA, it still relied on the activities in Ministry of Justice, the courts, the Auditor General and the Malawi Police amongst its many support partners in the security field. This interdependency had affected the success of anti-corruption regimes in that capacity differentials were existent.

Corruption in Malawi and the problems associated with institutions designed to ameliorate its negative effects are influenced by the legacy of state formation and evolution of the government. Corruption is often viewed as an incidental and opportunistic act while dismissing the role that political factors play in determining its causes and consequences. In many ways, the antecedents and precedents of neopatrimonial politics in Malawi can also be traced to revolutionary processes that merged long-standing traditions of social organisation with institutions of modern public administration.

The interaction of these exogenous mechanisms of governance with African technologies infused a behavioural hybridity in the African official that was constructed by influences from both these traditional and western principles. After the transfer of power at independence, this emergent political order was aggravated by the contestations for political power amongst various factions with the objective of controlling public resources as a guarantee for individual, familial and ethnic development and advancement. In reference to the post-independence Malawi, the acknowledged blurred boundary between the elites' official position and the private person provided the mechanism where legitimate institutions were utilised illegitimately for self-serving through the abuse of office.

The Republic entered the 1990s as a country at a crossroads. The voices of discontent from those dissatisfied with the autocratic regime became louder and more emboldened by international criticism of the human rights record of Kamuzu with a collective sense of urgency for change. The early years of the 1990s saw unparalleled challenges to the authority of the aging President Banda as the democratic movement progressed through African countries. Urged on by the international leaders and institutions and fuelled by a poor economic climate, the population proceeded to demand more freedom from the oppressive laws that regulated movement and association under the MCP. The enthusiastic embrace of a democratic system of governance had essentially been a reaction by the populace to the suppression they had endured under the autocracy of Malawi Congress Party. However, this change had elements of transplanted institutions that had questionable legitimacy. It is against this backdrop that the multi-party politics and neo-liberal reforms of good governance were introduced.

The new constitution and the laws of Malawi after the elections of 1994 had legally placed restrictions on the public service in relation to the execution of duties in the legal-rational framework. Chapter 1 (Section 7) declared that:

> The executive shall be responsible for the initiation of policies and legislation and for the implementation of all laws which embody the express wishes of the people of Malawi and which promote the principles of this Constitution" (Malawi Constitution, 2002:8).

The political realities were different. The procedures and processes that democracy had introduced with regard to the execution and implementation of policy contrasted sharply with the established methods of political mobilisation. Good governance advocated for the primacy of the rule of law above anything else, while the practices of particularistic patronage and factional contestations that had been well entrenched conflicted with this. Clientelism and all its manifestations was the long standing and overarching strategy that legitimised political action and the new regulations were circumvented for politicians to survive in this deeply contested space.

The anti-corruption strategy must place corruption within this broader political context. Corruption should be approached from a position where it is acknowledged that factors inherent in the political system, including the prevailing notion of organisational weaknesses, are determinants. Conceptualisations of corruption should be more aligned with public

sentiments and opinions based on experiences and not on transplanted legal frameworks alone.

It should also be acknowledged that the Anti-corruption Bureau operates in an environment that is fundamentally different to that of the Western countries where these recommended institutions originate. In so doing, it is suggested that interventions should be advanced along more proactive preventative measures than those that are aimed at deterrence *post-facto*. The state has no human or financial capital to replicate these externally imposed structures in total. There needs to be more coordination and communication amongst various entities is who aim to curb corruption within individual government departments and ministries. The government has to increase its investment on procedures and processes for strengthening controls, especially at the managerial level, of vulnerable public institutions to regain public trust. In addition, there should be periodic in-depth analyses of trends and patterns of incidents to identify areas for intervention through targeted resource allocation to bring the desired results.

At the macro level, an integrated approach that solidifies democratic traditions that were initiated in the post-1994 constitutional and institutional framework is more appropriate and a step in the right direction. The overreliance on criminal prosecutions by dedicated institutions such as the Anti-corruption Bureau as punitive mechanisms is not a practical solution when the criminal justice system is multi-layered with multiple actors; all of which have their own weaknesses that cumulatively contribute to the effectiveness (or lack thereof) of outcomes in criminal prosecutions. A transparent and accountable government that promotes the rule of law and one, which encourages greater public involvement in the policy process, is probably the most effective measure to contain corruption. Such a strategy should incorporate and encourage contributions from a robust civil society that assists in disseminating messages on the benefits of positive behaviour and the disadvantages of engaging in negative acts.

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Appendices

Appendix A: List of Interviewees

	Name	Date	Location
Security Agency			
	Victor Banda Assistant Director - Anti-corruption Bureau	1/05/09	Lilongwe
	Kalembe Chilongo - Human Resources Manager- Anti-corruption Bureau	23/04/09	Lilongwe
	Mcsyd Chalunda Chief Investigations Officer- Anti-corruption Bureau	2/05/09	Lilongwe
	Mary Phombeya Principal Corruption Prevention Officer- Anti-corruption Bureau	17/04/09	Lilongwe
	Ipyana Musopole Senior Corruption Prevention Anonymous- Anti-corruption Bureau	21/04/09	Lilongwe
	Vilera Liwonde - Senior Investigations Officer- Anti-corruption Bureau	21/04/09	Lilongwe
	Anonymous A. - Anti-corruption Bureau	24/04/09	Lilongwe
	Anonymous B. - Anti-corruption Bureau	24/04/09	Lilongwe
	Anonymous C. - Anti-corruption Bureau	29/04/09	Lilongwe
	Anonymous D. - Anti-corruption Bureau	29/04/09	Lilongwe
	Anonymous E. - Anti-corruption Bureau	29/04/09	Lilongwe
	Florence Phiri Former Investigations Officer- Anti-corruption Bureau		Email
	Lot Dzonzi - Commissioner -Malawi Police Service Headquarters	16/05/09	Lilongwe
	M.G.K Medi -Station Commander - Lilongwe Police Station Malawi Police Service	15/05/09	Lilongwe
	Elias Chimimba - Head of Custody Section - Malawi Police Service	18/05/09	Lilongwe
	Anonymous F Ministry of Finance	19/05/09	Lilongwe

	Anonymous G Ministry of Education	3/06/09	Lilongwe
	Anonymous-Ministry of Finance	8/06/09	Lilongwe
	George Nthengwe Head of Division-Investigative Audits - Auditor General's Office	8/06/09	Lilongwe
	Anonymous H-Office of the Director of Public Prosecutions.	12/06/09	Lilongwe
	Dr Khumbo Kalua-Ministry of Health	23/9/09	Email
	Chris Manyamba -Principal Statistician National Statistical Office	3/08/09	Email
	Anonymous I- Office of the President and Cabinet	7/05/09	Lilongwe
	Anonymous J-Department of Road Traffic	12/06/09	Lilongwe
	Anonymous K- Lilongwe Magistrates Court	12/06/09	Lilongwe
	Arthur Chipenda - Editor-Malawi News Agency	2/05/09	Email/Follow up interview**
	Situsi Nkhoma - Politician (MCP) and former Chairman of Public Accounts Committee-Parliament	25/03/09	Phone/Kasungu
	D. Dzayipa-Politician - MCP	26/03/09	Phone/Mchinji
	Alex Joseph Nkhulande Phiri Politician-Independent Parliamentary Candidate	28/03/09	Phone/Blantyre
	Moses Chingale- Politician - UDF Parliamentary Candidate	10/04/09	Blantyre
	Geoffrey Chikuta-Director-Millennium Development Challenge	8/6/09	Lilongwe
	John Kapito Director-Consumer Association of Malawi	8/8/09	Blantyre/Phone Interview
	Jeff Kabondo-Acting Director - National Initiative for Civic Education	9/06/09	Lilongwe
	Paul Russell-Former Technical Advisor to the ACB	15/09/09	Email

Appendix B: Corruption and Motivation

Position	Procurement	Elections	Employment	Examination malpractices	Farm subsidies	Maize sales	Mismanagement of finances	Mismanagement/misappropriation of resources	Provision of services	Relief items	School positions	Trafficking	Total
Top Managers	120	7	30	1	5	2	91	48	39	1	1	3	348
Senior Managers	49	7	33	1	7	1	43	28	22		1		192
Managers	52		85	0	7	3	36	34	45	2			264
Senior Officers	68		60	37	12	3	59	37	66	1	21		364
Officers	109		112	31	28	12	135	88	497	7	15	7	1041
Junior Officers	20		92	2	35	2	23	48	66	5	1		294
Rank and File			14	2	3		1	5	15		1	1	42
Total	418	14	426	74	97	23	388	288	750	16	40	11	2545
Percentage	16	1	17	3	4	1	15	11	29	1	2	0	100

Appendix C: Incidents in Sectors and Type of Complaints

Sector		Type of Complaints									
		Abuse of power	Bribery	Conflict of interest	Embezzlement	Extortion	Favouritism	Fraud	Nepotism	Unlawful gratuity	Total
1). Public Institutions	i) Govt Dept.	36	152	16	87	86	26	361	50	13	827
	ii) Statutory Institutions	18	37	5	12	35	13	131	19	3	273
	iii) Law enforcement	25	187	0	20	163	8	100	4	7	514
	iv) District Assemblies	4	22	4	5	6	4	34	2	1	82
Sub-total		83	398	25	124	290	51	626	75	24	1696
2) Private Institutions	i) Banks	0	0		1	2	1	4	0	0	8
	ii) Businesses	8	58	8	13	51	17	129	14	2	300
Sub-total		8	58	8	14	53	18	133	14	2	308
3) Judiciary	i) Magistrates/High Court	1	32	2	0	7	3	5	2	1	53
	ii) Industrial Court	1						0			0
Sub-total		2	32	2	0	7	3	5	2	1	54
4) Political Institutions	i) Politicians	15	12	1	17	2	1	28	1	1	63
	ii) Political Parties	1	4			1		1			6
		16	16	1	17	3	1	29	1	1	85
5) Non Governmental Organisations	i) Community Based Organisations		2		2	0		1			5
	ii) UN Agencies							2			2
	iii) NGOs	2	3		4	1	4	11	3		26
	iv) Churches and Religious Organisations		2		3	1	1	6	1		14
Sub-total		2	7	0	9	2	5	20	4	0	49
6) Traditional Authorities		6	158		14	48	2	34	2		264
7) Individuals/complaints		2	23	6	2	7	2	47		0	89
Total		119	692	42	180	410	82	894	98	28	2545

Appendix D: Press Corporation Structure and the amount of shares held in 1994.

Bergers Trading (clothes retailer) (51%)
Carlsberg Malawi (Brewery) (51%)
Central Poultry (poultry farmers) (100%)
Commercial Bank (40%)
Enterprise Containers (plastics) (62·5%)
Ethanol Company (35·5%)
Grain and Milling (milling of grain and stockfeeds) (51%)
Hardware and General (dealers in hardware and furniture manufacturing) (100%)
Limbe Leaf Tobacco (trading/processing) (42%)
Malawi Distilleries (distilling and importing liquor) (50%)
Malawi Pharmacies (100%)
Maldeco Fisheries (100%)
Mandala (agriculture/trading) (32·1%)
National Bank (38·4%)
National Insurance (NICO) (65%)
New Building Society (24·5%)
Number One (clothes retailer) (51%)
Oil Company of Malawi (OILCOM) (fuel and oil distributor) (80%)
People's Trading Centre (PTC) (supermarket chain) (60%)
Press Agriculture: General Farming (100%);
Press Farming (100%);
Kasikidzi Estates (100%);
Buwa Tobacco Estates (100%)
Press Foods (food manufacturing and distributing) (100%)
Press Properties (property investment and developm (100%)
Press and Shire Clothing (garment manufacturer) (100%)
Press Trading (procurement agency in South Africa) (51%)
Press Transport (100%)
Press Bakeries (100%)
Tyre Retreaders (60%)
Press Hall Steel (steel processing) (50%)
SOBO (soft drinks) (49·8%)

Source: *van Donge (2002)*

Appendix E: Restriction Notice, CASE NUMBER: CR/BT/11/2003

THE ANTI-CORRUPTION BUREAU

CASE NUMBER: CR/BT/11/2003
NOTICE
RESTRICTION ON SALE OF PROPERTY
TITLE NUMBER CHICHIRI 1/1
(SECTION 23(1) of the Corrupt practices Act)

TO: The Land Registrar
P.O. Box 2452
BLANTYRE
Cc: The Commissioner of Lands
Private Bag 311
LILONGWE 3

WHEREASthe Anti-CorruptionBureau is conductinginvestigations into KezaDevelopments and Title NumberChichiri 1/1

AND WHEREAS the Anti-Corruption
Bureau has receivedinformation that the said Keza Building is the subject of anintended sale.

TAKE NOTICE that you should not authorize the sale of thesaid KEZA Building or otherwise deal with any other matter inrelation to the said KEZA Building without my consent. Made by me at Blantyre this 8th day of July 2005.

Signed
GUSTAVE KALIWO
DIRECTOR