

**STRATEGIES USED BY CRITICAL CIVIL SOCIETY ORGANIZATIONS
TO SURVIVE IN HYBRID DEMOCRATIC MALAWI (1994-2019)**

MASTERS OF ARTS (POLITICAL SCIENCE) THESIS

TEMWA MORRIS MUGHOGHO

UNIVERSITY OF MALAWI

SEPTEMBER 2021



**STRATEGIES USED BY CRITICAL CIVIL SOCIETY ORGANIZATIONS
TO SURVIVE IN HYBRID DEMOCRATIC MALAWI (1994-2019)**

MASTERS OF ARTS (POLITICAL SCIENCE) THESIS

By

**TEMWA MORRIS MUGHOGHO
Bsoc.(Pol) – Catholic University of Malawi**

Submitted to the Faculty of Social Science, University of Malawi, in partial
fulfillment of the requirements for the Degree of Master of Arts (Political Science)

University of Malawi

September, 2021

DECLARATION

I, the undersigned, declare that this thesis is my own work. Where the work of other people has been used, acknowledgements have been duly made. I also declare that it has not been submitted for any degree in any other university. All errors herein are my own.

TEMWA MORRIS MUGHOGHO

Full Legal Name

Signature

Date

CERTIFICATE OF APPROVAL

We certify that this thesis is the student's own work and acknowledgements have been made where the work of other people has been used. We further certify that it has not been submitted to any other university for any degree and is therefore submitted with our approval.

Signature: _____ **Date:** _____

Happy Kayuni, PhD (Professor)

Main Supervisor

Signature: _____ **Date:** _____

Kondwani Chikadza, MSc (Lecturer)

Second Supervisor

DEDICATION

To: All Critical Governance CSOs in the World

ACKNOWLEDGEMENTS

My work would be meaningless if I do not show my profound gratitude to the people who offered me support from the moment I committed to pursue my MA in Political Science. Special thanks go to Professor Happy Kayuni and Kondwani Chikadza, under Political and Administrative Studies Department, University of Malawi-Chancellor College, my supervisors, for the rigorous thought process they took me through when writing my Thesis. May the Lord God continue to shower you with more academia wisdom.

Many thanks to my wife, Madalitso Mughogho, for your love and prayers. You push me to never give up and to aim high always. I appreciate your relentless support so much. On a special note I thank my family – Mum – Leah Paul Mughogho, Thandie Mughogho and Chimwemwe Mughogho. You have always been my strong pillar and your prayers of success have made me to prevail academically.

Above all, as per Proverbs 3: 5-6, I give all the glory to God for the continued academic and career success.

ABSTRACT

Since the reintroduction of multiparty elections in 1994, Malawi has had a vibrant Civil Society albeit faced with strong opposition force to shrink its operation space. For the past two decades, Freedom House and the Economist Intelligent Unit reports categorize Malawi among the list of hybrid regimes. Thus, the study undertook to uncover the strategies that critical governance CSOs are using to survive in hybrid democratic Malawi. The study has established that there is acerbic relationship between the government and critical governance CSOs, evidenced with political elites infiltrating CSOs space to limit their operations through various mechanisms. Consequently, CSOs have developed strategies to counter the mechanism that political elites employ to shrink their space. The study reveals eight strategies which include; Creation of Local Networks, Affiliating with International Networks, Aligning with Political Parties, Use of Media, Keeping Book Records Clean, Evidence based Advocacy, Reporting abuses to National and International Human Rights Institutions, Co-opting and Confrontation. In order to safe guard the CSOs space, the study concludes by recommending for; political will and tolerance by ruling elites to dissent views a democracy; harmonized CSOs strategic plan and;; critical governance CSOs should always be apolitical political.

TABLE OF CONTENTS

ABSTRACT.....	vi
TABLE OF CONTENTS.....	vii
LIST OF APPENDICES.....	xi
LIST OF ACRONYMS	xii
CHAPTER 1	1
INTRODUCTION	1
1.1 Background	1
1.2 Problem Statement	4
1.3 Research Objective.....	5
1.3.1 <i>Research Objective</i>	5
1.3.2 <i>Specific Objectives</i>	5
1.4 Research Question.....	6
1.4.1 <i>Sub Questions</i>	6
1.5 Study Justification	6
1.6 Conclusion.....	7
CHAPTER TWO	8
LITERATURE REVIEW	8
2.1 Introduction	8
2.2 Conceptual Framework	8
2.2.1 <i>Hybrid Regime</i>	8
2.2.2 <i>Civil Society Organizations</i>	9
2.3 Roles of Civil Society Organizations	12
2.3.1 <i>Global View of Civil Society</i>	14
2.3.2 <i>Civil Society Restrictions</i>	16
2.4 The Concept and Practice of Civil Society in Africa	16
2.5 Historic Development and Performance of CSOs in Malawi – 1964-1989.....	18
2.6 Re-introduction of Multiparty Era – 1994 to 2018	20
2.7 Theoretical Frame Work	23

2.7.1 <i>New Institutionalism: Rational Choice Institutionalism</i>	23
2.7.2 <i>Harm Principle</i>	24
2.7.3 <i>Pluralism</i>	25
2.8 <i>Conclusion</i>	26
CHAPTER 3	28
METHODOLOGY	28
3.1 <i>Introduction</i>	28
3.2 <i>Research Design</i>	28
3.3 <i>Data Collection</i>	28
3.3.1 <i>In-depth Interview</i>	28
3.3.2 <i>Review of Documents</i>	29
3.4 <i>Population and Sampling</i>	29
3.4.1 <i>Population</i>	29
3.4.2 <i>Sampling Technique: Non-Probability Purposeful Sampling</i>	30
3.5 <i>Data Analysis</i>	30
3.6 <i>Ethical Considerations</i>	30
3.7 <i>Validity and Reliability</i>	31
3.8 <i>Limitations</i>	31
3.9 <i>Conclusion</i>	31
CHAPTER 4	32
FINDINGS	32
4.1 <i>Introduction</i>	32
4.2 <i>Working relationship between governance CSOs and Malawi government</i>	32
4.2.1 <i>Legal Framework and Registration Process for NGOs</i>	32
4.2.2 <i>Policy Consultation/engagement</i>	34
4.2.3 <i>Conducive Environment for Critical Governance CSOs to Operate</i>	37
4.3 <i>Narrowing of Governance CSOs Space by the Ruling Political Elites</i>	37
4.3.1 <i>Co-opting</i>	38
4.3.2 <i>Use of State Machinery</i>	38
4.3.3 <i>Use of Party Zealots</i>	38
4.3.4 <i>Public Statements</i>	39
4.3.5 <i>Lawsuit</i>	39
4.3.6 <i>Divide and Rule</i>	39

4.4 Strategies CSOs are using to Survive in Hybrid Malawi	39
4.4.1 Creation of Local Network	40
4.4.2 Joining International Networks	40
4.4.3 Aligning with Political Parties	41
4.4.4 Use of Media.....	41
4.4.5 Keeping Books Clean.....	41
4.4.6 Evidence Based Advocacy	42
4.4.7 Reporting abuses to National and International Institutions	42
4.4.8 Confrontation.....	43
4.4 Conclusion.....	43
CHAPTER 5	44
DISCUSSION OF FINDINGS	44
5.1 Introduction	44
5.2 Working Relationship between Critical Governance CSOs and Political Government Elites.....	44
5.2.1 Legal Frame Work for CSOs.....	45
5.2.2 Public Policy Consultation.....	46
5.3 Narrowing of Governance CSOs Space by the Ruling Political Elites.....	48
5.3.1 Co-opting	49
5.3.2 Use of State Machinery.....	50
5.3.3 Public Statements	51
5.3.4 Use of Party Zealots	51
5.3.5 Lawsuit.....	52
5.3.6 Divide and Rule	53
5.4 Mechanism that the critical governance CSOs are using to survive in hybrid Malawi.....	53
5.4.1 Creation of Local Networks.....	54
5.4.2 Affiliating with International Networks.....	55
5.4.3 Aligning with Political Parties	56
5.4.4 Use of Media.....	57
5.4.5 Keeping Book Records Clean.....	58
5.4.6 Evidence based Advocacy.....	58

5.4.7 <i>Reporting Abuses to National and International Human Rights Institutions</i>	60
5.4.8 <i>Confrontation</i>	61
5.5 Conclusion	62
CHAPTER 6	63
CONCLUSION	63
6.1 Summary	63
REFERENCES	65
APPENDICES	68

LIST OF APPENDICES

Appendix 1: Table 2 Showing Coding of Quoted Respondents	68
Appendix 2: Structured Interview Guide for Academia	69
Appendix 3: Structured Interview Guide for Governance CSOs.....	71
Appendix 4: Structured Interview Guide for Political Parties	73
Appendix 5: Structured Interview Guide for CONGOMA.....	75

LIST OF ACRONYMS

ACB	Anti-corruption Bureau
AU	African Union
CONGOMA	Council for Non-Governmental Organizations
CHRR	Centre for Human Rights and Rehabilitation
CSC	Christian Service Committee
CSOs	Civil Society Organizations
DPP	Democratic Progressive Party
HESLGB	Higher Education Students Loans and Grants Board
HRDC	Human Rights Defender's Coalition
ICT	Institution Choice Theory
INGOs	local and international Non-government Organizations
MOU	Memorandum of Understanding
MRA	Malawi Revenue Authority
MPS	Malawi Police Service
UN	United Nations
MHRC	Malawi Human Rights Commission
NGOs	Non-government Organizations
NGO Board	Non-government Organizations Board
MIDEA	Malawi Institute for Democratic and Economic Affairs
CARER	Malawi Centre for Education and Rights
NCC	National Constitutional Conference
PAC	Public Affairs Committee
PAHRDA	Pan African Human Rights Defender's Alliance
RCT	Rational Choice Theory
SAHRDA	Southern Africa Human Rights Defender's Alliance

CHAPTER 1

INTRODUCTION

1.1 Background

Huntington (1991) describes the pattern of global democratization as a series of three waves and reverse waves. According to Mozaffar (1997, p.2) the first wave experienced between 1828-1926, modern democracy expanded from its intellectual roots in the American and the French Revolutions to Western Europe and parts of Latin America, before being reversed by the rise of fascism in Italy and Germany. With the end of World War Two came a second wave of democratization. Hagre, et al. (2003) argue that the second wave was however relatively brief, with a large proportion of countries succumbing to autocracy in the 1950s and the remainder of the second reverse-wave of democratization. Mozaffar (1991, p.2) aptly point out that:

The third wave began on April 25, 1974, with the overthrow of Portugal's 48-year old authoritarian government in a peaceful military coup and the installation a year later of one of the world's most successful democracies. From this ironic beginning, the third wave spread rapidly to Spain and Greece, across the Atlantic to Latin America, and then to Asia. In 1989, as communism and the Berlin Wall fell, it engulfed Eastern Europe, Russia and most of the former Soviet Republics, and simultaneously swept across Africa

Cassin (2014) assert that the third wave of democracy that was experienced and ended in the 1990s resulted in the emergency of several regimes in most parts of the developing countries, particularly in Africa, that were descriptively different from each other, with a few others from Europe. Carothers (2002) has described these to be hybrid regimes that occupied the “grey zone” between liberal democracies on the one hand and closed authoritarian regimes on the other. According to Menocal, et al. (2008) only a limited number of countries that have undergone transitions to

democracy have succeeded in establishing consolidated and functioning democratic regimes. Instead, many of these new regimes have ended up getting stuck in transition, or reverting to more or less authoritarian forms of rule. These incipient democracies, which various scholars described as ‘illiberal’, (Zakaria, 1997) ‘delegative’, (O’Donnell, 1996) or, more generally, ‘hybrid’ regimes, (Diamond, 2002) constitute ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits. Thus, they have come to occupy a precarious middle ground between outright authoritarianism and fully-fledged democracy and their democratic structures remain fragile (Carothers, 2002).

Menocal, et al. (2008) argues that some emerging democracies may be moving in the direction of consolidation as formal rules gradually begin to displace informal ones not only in rhetoric but also in practice, whereas others may be slipping towards more authoritarian and personality-driven practices. They single out Malawi to have been heading down the route of uncharted institutional decline towards a state of political breakdown and thus being a hybrid regime. In addition, using a three-tiered system consisting of scores, ratings, and status used by Freedom House for measuring “Political rights and Civil liberties” of countries, for the past two decade to recent time, continually Malawi has been identified to be on the list of “partially free” countries in upholding of political rights and civil liberties (Freedom House, 2006 – 2018) and, the Economist Index of 2018 report continually categorize Malawi among the list of hybrid regimes¹.

In light of the above, imperative to note that Malawi has a vibrant Civil Society that is actively involved in the development of the country. Neji (2011, p. 117) defines civil society being a realm and range of voluntary and autonomous associations in the

¹ The Economist Intelligence Unit’s index of democracy (2017), on a 0 to 10 scale, is based on the ratings for 60 indicators, grouped into five categories: electoral process and pluralism; civil liberties; the functioning of government; political participation; and political culture. Each category has a rating on a 0 to 10 scale, and the overall Index is the simple average of the five category indexes. According to the EIU (2017) Hybrid regimes, Elections have substantial irregularities that often prevent them from being both free and fair. Government pressure on opposition parties and candidates may be common. Serious weaknesses are more prevalent than in flawed democracies—in political culture, functioning of government and political participation. Corruption tends to be widespread and the rule of law is weak. Civil society is weak. Typically, there is harassment of and pressure on journalists, and the judiciary is not independent

public sphere between the family and the state, which exist in relation to, but are independent of the state. Braathen, et al. (2018, p. 5) highlights that over the last 20 years, critical Civil Society Organizations (CSOs) consistent in demanding and promoting democratic principle and human rights have experienced increasingly restrictive operating environments across the globe, varying from legal restrictions and physical violence to subtler forms of intimidation

Malawi's robust Civil Society has not existed without strong opposition force to suppress it, particularly those deemed critical through advocacy, by consistently demanding transparency and accountability on use of public resource and promotion of human rights². Noting the past trajectories on the existence and performance of CSOs, Chirwa (2014) points out that seventy years of colonial rule followed by one party state dictatorship had a negative impact on the growth and development of Critical Civil Society in the country. Trade Unions and farmer's organizations in particular were closely aligned to the ruling party, though religious organizations remained independent with most of their activities taking place at community level and focusing on relief, charity and development (Chirwa, 2014). It was quite evident that CSOs during the one party rule were restricted in their formation and execution of their duties as they were deemed a threat to the one party regime. Mwalubunju and Chisi (2013) echo that Malawi's first President, Kamuzu Banda, evidently showed that involvement of civil society in development of the country was not welcomed. According to Chipeta (1992) in the period of 1964-1990, Kamuzu paralyzed Malawi's civil society such that it was irrelevant in the country's economic and political development.

Chirwa (2014) has argued that it is only more recent that Malawians have experienced living in an open and pluralistic society. The political settlement that took place in 1994, multiparty democracy ending dictatorship in Malawi, created more space for citizens to associate freely through civil society formations. The development and growth of critical CSOs attested to the fact that Malawians overtly wanted to be

² This study uses the word "Critical CSOs" to imply CSOs that face resistance from ruling political elites due to their persistent demand for transparency and accountability through advocacy from political elites on the use of public resources and policy direction. Braathen et al (2018, p. 5) argue that over the last 20 years, critical CSOs consistent in demanding and promoting democratic principle and human rights have experienced increasingly restrictive operating environments across the globe, varying from legal restrictions and physical violence to subtler forms of intimidation.

involved the shaping of Malawi's democracy and development agenda (Mwalubunju & Chisi, 2013). However, to this democratic epoch, Mwalubunju and Chisi (2013) put forward that from the period of 1994-2012, there have been many notable tension periods between the ruling political³ elites and critical governance CSOs characterized by intimidation and physical attacks towards critical governance CSO leaders in efforts to shrink their space by silencing them. Recently, Malawi's media has been flooded with several reports of attacks and threats on some governance CSO leaders; mostly with evidence of acts of threatening messages and petrol boomed their premises (Malekezo, 2018).

It is on the basis of this background that the study sought to find out how advocacy governance CSOs are surviving in Malawi's hybrid democratic polity characterized with suppression of political and civil liberties.

1.2 Problem Statement

Mwalubunju and Chisi (2013) attest that from the period of 1994-2012, there were many notable tension periods between the government political elites and critical governance CSOs leaders which was characterized by intimidation and physical attacks by the elites toward the critical governance CSOs. They elaborate that this was much experienced during the period of third term bill during Bakili's regime and the second term of Bingu's regime when Malawi faced acute fuel shortage country wide and lack of forex. CSO leaders who were critiquing the government during the aforementioned periods were heavily threatened and others attacked with petrol booms. Recently, it was reported that thugs invaded Center for Human Rights and Rehabilitation (CHRR) premises and were petrol boomed (Malekezo, 2018). Prior to this physical attack, it was also noted that on 7th July, 2018, President Peter Muthaka attacked CSOs with a claim that they are being used by donors to destabilize his government as such he wanted the donors to stop funding the CSOs (Mwale, 2018).

In light of the above, and an ongoing heated debate between the government and a sect of CSOs led by the Council for Non-Governmental Organizations (CONGOMA) on the amendment of the Non-Governmental Organization Act (2018) in draft, CSOs

³ The study acknowledges that the words "political elites and government" are not the same but they are used interchangeably to imply one word, ruling political actors.

claim that through the amendment the government is treating them like terrorist and there was no thorough consultation on the bill (Mwale, 2018). In view of the past and recent tensed periods between critical governance CSOs and the ruling political elites, and despite the life threatening situations and personal attacks on critical governance CSO leaders, critical governance CSOs have still thrived and others still mushrooming. This therefore compelled the researcher to do a study in order to find out how critical governance CSOs are survive in a harsh political environment in which the ruling political elites are endeavoring to shrink their space through various possible means.

Globally, studies on hybrid regimes have revolved on trying to define what they are and the various varieties; how they emerged and function and; key characteristics and their challenges of democratic deepening. Thus, there is no detailed literature on strategies being used by critical governance CSOs to survive in hybrid regime, Malawi inclusive. In addition, many studies on CSOs in Malawi have been inclined to their role and challenges in the democratic political space as organizations and not on strategies they are using to counter the challenges, particularly where their space is limited. Some of the notable studies include Democracy Report for Malawi (Chirwa, et al., 2014), Civil Society in Malawi (Mwalubunju & Chisi, 2013), United Nations Democracy Report: Case Study of Malawi (2010), Can Civil Society be a force for political change in Malawi' (Minnis, 1994). All of these studies focused on the functionalities of CSOs as organizations and their challenges in general and not strategies being used for their survival per say. In essence, this offers gap to be explored scholarly. The study covers mainly the period from 1994 to 2019 .

1.3 Research Objective

1.3.1 Research Objective

To analyze the strategies adopted by critical governance CSOs in Malawi which have enabled them to survive despite several efforts by ruling political elites to shrink their space.

1.3.2 Specific Objectives

- i. To explore the working relationship between critical governance CSOs and Malawi government.

- ii. Find out the ways ruling political elites use to shrink governance CSOs space.
- iii. Find out strategies governance CSOs use to counter measures of employed by the ruling elites to shrink their space.

1.4 Research Question

What are the strategies critical governance CSOs use to survive in hybrid democratic Malawi?

1.4.1 Sub Questions

- i. What is the working relationship between critical governance CSOs and Malawi government?
- ii. What are the mechanism employed by the ruling political elites to shrink CSOs space?
- iii. How do critical governance CSOs respond to the shrinking mechanisms employed by ruling elites?

1.5 Study Justification

As argued by Ekman (2009) that many new democracies have been unable to make a clean break with the authoritarian past resulting in many of them graduating into hybrid regimes, these regimes have a bearing on how governance CSOs operate in a country (Obuch, 2014). Malawi being classified as a hybrid regime (Menocal, et al., 2008; Economic Index, 2018) it is assumed CSOs space is unfriendly. This has been attested by Mwalubunju & Chisi (2013) by pointing out the tensions that have existed between governance CSOs and political elites that were characterized with verbal and physical attacks. Therefore the study brings to light strategies being used by governance CSOs to survive in a restricting political environment. The study further labours to fill the gap in literature regarding how governance CSOs are surviving in hybrid regimes.

1.6 Conclusion

The chapter has made known the topic of the research in brevity by explaining the context for conducting the study. Through the problem statement, the chapter has shown the gap which the study aimed to fill which is to unearth the strategies that governance CSOs are using to survive in Malawi's hybrid democracy. The chapter has further outlined the main objective of the study, the research question and justification for conducting the study.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter reviews literature on what others have authored in relation to the study. The literature has been drawn from a wide-pool of authors both international and local. First, the chapter presents conceptual frame works which gives understanding of the concept of hybrid regime and civil society and establish their relevance to the study. Second, section explores CSOs globally and their various roles in contemporary democracies. The section further narrows down the concept and practice of Civil Society to African context and; gives historic perspective of civil society in Malawi. To conclude, the chapter outlines theories that underpin the study namely; Capitalism, Pluralism, Institution Choice Theory (ICT) and Harm Principle.

2.2 Conceptual Framework

2.2.1 Hybrid Regime

Huntington (1991) points out that the face of the third wave of democratization masked the real landscape of many processes of regime change, whose direction toward democracy grew increasingly uncertain. Only recently have the limitations of the transition paradigm become clear, and has the notion of “hybrid regime” become widely accepted (Carothers, 2002). The concept refers to those political regimes that cannot be classified into the traditional categories of democracy and autocracy because they are characterized by a mixture of institutional traits typical of both these regimes (Cassin, 2014).

It is however imperative to note that contemporary scholars of hybrid regime all agree that there is an impasse in coming up with a conventional meaning of what a hybrid regime is (Mufti, 2018; Bogaards, 2009; Cassin 2014). Mufti (2018) explicitly clarify that, despite the extensive theorization of hybrid regimes and numerous attempts to bring some clarity to the blurred lines among different political regimes, it is difficult to find consensus among scholars over what hybrid regimes actually are. However this being the current position, several scholars have attempted to conceptualize what hybrid regimes are, premising on various departure points. Hybrid regimes are variably understood as diminished subtypes of democracy (Merkel, 2004; Puhle, 2005; Zakaria, 1997); diminished subtypes of authoritarianism (Schedler, 2006); transitional “situations” that are expected to revert back to either democracy or authoritarianism (Armony & Schamis, 2005; Linz, 1973); a residual category of regimes that fit neither democracy nor authoritarianism (Bogaards, 2009; Gilbert & Mohseni, 2011); or as clear-cut instances of authoritarianism (Ezrow & Frantz, 2011; Gandhi, 2008).

In view of the above definitions, this study adopts the definition of Merkel (2004) which conceptualizes hybrid regime as diminished subtype of democracy, which he further qualifies it to be defective democracy. Defective democracy in his view is a regime defined by ‘a largely functioning democratic electoral regime for the selection of rulers that, however, through disruptions in the operating logic of one or more of the other components, loses the complementary buttresses which in a functioning democracy are indispensable for securing freedom, equality and control (Merkel, et al., 2000). This definition has been adopted as Malawi fits well in categorizing it as a hybrid regime based on the variables that have been used by Freedom House for the past two decades which include being in the list of “partially free” and Economist Intelligence Unit (2018) out rightly identifies Malawi as a hybrid regime as there is suppression of civil rights and space.

2.2.2 Civil Society Organizations

Veneklasen (1994) define civil society to be a sphere of social interaction between the household (family) and the state which is manifested in the norms of community cooperative, structures of voluntary association and networks of public communication. In his definition, Vaneklsen points out that norms are meant to bring

about peace and tolerance amongst different groups with different interest in the community. Agreeing with Veneklasen definition, Neji (2011, p. 117) defines civil society being a realm and range of voluntary and autonomous associations in the public sphere between the family and the state, which exist in relation to, but are independent of the state. Neji (2011) argues further in his definition that another important point in defining CSOs is to look at the chief attribute for civil society's norm-setting role which is concerned with the nature and limits of state power and the rules that govern its functioning. The public realm in which these associations exist is populated by organizations such as ethnic, religious, professional, trade/labor unions, gender, environmental, human rights and pro-democracy groups, student and youth groups and media organizations but exclude political parties and the private sector.

In line with Nenji's later part of defining CSOs by looking at its chief attribute which is norm setting, Connor (1999) is of the view that civil society is composed of autonomous associations which develop a dense, diverse and pluralistic network. The rationale to his view is that, the realm of civil society is not limited to formation of different groups but rather the groups further form networks with a common voice to advance the welfare of people in the community. In the same view, Mwalubunju and Chisi (2013, p. 268) point out civil society as the realm of organized social life which lies above the individual but below the state. It is the part of society that connects individual citizens with public realm and state. Thus civil society includes formal and informal community organizations, faith based organizations, research networks, professional bodies, social movements, pressure groups, interest groups of numerous occupational practices, the media, voluntary associations, trade unions and guilds, cultural institutions, cooperatives, fraternal and ethnic associations, non-governmental organizations and human service delivery system (Mwalubunju & Chisi, 2013) .

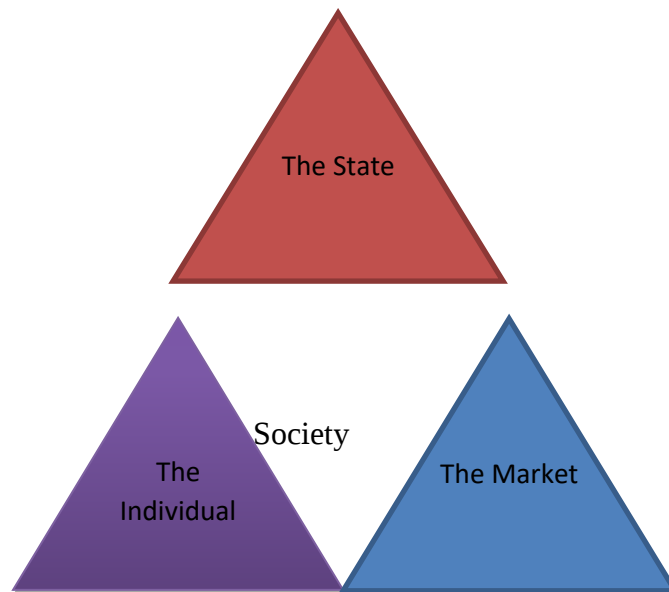


Figure 1: Relationship between individual, the state, the market, and civil society (Mwalubunju & Chisi, 2013, p. 267).

Pasha (2004) points out that there are essential elements to be considered if civil society is to be vibrant in its functionalities.

The elements include: operate different from the state and the market; formed by people with a common drive and goal to advance good governance and democratic tenets; and development through profoundly endogenous and political free process which are insulated from external forces. He further highlights that Civil Society is bigger than common perception of equating it to non-government organizations (NGOs). NGOs are a part of civil society as they operate to address the failures of the state and market, thus, citizen sensitization, empowerment and other socio-economic community service. (p. 5).

Practically, civil society is a far-reaching concept, as it incorporates groups, associations, organizations, unions and associations that are independent from the state and market forces.

Borrowing from the above views in defining civil society, this study therefore employs a definition of civil society by marrying the views Neji (2011) with those

Mwalubunju and Chisi (2012) which do not confine civil society to registered nongovernmental organizations, but also includes other organized social networks and associations outside the governmental sector, whose activities and programs influence and inform the lives of wide sectors of the community. They include voluntary associations, nongovernmental organizations, social movements, traditional organizations and community-based associations, including faith-based organizations. The range of activities that inform the work of these civil society organizations include: the provision of basic social services; monitoring implementation of national government policies according to established national and international standards; undertaking advocacy for, and working to promote social justice and equality; and providing moral and/or cultural leadership at the community level (Neji, 2011).

2.3 Roles of Civil Society Organizations

Pasha (2004, p.5) asserts that:

Civil society is widely acknowledged as a significant sector that enhances global development. Its strength lies in the ability to provide checks and balances in the management and distribution of resources by promoting good governance practices such as transparency and accountability.

Nenji (2011, p. 4) argues that many civil society organizations basically arise from failures of national States (and international institutions) and markets. His argument stems from a historical perception where the State has been seen as the main actor dealing with market failures and negative externalities. Johnson and Prakash (2007) are of the view that because of political and administrative constraints, States are often not able to cover the full range of needs of the citizens resulting from these market failures, especially since the demand is believed to be heterogeneous and the State is efficient in providing homogeneous goods and services but much less efficient in providing heterogeneous goods and services.

Desse (2012, p. 7) is of the view that, due to the gap that the state and market has failed to address, CSOs have emerged to be a crucial but complementary force to address these failures. He further points out that CSOs started to provide some essential services usually provided by the public sector, including but not limited to

health, education, agriculture, water and sanitation, and natural resource management. They offered critical humanitarian services in the event of natural disasters or human-induced conflicts and war. Further to this, according to UNCC (2010), CSOs also became instrumental in advocacy for advancement of universal standards of human rights, peace and conflict resolution and prevention, and for anti-corruption and democratization measures, thus promoting good governance and social accountability. However, Desse (2012, p. 8) acknowledge that they are others who are hybrid since they combine provision of services and advocacy. However, this study focuses on governance CSOs who are into advocacy in promotion of good governance and social accountability.

Building on Desse (2012, p. 8) view of the hybrid CSOs, and noting that CSOs are very diverse and can take various shapes, Schwab (2013, p. 7) acknowledges that though civil society has numerous organizations and associations, it is interesting to note that faith and cultural groups and social media communities and networks are becoming more proactive and constructive. Schwab points out the roles of CSOs to include but not limited to:

- i. **Expert:** bringing unique knowledge and experience to shape policy and strategy, and identifying and building solutions.
- ii. **Capacity builder:** providing education, training and other capacity building.
- iii. **Representative:** giving power to the voice of the marginalized or under-represented.
- iv. **Citizenship champion:** encouraging citizen engagement and supporting the rights of citizens.
- v. **Incubator:** developing solutions that may require a long gestation or payback period
- vi. **Solidarity supporter:** promoting fundamental and universal values.
- vii. **Definer of standards:** creating norms that shape market and state activity. (p. 9)

In view of Schwab's perception on the roles of CSOs, the UNCC (2010) considers CSOs as more flexible, innovative, and cost effective than either government or aid agencies because they are poverty-oriented, grassroots focused, and are able to reach the most marginalized and affected segment of society easily. Hence, with the new strategy of decentralization to improve governance and development, some of the functions of the State have been transferred to CSOs, particularly NGOs. In line with this view, Pasha (2004, p. 6) perceive that

“Civil society can further good governance; first, by policy analysis and advocacy; second, by regulation and monitoring of state performance and the action and behavior of public officials; third, by building social capital and enabling citizens to identify and articulate their values, beliefs, civic norms and democratic practices; fourth, by mobilizing particular constituencies, particularly the vulnerable and marginalized sections of masses, to participate more fully in politics and public affairs; and fifth, by development work to improve the wellbeing of their own and other communities.”

2.3.1 Global View of Civil Society

The past two decades has witnessed an evolution of civil society globally. Schwab (2013, p. 6) is of the view that several factors have played pivotal role in evolving civil society globally. The factors range from availability of resource to global politics, whilst acknowledging advance in technology, too. These factors aid in creation of environment for CSOs flourish around the world. Salamon (et al, 1999) notes that the groups known variously as the “nonprofit,” the “voluntary,” the “civil society,” the “third,” or the “independent” sector, this set of institutions includes within it a sometimes bewildering array of entities—hospitals, universities, social clubs, professional organizations, day care centers, environmental groups, family counseling agencies, sports clubs, job training centers, human rights organizations, and many more. This links well with definitions of CSOs as provided by Neji (2011) and Mwalubunju and Chisi (2013), which do not confine civil society to registered nongovernmental organizations, but also includes other organized social networks and associations outside the governmental sector, whose activities and programs influence and inform the lives of wide sectors of the community.

In contemporary world, CSOs have attracted so much attention globally. According to Salamon (et al, 1999) the global attraction is due in large part to the widespread “crisis of the state” that has been underway for two decades or more in virtually every part of the world.

“Their pattern of reasoning is that, a crisis that has manifested itself in a serious questioning of traditional social welfare policies in much of the developed North, in disappointments over the progress of state-led development in significant parts of the developing South, in the collapse of the experiment in state socialism in Central and Eastern Europe, and in concerns about the environmental degradation that continues to threaten human health and safety everywhere (p. 4).

In addition to stimulating support for market-oriented economic policies, this questioning of the state has focused new attention, and new expectations, on the civil society organizations that operate in societies throughout the world. Some scholars and practitioners have echoed the same that Market failure has significantly contributed to growth and attraction of CSOs globally; arguing that CSOs are mainly being birthed as result of failure of the state to fully accommodate human needs in all sectors of life (Veneklasen, 1994; Connor, 1999; Pasha, 2004; Neji, 2011). Because of their unique position outside the market and the state, their generally smaller scale, their connections to citizens, their flexibility, their capacity to tap private initiative in support of public purposes, and their newly rediscovered contributions to building “social capital,” civil society organizations have surfaced as strategically important participants in this search for a “middle way” between sole reliance on the market and sole reliance on the state that now seems to be increasingly underway (Salamon, et al., 1999).

Practitioners such as Schwab (2013, p. 6) ascribe to the view that advancement in technology has fast tracked the growth of CSOs. Technology has eased accessibility of information and communication has been simplified such that the world has become one. Consequently, the spillover effect is the opening up spaces of advocacy and influence for citizens to actively participate in the civil space. According to Schwab (2013), since 2010 there has been a renewed energy of citizen expression and

participation in different forms around the world, including the Arab Spring revolutions; the Occupy Movement as a response to growing inequality; citizen protests against austerity measures in Greece and Spain; and the “For Fair Elections” protests in the Russian Federation.

2.3.2 Civil Society Restrictions

Braathen et al (2018, p. 5) highlights that over the last 20 years, civil society organizations (CSOs) promoting democracy and human rights have experienced increasingly restrictive operating environments across the globe, varying from legal restrictions and physical violence to subtler forms of intimidation. Salamon and Anheuer (1997) further clarify that variation in the scale and nature of civil society sector in different countries is largely affected by the historical, cultural, social and political environment, a number of impediments to growth of CSOs can be identified as follows: authoritarian political control, religion, colonialism, limited resource, legal treatment and, development paradigm.

Schwab (2013) laments that the line is not blur for one to not see that governments in many countries are suppressing the operation space for CSOs. The measures for suppression may take various forms such as strict media oversight or burdensome regulatory hurdles. Interestingly, just like dictatorship regimes, the victimized CSOs are those that emerge to be critical in advocacy role. Schwab (2013, p. 7) candidly points out that beyond deliberate frustration measures to frustrate CSOs by different national governments, international civil society leaders have identified a more general decline in funding available for advocacy, rights-based activities, or “causes that challenge the status quo”.

2.4 The Concept and Practice of Civil Society in Africa

Makuwira (2011, p.615-616) argues that the past three decades, in particular, have witnessed changes in the nature of contemporary African politics, with an increased engagement of civil society organizations (CSOs) that include, although they are not limited to, local and international NGOs (INGOs). These actors are no longer confined to the bounds of social development but are also actively participating, albeit with some degree of difficulty, in the political-economic spheres affecting Africa

(Hearn, 2007; Edwards, 2006; Makuwira, 2006). However, the changing nature of African politics from the independence to the post-independence era on the one hand, and from dictatorial and autocratic regimes to a multiparty political system, on the other hand, has had implications for CSO operations on the continent (Makuwira, 2011).

Most African countries to date view CSOs as opposition or agents used by opposition parties and donors to bring about political instability in their countries (Makuwira, 2011).. This therefore has created a vacuum in space in which CSOs are to operate since it is not well defined for them to ably operate. Clark (2000, p. 1) notes that though there has been claim in the Ethiopian government that it is making strides in democratization process, the country's nongovernmental sector struggles for definition, operating space, and enhanced institutional capacity. The reality on the ground is that CSOs in Ethiopia is weak and far from being empowered. Many in government seemingly see CSOs actors by definition as political opponents—indeed, as part of the partisan opposition—despite a decidedly nonpartisan orientation by the vast majority (Clark, 2000). Neji (2011, p. 123) laments that:

“the history of democratic governance in Nigeria from 1999 till date has been a history of constant struggles between successive democratic regimes and CSOs all having basic objectives in contrast. In other words, democratic governance is difficult to sustain because, among other restraining factors, CSOs are weak; and civil society is weak because what is practiced in Nigeria is short of democracy as a result has not created the conditions necessary for civil society to strive.”

Kaliba (2014) argues that in Zambia there has been an increasing criticism of CSOs alongside growing party political. Kaliba (2014) considers the NGO Act of 2009 as an attempt by the then ruling party to hold on to power by limiting CSO space. The opposition party, Patriotic Front (PF), made it a campaign issue to improve state-CSO relations and oppose the NGO law. However, when PF came to power after the 2011 election, NGOs were called to register in 2013. The state uses excessive power (partly to silence opposing voices) and “underhand methods to reconquer the political arena

and criminalize dissent” (Kaliba 2014). In Ethiopia, the Registration and Regulation of Charities and Societies Proclamation No 621, (the NGO Law of 2009) established new rules, limiting the opportunities for CSOs to work promoting human rights and democracy (Braathen et al, 2018). In Uganda, the 2016 NGO Act included “troubling and vague special obligations” such as “not [to] engage in any act, which is prejudicial to the interests of Uganda and the dignity of the people of Uganda” (Human Rights Watch 2016). Registration applications must include a letter of recommendation from a government body, leaving broad scope for state interference (USAID 2016). Africa politics in general creates difficult operating environment for CSOs which is hostile and limit their scope of work.

2.5 Historic Development and Performance of CSOs in Malawi – 1964-1989

The development and performance of CSOs in Malawi has taken different phases. Meinhardt and Patel (2003) highlight that both the colonial period and one-party rule, there was presence of religious organizations and NGOs working in various development areas but with limited autonomy. Mwalubunju and Chisi (2013, p. 271) point out that

after the declaration of the Nyasaland protectorate by the British towards the close of the 19th century, the new men of Nyasaland comprising clerks, teachers, Church leaders and small businessmen were making economic, social and political demands through the medium of organizations that were ostensibly tribal in structure, but in principle they operated as early pressure groups with no intension of advancing tribal or regional interest. The pressure groups were in form of native and tribal associations which were located across the country; with many of them originating from the Northern Region of the protectorate

At the beginning of the 20th century, about 15 associations of educated Africans were created with the objective of representing the political, social and cultural interests of their members in the face of the colonial regime (Mwalubunju & Chisi, 2013).

Chirwa (2014) elaborates that one party state dictatorship had a negative impact on the growth and development of Critical CSOs in the country. He highlights that Trade Unions and farmer’s organizations in particular were closely aligned to the ruling

party, though religious organizations remained independent with most of their activities taking place at community level and focusing on relief, charity and development. These institutions were either co-opted into the regime or were completely not political (Meinhardt & Patel, 2003). Mwalubunju and Chisi (2013) explicitly argue that one-party state was not comfortable with the capabilities CSOs had in empowering the citizenry. The leadership was afraid that CSOs would empower citizens to rebel against the government. This therefore compelled the Malawi Congress Party (MCP) to put more party structures in communities in order to dominate as a way of surveillance. Dr Hastings Banda, Malawi's President between 1964 and 1994, made it abundantly clear that his vision of Malawi did not have any space for CSOs' involvement in the development process. Chirwa (2014) qualifies the repressive action of the one party as a clear indication that Kamuzu had no place in his vision for CSOs to contribute meaningfully to the development of the country. CSOs were muted by the totalitarian regime.

Mwalubunju and Chisi (2013) have argued further that as a measure to ably regulate the public, the authoritarian regime constrained the civil space with regulation that were unfavorable, thus limiting their operation space. In essence, their operation space was confined to charity works in health, education, community development and promotional welfare. Chipeta (1992) overtly points out that during his regime, Kamuzu never gave CSOs space for growth nor recognition as development partners. He further points out that advocacy CSOs were barred from promoting human rights issues and trade unions were banned from existing throughout the period of 1964 to 1992. International NGOs were not welcome as others were sent out of the country during this time (Chipeta, 1992). Although service delivery CSOs were allowed to operate, they could only function in a very tightly controlled context. For instance, the Christian Service Committee (CSC), an umbrella ecumenical civil society movement, was banned and refused permission to work during this period. During this period, CSOs were seen as opposition agents, and Government policy consisted of deliberate spying on, monitoring and controlling them (Mwalubunju & Chisi, 2013).

1989 to 1994 witnessed a growth in advocacy activities by the Church with the authoring of the significant and historical pastoral letter issued by the Catholic

Bishops in 1992 which boldly exposed the undemocratic tendencies of the authoritarian regime (Meinhardt & Patel, 2003). Meinhardt and Patel, (2003)) have presented that from 1993 to 1994, CSOs took a leading role in facilitating political changing. CSOs were gearing up to impart civil and voter education, participate in stakeholders' workshops with the donors and the Electoral Commission, the media and other institutions towards the first ever multiparty elections in three decades (Mwalubunju & Chisi, 2013). The National Constitutional Conference (NCC) set up to draft the new liberal Constitution involved extensive civil society participation. They engaged both the state and society in a dialogue on the country's political future, and acted as a conduit for grassroots articulation of political demands.

2.6 Re-introduction of Multiparty Era – 1994 to 2018

Following the momentous political transition in 1994 which gained the reintroduction of multiparty democracy, marked the birth of a fairly free civil space which presented opportunities for CSOs to mushroom and meaningfully contribute to the development of the country (Meinhardt & Patel, 2003). Chirwa (2014) and Mwalubunju and Chisi (2013) confirm that the adoption of the new democratic Constitution in 1995 by Parliament insulated the CSOs space from political control. This marked the breaking point for CSOs to work with a wider mandate, thus a shift from only performing charity works to advocacy and service delivery. The new season rejuvenated formation of Trade unions which were banned for nearly 30 years and, workers regained the power of collective bargaining (Meinhardt & Patel, 2003).

The end of dictatorship in Malawi created more space for citizens to associate freely (Chirwa 2014). Mwalubunju and Chisi (2013, p. 273) point out that though multiparty democracy presented the needed opportunity for civil society to perform its wider mandate freely, they were faced with limited expertise in executing their role. Meinhardt and Patel (2003) present that after the first multiparty elections in 1994, huge gaps emerged amongst CSOs space as a result of failure to properly understand and coordinate their work. The CSOs had weak institutions, lack of long-term vision and strategies, and intransigence of the state.

Mwalubunju and Chisi (2013, p. 274) note that:

From 1999 to 2004; this period was characterized by an increased tension and mistrust between CSOs and the state. The state visibly intimidated those CSOs and the media which were engaged in advocacy for good governance and made attempts to silence them. A vibrant civil society was emerging in Malawi, which was exemplified through its success in blocking the infamous presidential third/open term amendment bill being passed into law. Yet, it was also a period when the state enacted the repressive NGO Act of 2000 which meant to control the activities of NGOs.

Meinhardt and Patel (2003) highlight that:

the overall performance of NGOs in the second multiparty elections raised several doubts regarding their efficiency and, more importantly, their neutrality and credibility. The issue of lack of accountability and responsibility also surfaced prominently and some notable NGOs, such as MIDEA, had to eventually close down. The Danish Embassy, which demanded audited accounts for all projects, came out with a firm stand on the serious consequences of misusing Danish funds by partners. In early 2001, parliament initiated a move to enhance the accountability and transparency of NGOs by passing the NGO Act (p. 45).

The act endeavored to provide for the rights and obligations of NGOs in Malawi and to promote the development and values of a strong independent civil society (Meinhardt and Patel, 2003). It further provided for the establishment, functions and power of the Non-Governmental Organization Board of Malawi and the right of the public to access information with respect to registered organizations and to provide for matters incidental thereto or connected with (NGO Act, 2000, p. 2). The act included provisions to create an environment conducive to NGOs development through government incentives, the promotion of donor and public confidence in the NGO sector, and by encouraging the development of an NGO code of conduct (NGO Act, 2000, p. 2). CONGOMA was designated as the NGO coordinating body for the purposes of this act, and all registered NGOs were required to be affiliated. It is however interesting to note that some CSOs resisted some clauses in the ACT which

required mandatory membership with CONGOMA arguing that it was against the principle of freedom of association. Registration and other costs involved in the process of obtaining CONGOMA membership are prohibitive for small, local NGOs (Meinhardt & Patel, 2003, p. 46).

From the period of 2006 to 2009 there seemed to be peace between the government and the CSOs. These prevailing political conditions then made the CSOs to side with the government in advancing a national agenda which was to force MPs in opposition, who then were in majority, to pass budget first and other political matters to come second. However, Mwalubunju and Chisi (2013) describe this to have been a marriage of inconvenience as the government acquired majority MPs in parliament saw no need of CSOs support. This was evident with perpetual attacks in form of intimidation and accusations from the president that the advocacy CSOs was puppets of the international donors and agents of opposition parties. In 2011, due to harsh prevailing economic conditions and poor governance, CSOs organized wide mass demonstrations which saw 20 people killed. This unprecedented violence experience in July 2011 scared ordinary people away and resulted in CSOs not being able to unite and agree on tactics or way forward (Mwalubunju & Chisi, 2013, p. 276)

From 2016 to current time, CSOs advocating for good governance have been at tension with the government. The Nation (2018) reports that thugs invaded Center for Human Rights Rehabilitation (CHRR) premises where a guard was attacked as he denied to give them location to CHRR director as such CHRR premises were petrol boomed. Prior to this physical attack, Mwale (2018) on 7 July, 2018, captures President Peter Muthaka attacking CSOs with a claim that they are being used by donors to destabilize his government as such he wants the donors to stop funding the CSOs. With this, and the ongoing heated debate between the government and a sect of CSOs led by the Council for Non-Governmental Organizations (CONGOMA) on the amendment of the Non-Governmental Organization Act (2018), CSOs claim that through the amendment the government is treating them like terrorist as it is very restrictive in operation and that there was no thoroughly consultation on the bill (The Nation, 2018).

2.7 Theoretical Frame Work

2.7.1 New Institutionalism: Rational Choice Institutionalism

The theory articulates that Institutions are constitutive rules and practices prescribing appropriate behaviour for specific actors in specific situations. Institutions empower and constrain actors differently and make them more or less capable of acting according to prescriptive rules of appropriateness (Goodin, et al., 2006, p.3). March and Olsen (1989) perceive that Institutions can further be viewed as collective rules that are relatively unchanging and resilient to distinctive purposes of individuals and changing external circumstances. Institutions are necessary for the benefit of all in a society because they influence the behaviour of individuals and organizations in attaining their goals or performing their functions. Therefore, it can be concluded that institutions are humanly devised constraints or standard operating procedures that explain, justify and legitimate behavioural codes for the common good in a society (March & Olsen, 1989).

Intuitionism has undergone some changes over the years hence it should be noted that: Unlike the old institutionalism of the 1920s and 1930s, in which the emphasis was exclusively on the formal aspects of decision making in a descriptive way, new institutionalism goes further to give the field of social sciences a 'structural turn', by focusing on the impact of institutions on actions and outcomes (Lecours, 2005, p.8). The new institutional approach emphasizes on how the structure and organization of any institution can make a difference for the outcome (March and Olsen 1984; Peters, 2005).

New Institutionalism views institutions as paramount and determinant of people's behaviour in a society. The new institutional approach extends the idea of institution to include the informal activities hence looking at how formal aspects impact one's behaviour. Rational Choice institutionalism is a theoretical approach to the study of institutions arguing that actors use institutions to maximize their own utility. However, actors face rule-based constraints provided by the institutional environment which influence their behaviour (North, 1990). Under this school of thought, rules are understood as the 'rules of the game' shaping human interaction. Rational Choice institutionalists group institutions into structured (formal) and unstructured (informal

rules). Shepsle (2005) views structured institutions as those rules that are robust and remain the same over a long period of time (such as National Assemblies) and unstructured institutions are patterns or practices performed by individuals which are not formally agreed upon as legitimate code of standard behaviour (Goodin et al., 2006, p.27). In essence, Rational Choice Institutionalists argue that, individuals use 'rules of the game' for their personal satisfaction and tend to formulate practices and patterns parallel to the formal rules.

In Malawi, the constitution has made some human rights provisions in Chapter 5 such as section 32, 34 and 35 which highlight issues about freedom of association, freedom of opinion and freedom of expression respectively (The Constitution of the Republic of Malawi). The rationale of the chapter and sections is to make sure that every actor, that is inclusive of every individual, institutions – formal or informal, and the state, act or behave in a way that does not contradict the constitution in order to promote principles of democracy in the country for the common good. This is to say that the constitution through the chapter and aforementioned sections set rules of a game in a community. Furthermore, CSOs Act of 2000 is meant to guide the operations of the CSOs activities. The act therefore sets rules of the games for the CSOs. The theory therefore guided the researcher to understand who plays or does not play according to the outlined institutions between the political elites and governance CSOs. Further, linking to Rational Choice Theory (RCT), the theory assists in narrowing down rationality of both players in using or ignoring the outlined rules of the game.

2.7.2 Harm Principle

To further fully understand the rationality in choices the ruling political elites and governance CSOs make to maximize utility of their interest within the set institution, the study engaged Harm Principle by J.S Mills. The principle states that the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others (Saunders, 2016). This is to say the state may intervene in the life of an individual against his will only if it has as its actual justification that by so intervening it will prevent or reduce harm (risk) to others (Holtug, 2002).

According to J.S. Mill, he believed that the only part of anyone's conduct for which he is amenable to society is that which concerns others. Over himself, over his own body and mind, the individual is sovereign (Kenny, 2006, p. 331). According to Saunders (2016), Mill was of the view of the need to safeguard an individual private sphere of liberty which had to deal with "self-regard" from that of "others regard" which concerned the interest or rights of others.

John C. Rees (1960) points out that almost anything a person do may causally affect those who surround them, but not everything that causally affects those surrounded affects their interests. Thus, there is plausibly a range of individual actions that are not other-regarding. John C. Rees (1960) further expands and defends the private sphere by observation that "not all effects that I might have on your interests license interference; perhaps only harms, i.e. negative effects," permit intervention. With regards to John C. Rees interpretation of safe regarding and, agreeing to his view and that of Mill that the private sphere must be protected, Saunders (2016) exclusively and exhaustively define 'self-regarding' as what primarily affects the agent, and 'other-regarding' as what primarily affects others. In essence, the act of a person should be judged bad if it harms or poses threats to others.

The principle guided the researcher to first – examine the act of governance CSOs in demanding transparency and accountability from the political elites if it posed harm that violated or interfered with the private sphere of liberty of the elites, second – if such interference warrants elites the of use whatever force, including state institutions, to intervene in the lives or sphere of the CSOs such that they shrink their space.

2.7.3 Pluralism

The pluralist theory of the state has a very clear liberal lineage. According to Haywood (2002) in its traditional sense, pluralism is a sociopolitical theory that emphasizes the diffusion of power amongst a number of competing bodies or groups. The belief is that the state is to act as an 'umpire' or 'referee' in society. The origins of this theory of the state can be traced back to the writings of seventeenth-century social-contract theorists such as Thomas Hobbes and John Locke. The principal concern of such thinkers was to examine the grounds of political obligation, the

grounds upon which the individual is obliged to obey and respect the state. They argued that the state had arisen out of a voluntary agreement, or social contract, made by individuals who recognized that only the establishment of a sovereign power could safeguard them from the insecurity, disorder and brutality of the state of nature (Shaapera, 2014).

According to Shaapera (2014) the pressing perception is that, without a state, individuals abuse, exploit and enslave one another; with a state, order and civilized existence are guaranteed and liberty is protected. In liberal theory, the state is thus seen as a neutral arbiter amongst the competing groups and individuals in society; it is an 'umpire' or 'referee' that is capable of protecting each citizen from the encroachments of fellow citizens (Shaapera, 2014). The neutrality of the state reflects the fact that the state acts in the interests of all citizens, and therefore represents the common good or public interest. Cerny (2006) points out that pluralism is about real people interacting in the modern (or even postmodern) world in ways that channel power struggles and faction-fighting into negotiation and compromise, smooth the sharp edges of belief into toleration, and engage people in positive-sum coalition-building activities that will not merely lead to stability but – one hopes – to cooperative, positive-sum, “win-win”, or at least Pareto-efficient, welfare outcomes. According to Haywood (2002) and Shaapera (2014), it is in this sense that the state has to play a neutral role in balancing power and hegemony in a society to prevent fragmentation, stalemate, institutional bias, and/or negative-sum, according to Cerny (2006).

This theory was adopted to aid the researcher in understanding whether indeed the state acts as an umpire or not. This has been achieved by examining the relationship of the state and the CSOs in the past two decades since inception of democracy.

2.8 Conclusion

The chapter has reviewed literature in relation to the topic of the study. The review of such literature has shown that CSOs play a pivotal role in entrenchment of democracy at national and global level. The roles played by CSOs cannot be overrated nor undermined as they have contributed significantly to global economics and politics by

standing in the gap where the state and market forces have failed to address some of the basic needs of people in community.

The review has also shown that despite the relevance of CSOs being undisputed, they face various challenges which among others include poor or lack of funding, political interference, intimidation and litigation. In addition, the review has given a historic and performance over view of CSOs in Malawi in different phases. CSOs in Malawi have played a significant role in the socioeconomic development of the country. That being the case, like elsewhere, they haven't been spared from political resistance which has effortlessly worked to shrink their space.

CHAPTER 3

METHODOLOGY

3.1 Introduction

This chapter outlines the methodology that was used in gathering information related to the topic under study. Specifically, the chapter outlines the different strategies that the researcher employed in collecting data. It gives particular attention to concepts such as research design, population, sampling techniques, data collection tools, data analysis, research ethical considerations, validity and reliability. The concepts were used to obtain the relevant data and interpret it to reflect the research question.

3.2 Research Design

The research employed qualitative approach. The approach fit well with the study objective and question which required soliciting views from a wide range of key informants that were part of study population. This helped the researcher to unearth and understand the strategies that governance CSOs are using to survive in hybrid regime of Malawi.

3.3 Data Collection

3.3.1 In-depth Interview

A semi-structured interview guide was used for collecting data during interviews with key informants. A voice recorder was used in order to not miss points that were raised during discussions in the interviews. The interviews gave the researcher enough time to go through questions and probe on issues that emerged during the discussions with the respondents. The probing gave opportunity for the researcher to fully understand some events and experiences that the respondents were relating.

3.3.2 Review of Documents

The researcher reviewed some of the reports by some CSOs, CONGOMA, Malawi Human Rights Commission (MHRC) and other articles authored locally and international in line with the study. The review enriched the findings of the study.

3.4 Population and Sampling

3.4.1 Population

The study interacted with 7 governance CSO leaders which have been critical and consistent in demanding transparency and accountability from the ruling political elites for the decade (2010 to current) and these include Institute for Policy Interaction (IPI), Human Rights Defenders Coalition (HRDC), Center for Human Rights and Rehabilitation (CHRR), Youth and Society (YAS), Nation Election Systems Trust (NEST), Church and Society (CS) and Voluntary Voice Overseas (VSO). The 7 CSOs helped the researcher reach a point of theoretical saturation hence no need to interview other CSOs that qualified in the category of critical as per studies definition, The researcher interviewed 2 academicians knowledgeable with the topic; one from department of Political and Administrative Studies at Chancellor Collage and One from Department of Political Leadership at Catholic University. The researcher also interviewed CONGOMA, as they are the mother body of registered NGOs in Malawi. In addition, the researcher interviewed the Presidential Advisor on CSOs.

The researcher further engaged 3 political parties which include DPP, MCP and UDF. The parties were chosen because they are the major active political parties and, apart from MCP, UDF and DPP have all had a taste of power since the re-introduction of multiparty democracy whilst MCP has been the lead opposition party since multiparty politics in Malawi. The researcher was given a representative from each political party that was knowledgeable enough about the topic. Of the three parties, the researcher was successful with 2 interviews as DPP representative continuously excused himself from the interviews. In addition, the researcher interviewed MHRC as it directly interacts with CSOs in the promotion of Human Rights in Malawi. In total, the researcher conducted 14 interviews.

Table 1: Showing the Number of Key Respondents Interviewed

Key Respondent	CSO Leaders	Academician	Political Parties	CONGOMA	MHRC	Presidential Advisor
Subtotal	7	2	2	1	1	1
Total	14					

3.4.2 Sampling Technique: Non-Probability Purposeful Sampling

Since the study employed qualitative approach, the researcher used non-probability purposive sampling method. Alluding to the targeted population, the researcher purposively interacted with key informants that were acquainted with the topic which include leaders in governance CSOs, political actors, academicians, CONGOMA and MHRC.

3.5 Data Analysis

The researcher used Interpretation Analysis to process and analyzes the data that was collected from interviews. The audio recordings were transcribed for analysis. The researcher had to categorize the respondents into groups of their profession and drew tables for each group to draw out commonalities. This allowed the researcher to identify dominant themes from each group relevant to the study and relate them to the objectives and the research question. The themes from each group were then rounded up and presented as findings of the research. The method was rewarding to the researcher as the common themes were easily adopted from each interview and then a conclusion regarding that particular theme made.

In addition, Content Analysis was used for analyzing data that was collected through review of relevant documents. This enabled the researcher to ably engage with the literature to pick out issues that were speaking to the research objective and question.

3.6 Ethical Considerations

The research considered all research ethics which are professional guiding principles for researchers. The respondents were asked to complete research consent forms before the interviews. In addition, the environment and questions that were asked were in a neutral non-hostile and non-emotional environment. In short, the research

ethically respected respondents' privacy, confidentiality, informed consent and voluntary participation.

3.7 Validity and Reliability

The researcher is confident of the research finding being valid and reliable as the study was done professionally, whereby, self-interests was not the determinant of doing this research but to fill the gap in the academia on the topic of CSOs in Malawi and Hybrid Regimes. Thus, the reliability and validity was achieved.

3.8 Limitations

The study encountered two main challenges. First, most of the governance CSOs leaders were very much busy and engaged with National Demonstration which were run twice in a week for close to 5 months. This made it very difficult for the researchers to secure time for interview with them. The researcher employed other mechanism such as sending a semi-structured interview questions (tool) for them to respond to which did not materialize so as phone calls.

Second, a representative from DPP continuously excused himself from an interview by saying he was busy. However, this did not entirely affect data collection or quality of the data as the researcher managed to secure an interview with Presidential Advisor on CSOs. This helped the researcher to fully follow through some critical questions that had emerged through interaction with other respondents which needed clarification from ruling party.

3.9 Conclusion

The chapter has outlined the research design which is qualitative in nature. The chapter further explained the population and how it was identified and, how data was collected and analyzed in order to establish the findings. A total of 14 interviews were conducted with various key informants. The study followed all ethical considerations making it valid and reliable.

CHAPTER 4

FINDINGS

4.1 Introduction

This chapter presents the findings of the study which are all leading to the strategies that governance CSOs are using to survive in hybrid Malawi. The findings have been categorized into three main themes framed from the responses from the key informants and the documents that were reviewed during the study process. The first theme focuses on the working relationship between the government and critical governance CSOs. The second theme outlines the various mechanisms that the ruling political elites use to shrink the civil space. The last theme has outlined the strategies that CSOs are using to counter the mechanism employed by the ruling political elites to shrink the civil space.

4.2 Working relationship between governance CSOs and Malawi government

The aim of this theme was to establish the working relationship between government and NGOs, particularly governance CSOs. The theme is guided by three sub-themes which include Registration Process for NGOs, Policy Consultation/engagement and, Conducive working Environment for Governance CSOs to Operate.

4.2.1 Legal Framework and Registration Process for NGOs

All the 7 CSO leaders that the study engaged expressed that in terms of registration of NGOs Malawi has a fairly progressive registration that regulates civil society which is guided by the NGO Act (The Act, 2000) which basically gives the civil society leaders and the leaders from the NGO sector power to regulate NGO activities making it more progressive. T14 describe the registration regimes as non-discriminatory as they apply to all, that is, service, charity and advocacy NGOs.

The study has further gathered that the registration process in itself for NGOs in Malawi is relatively burdensome since it requires one to follow many steps to register. All CSO leaders complained that Registration steps are too many to follow

and that there are several laws affecting Registration such as Trustees Inc. Act; Companies Act and NGO Act that need harmonization. At operational level, which is a legal requirement as well, NGOs must have an MOU with the Ministry responsible for their activities. In addition, after signing an MOU, when they go on the ground, they are expected to get another MOU with Local Councils. T3 lamented that due to many steps of registration, NGOs are forced to do double subscription making it financial straining, particularly for local NGOs. The double subscription is as a result of double registry with the CONGOMA and NGO Board. This was lamented by all the CSOs leaders. In addition, Meinhardt and Patel (2003, pg. 36) point out that;

Other NGOs did not fully agree with the dictates of the act, particularly on the requirement for all NGOs to be affiliated to CONGOMA, by arguing that this was a violation of the freedom of association; institutions should be free to register or not register and enforcing association by law is a violation of such right. Registration and other costs involved in the process of obtaining CONGOMA membership are prohibitive to small local NGOs.

As presented by T8, for an NGO to be registered it first has to register under companies act or under the trustees and cooperation act, then with CONGOMA and pay annual fees to CONGOMA and, then registrar with NGO Board and again make annual subscription. According to CONGOMA the registration process is categorized into two platforms; one for local NGOs and the other for International NGOs.

For a local NGO to register, they have to provide: A filled CONGOMA Membership Application Form; A certified copy of the NGO's Constitution or a Governing instrument of the NGO; A copy of minutes of the first meeting at which it was agreed to form an NGO; A brief concept paper indicating brief background to the NGO, mission statement, vision, values, districts where activities are being/will be implemented, sectors of operation (e.g. health, education etc) and an outline of activities that the NGO has implemented or intends to undertake in Malawi under each of the sectors; Sworn-in Affidavits of Trustees and/or Directors, giving their names, citizenship, occupation and address; A copy of the Trustees/Directors Declaration; A copy of Certificate of Registration with the Registrar General;

Payment of a Processing Fee of MK3500.00, nonrefundable. Remember that an NGO needs to register with CONGOM – After registering with CONGOMA a local NGO pays an Annual Subscription Fee of MK 87,000.00 for the first two years, after which it is revised.

For International NGO to register, they have to provide: A filled CONGOMA Membership Application Form; Articles of Association or a Governing Instrument of the NGO; A copy of the Registration Certificate of the NGO from the originating Country; A brief concept Paper indicating physical address for offices, brief background to the NGO, mission statement, vision, values, districts where activities are being/will be implemented, sectors of operation (e.g. health, education etc), an outline of activities that the NGO has implemented or intends to undertake in Malawi under each of the sectors, sources of funding and number of employees; Sworn-in Affidavits of at least two Malawian Trustees and/or Directors, giving their names, citizenship, occupation and address; Copies of Temporary Employment Permits for all non-Malawian staff/trustees resident in Malawi; A letter of approval from the Ministry of Gender; Payment of a Processing Fee of MK 5,250.00, non-refundable – after registering with CONGOMA an International NGO pays an Annual Subscription Fee of MK 290,000.00” (T8)

The key legal requirements for operation of NGOs include legal personality – Registration certificate from Government of Malawi through Ministry of Justice; Registration certificate from CONGOMA (S20-3-a-v of NGO Act 2000); Registration certificate from NGO Board of Malawi; Tax Registration with MRA for paying Pay as You Earn Tax or other taxes; Valid Temporary Employments permits for all Foreign staff from Immigration and; Have projects approved by Local Councils (Local Government Act).

4.2.2 Policy Consultation/engagement

Policy making processes requires the involvement of so many stakeholders, the citizenry being key in the process. The citizenry are engaged through various channels one of which is the CSOs through formal consultations. The study has gathered mixed views on policy engagement with CSOs by the government.

T14 expressed that all CSOs are engaged in policy making by the government. However, one must take note that their voice is incorporated by the government based on two conditions (a) the CSOs must ground its voice on evidence – thus evidence based advocacy and; (b) the type and nature of advocacy they engage must use proper channels such as constructive dialogue and not confrontation which usually is a negative approach and yields no results.

As presented by T9, policy engagement depends on a number of factors, one of which is the level of sensitivity of the policies or laws. Some are actually targeted at certain institutions like the policy on NGOs or the legislation of NGOs which actually is targeted at NGOs themselves. Sometimes the government will not consult enough, though this being the case, in other instances government actually incorporates CSOs into task forces or committees that actually draft legislation and even policies and even where they are validating some of these documents it's done openly.

We participate as state institutions where other CSOs also participate, for instance, the development of the law on rights of a child, the enactment of the child care protection and justice act, gender equality act. These have been participatory. The HIV/AIDS law was also highly participatory. Actually some NGOs even participate at the level of special commission with the law commission when they are developing legislation. However, it is important to note that at the center of all policy interaction, the government may choose who to involve (T9).

All the CSO leaders did not hesitate to explain that policy engagement in most cases is always associated with hoodwinking, tokenism and lack of transparency. It is not all times that critical CSOs are engaged in policy process or that their voice is adhered to by the government. Usually their voices are limited to a certain level as most of the times the executive is in control; therefore, executive arrogance manipulates all things, citing the electoral reform as a law manipulated by the executive after all proper consultations was made and it was gazette. In addition, the NGO law (2018) amendment in draft was done in hiding by consulting CSO that sympathized with the government. In essence there was very limited transparency as the government was lead in selecting who should participate.

T1 specifically made mention that

in some cases the government has been forced to bring CSOs on board because some developing partners have made it as a condition for them to secure funding they are to ensure that there is inclusion of CSOs, that is inclusive of critical CSOs. In this case they have been forced to put critical CSOs on board. In addition, some CSO leaders who demonstrate some level of expertise in some areas it becomes difficult for the government to avoid them, for instance, currently there is a review on the national anti-corruption strategy for Malawi by Anti-corruption Bureau (ACB) which has engaged various CSO leaders, particularly those that are critical because of their role in the anti-corruption work.

T10 specifically pointed out that there is a lot of resistance for voice of reason from governance CSOs toward the government currently, especially on point where there is failure for the government to hold on to governance principles and therefore the government stands to protect itself from outside pressure, that is from non-state actors, against demands for change, transparency and accountability. Whilst T11 argued that Policy engagement is a political process as such the government cannot involve CSOs with dissent views on how the government is run. They reward CSOs that sympathize with the government, therefore, the involvement is limited as it is a political process and not a clear or straight forward logical way.

T12 presented that there is CSO engagement with Members of Parliament, through the parliamentary Committees. For example, the Budget and Finance Committee engage with the CSOs during budget formulation. However, the CSOs' voices do not play the role in government decision making to the extent they should because the CSOs in Malawi are not organized, consistent and professional. They do not adopt a strong lobby strategy and are largely event driven. T13 pointed out that there are structures such as Presidential Advisor on CSOs which present an opportunity to have them represented but however there hasn't been meaningful interaction between governance CSOs that critique the government and the government representatives.

4.2.3 Conducive Environment for Critical Governance CSOs to Operate

Almost all the respondents attributed to the Constitution (The Constitution) and NGO Act (The Act) being instruments that already created a conducive democratic space for CSOs to operate. However, political actors always make and implement plans that continuously aim at shrinking the CSO space. T13 was quoted

Government will never create an environment for critics. This is a wrong expectation. The citizenry have to create an environment that is functional. Civil space is supposed to be claimed by citizenry and not accorded by the government. It is possible to have a law that is open enough but the leaders will still try to stifle the space.

T8 agrees with T13 by making an emphasis that:

Everywhere in the world Governments do not like to be criticized. Even in big democracies like India etc CSOs must fight for space. Ruling elites have to secure their longevity in office by dealing with dissent in most cases. A genuine CSO grouping that really fights for the ordinary citizens will never be a friend of the ruling elites.

On contrary, T14 expressed that working environment for CSOs is so open and friendly with evidence of registration regimes being non-discriminatory; financing regimes is not strictly under government severance, CSO leaders are not arrested on political motives; operation of CSOs are guaranteed of their rights and; CSOs activities are not unnecessary stifled by the government, evidenced by free demonstration.

4.3 Narrowing of Governance CSOs Space by the Ruling Political Elites

The aim of this theme was to find out the ways that ruling political elites use to shrink civil society space. All the respondents acknowledged that ruling political elites work to shrink the civil political space. The findings have been presented into 6 Sub-themes which include co-opting, use of state machinery, use of party zealots, public statements, lawsuit and divide and rule,

4.3.1 Co-opting

Political elites use soft power on CSO leaders who are vocal and influential among their colleagues to sympathize with the government. These marked leaders are given some offers in form of positions in government institutions or funding for their organizations in order to compromise their stand on demand for transparency and accountability. The aim is to completely buy them off as highlighted by T13:

Political elites will always target critical leaders who are more influential among their equals. The goal is to divide and rule in the game – goes as deep even among faith based CSOs and NGOs.

4.3.2 Use of State Machinery

The elites directly use state institutions such the Police to create some charges in order to arrest the leaders so as to silence them. As pointed out by T1, recently two CSO leaders, Gift Trapence and Reverend Sembereka, were arrested on grounds that were not clear yet the government was not to intervene in a matter that exclusively involved the CSO and its development partner. Addition to that, another common way used is the use of Malawi Revenue Authority (MRA) to create crimes of tax evasion in order to impound on the CSOs assets or suspend the operation of the CSOs (T3).

4.3.3 Use of Party Zealots

Party zealots usually use various violence ways to intimidate and threaten the CSO leaders that are critical. They use threatening messages and phone calls, petrol bombs and beating them. Political elites support the party zealots though they do not overtly make such declaration. T14 points out that:

The aim is to inflict pain and fear in leaders in order to silence them. They use threatening messages, direct calls of threats, and threats of abduction among others. Political ruling elites do not speak against these acts in any way. This has been the most violent approach that so far is commonly being used.

4.3.4 Public Statements

The political elites insult the CSOs on the political podiums and threaten them. T1 lamented that the statements made usually dent the image of the CSO leaders and are viewed as rebellious claiming that the opposition and donors are using them as their agents. The public statements also empower the party zealots to embark on a series of attacks on the CSOs.

4.3.5 Lawsuit

It has become a common practice that political elites who are keenly followed by the critical CSOs in demand for transparency and accountability on a particular public task they undertook, file lawsuits against them. T3 witnessed that, amongst the many legal battles that are ongoing, a reference of Charles Kajoloweka who was taken to court and then charged a fine of approximately (MK) 21 million for defamation and in another case he was given a restraining order for him to not look or interfere in any of affairs of a political business man, Mulli, who he believed was doing dubious business and evading taxes. Lawsuit is used by the elites as a way of silencing the critical CSOs.

4.3.6 Divide and Rule

T14 pointed out that ruling political elites create and fund parallel CSOs and networks to praise the government and at the same time fight the critical CSOs and networks that are deemed as antigovernment. In this way, they create division within the CSO sector as the elites offer great rewards to those who chose to back the government by speaking against fellow CSO leaders who are vocal. This enables the elites to infiltrate the CSOs space and manipulates the leaders. In this way, the space shrinks as there are divisions among the CSOs and lead a well-coordinated pursuit of goals.

4.4 Strategies CSOs are using to Survive in Hybrid Malawi

The aim of this theme was to find out survival strategies employed by governance CSOs to counter the mechanism which are continuously used by the ruling politics elites to limit their space. 9 sub-themes were drawn from the responses of the respondents as presented below.

4.4.1 Creation of Local Network

All the respondents pointed out that over the years it has become a common practice that various CSOs with common interest and goals on particular thematic areas come together and form a network of CSOs which push for their common agenda together. The network creates a strong force for demand for change, policy formulation or adoption, transparency and accountability which is very hard most of the times for a solo CSO to push for with success. T1 specifically pointed out that;

“Here in Malawi amongst the many networks that have been created over the years, the Malawi Human Rights Defender’s Coalition (HRDC), a network that looks at the state of governance and human rights in Malawi and at the same time the right of human rights defenders themselves, is one seen to be proactive and consistent, currently.”

4.4.2 Joining International Networks

Alluding to creation of local networks, governance CSOs have ensured to join international networks which amplifies their voice for demand for transparency and accountability in the country. For instance HRDC is platform for human rights activist and it’s a sister organization of the Southern Africa Human Rights Defender’s Alliance (SAHRDA). The SAHRDA is the region body whilst HRDC is the country body. At continental level we have the Pan African Human Rights Defender’s Alliance (PAHRDA) so covering the whole African countries including all regions. These international networks show support for local networks by issuing statements when the local networks came under attack by ruling elites in the country.

T3 highlighted that the governance CSOs have made sure to be in good records with special repertoire on protections of human rights under the AU as well as UN who are friends of CSOs. These repertoires help in ensuring that the rights of the CSO leaders are safeguarded and the civil space by engaging the government either through diplomacy or issuing of statements in support of CSOs work during developed tensions between the government and CSOs. This has secured growth of civil space in Malawi.

4.4.3 Aligning with Political Parties

T10 and T11 have argued that no matter how the governance CSOs will present themselves as being apolitical, they always work well with the opposition parties since they sympathize with them. The opposition parties endorse their work and help them with citizen mobilization during demonstrations against the government. The recognition of the work of governance CSOs in demanding transparency and accountability by the opposition parties amplifies the CSOs voice and space, making them to grow in strength and numbers.

4.4.4 Use of Media

The use of all forms of media has over the years been a strategy employed by governance CSOs to uphold and grow their space. The media is key by providing the CSOs with a platform to properly articulate their agenda which gives the citizenry a balanced view on CSO position on particular governance issues and, helps them to counter opposing forces that create propaganda. T14 expressed that

Governance CSO leaders are more into conducting press briefings to directly communicate with the citizenry on their agenda and currently they are fond of using Facebook to communicate on alleged attacks or threats on them. This over time has garnered sympathy for them from the citizenry making them popular and safeguarded by the citizenry.

4.4.5 Keeping Books Clean

It was pointed out by most of the respondents that political elites will always look into the character and management of donor funds by the CSO leaders in order to find faults and blunders in them. As such, it is important for CSO to have ethical values of accountability and transparency which makes it is hard for the government to attack or came after them based on character or fault finding. Therefore, most CSO leaders expressed integrity and consistency being principles that have kept their records clean making it hard for the government to find loophole to use to attack them (T4).

4.4.6 Evidence Based Advocacy

Four CSO leaders (T1, T2, T5 and T6) pointed out that countering government opposition is based on facts by bringing forward hardships being experienced by the public daily. With such evidence of daily struggles by the citizenry due to corruption or unconstitutional acts by the ruling political, the government fails to refute the demands since the claims are genuine. This has made the CSO pursuit for transparency and accountability to garner more citizenry support. T3 specifically mentioned that:

You know countering those negative forces is not just one of the activity but being able to maintain your credibility and being consistency with your work regardless of state disruption is very key in shaping public perception, public understanding and public awareness from the work that you do. When you're constant and you're credible and you have evidence based advocacy, this is key in countering those forces. If you have facts, you have evidence and you're really bold to engage openly, people will know who is credible and who is not, so we have been more evidence based, consistent and credible ourselves than the claims brought forward by the government.

T13 echoed that evidence based advocacy stands as a strong shield to vindicate works of governance CSOs in demand for transparency and accountability as apolitical and solution oriented approach. This in turn proves the significance of CSOs existence hence there space is upheld and supported by the citizenry.

4.4.7 Reporting abuses to National and International Institutions

In order to protect their space from elite's encroachment, CSOs report abuses by state to the Malawi Human Rights Commission (MHRC), locally. T3 pointed out that at international level, they report at African Union through the human rights sessions hosted by the Human Rights African Union Commission. In addition, they report to United Nations (UN), where they submit shadow reports which give the civil society perspective on the state of affairs on human rights in the country. This helps to notify, particularly the international community, the condition of human rights in the

country. This prompts the international community to respond in various ways against the state in order to safeguard the civil space and rights of the CSO leaders.

4.4.8 Confrontation

Confrontation is one of active approach that CSOs are employing to counter the political elites measures to shrink their space. This takes various forms such as demonstrations, public statement, or law suits. T6 argued that the rationale is to mobilize citizen's voices against the elites or discrediting them. For instance, T3 pointed out that direct confrontation hasn't gone well with many of the elites and its working very effectively.

When we took our first corruption litigation case, the maize gate case, we were told that our chances to succeed were zero so we got a legal opinion and we pursued the matter succeeded in a big way. This prompted them to carried about 7 cases in anti-corruption strangle in their name and with unprecedented impact (T3).

4.4 Conclusion

The chapter has presented the study findings in answering the research question. The findings have been categorized into three main themes which have sub-themes. The main themes include; working relationship between governance CSOs and government; Shrinking of governance CSOs space by the ruling political elites and; strategies governance CSOs are using to survive in hybrid Malawi. The findings are discussed and analyzed in chapter 5.

CHAPTER 5

DISCUSSION OF FINDINGS

5.1 Introduction

The chapter gives thorough discussion of the research findings. The discussions have been categorized into two main themes which have sub-themes answering the research question. The themes have been drawn from the findings as presented by the research participants and these include; working relationship between governance CSOs and Malawi government and; strategies that CSOs are using to counter mechanism employed by ruling elites to shrink governance CSOs space in hybrid Malawi. The first theme expounds and establishes the working relationship between the critical governance CSOs and government political elites by analyzing policy interaction between the two parties and, evaluation of legal framework guiding the CSOs space. The second themes establishes the strategies that the critical governance CSOs are using to survive in hybrid Malawi by first of all pointing out the mechanisms political elites use to shrink the civil space.

5.2 Working Relationship between Critical Governance CSOs and Political Government Elites

Pasha (2005) asserts that civil society has been widely recognized as an essential ‘third’ sector as its strength can have a positive influence on the state and the market. Civil society is therefore seen as an increasingly important agent for promoting good governance like transparency, effectiveness, openness, responsiveness and accountability. In line with the views of Pasha (2005), Chirwa (2014) acknowledges Malawi having a robust Civil Society that is actively involved in the development of the country.

In acknowledging the relevance of CSOs globally and locally, this theme establishes the working relationship between the governance CSOs and government political elites. The essence was to explore the working environment for the governance CSOs if it is conducive for them to meaningfully contribute to the development of this country. The study achieved this by examining the legal framework for NGOs, with an emphasis on the registration process and their operation space if it enables them to freely execute their advocacy role. The study further looked into the interaction processes between the governance CSOs and political elites by examining policy consultation processes.

5.2.1 Legal Frame Work for CSOs

As propagated by the UN (Chapter V111), Organizations cannot exist or function normally without an institutional framework of laws established by the state, including credible guarantees of fundamental rights and political freedoms. All the participants pointed out that the CSOs sector has a well-defined legal frame work which is covered by the NGO Act of 2000. In essence, the act gives the civil society and NGO leaders' power to regulate NGO activities and establish a good working relationship with the government. The Act (NGO Act, 2000) in chapter 3 provides its objects among which are “(a) to promote the development of a strong independent civil society in Malawi and facilitate the formation of and effective functioning of NGOs for public benefiting purpose; and, (b) to create a conducive environment for NGO development through government provision of incentives”. Through the objects, the act explicitly lays out its purpose which is to create a safe working environment for the CSOs. The act has further enabled the civil space and its activities to be legally under the control of the NGO leaders through the creation of CONGOMA as a mother body for all the registered NGOs. The boards' leadership is largely constituted and chaired by CSO leaders and has few government representatives.

In addition to the act providing legal frame work for CSOs, the study establishes that, the constitution (The Malawi Constitution) albeit not being explicit; enhance the legal framework of the CSOs space. According to the constitution, chapter 5 (32) (1) provides that “every person shall have the right to freedom of association, which shall include the freedom to form associations”. The Constitution provision tallies with the

definition of CSO as provided by Neji (2011), Veneklasen (1994), and Mwalubunju and Chisi (2012) which do not confine civil society to registered nongovernmental organizations as the Act do, but also includes other organized social networks and associations which are not registered, whose activities and programs influence and inform the lives of wide sectors of the community. Thus, the constitution recognizes and promotes the development of civil space.

In line with Rational Choice institutionalism, the constitution and the NGO Act set the rules of the game on how CSOs are to operate and government is to recognize the CSOs space covered with a legal framework in order to respect the rule of law. In essence, governance CSO leaders execute their duties within a set institution framework to maximize pursuit of their interest, which is to promote good governance.

5.2.2 Public Policy Consultation

Cochran and Malone (2014) have defined public policy as the study of government decisions and actions designed to deal with a matter of public concern. In coming up with a policy, the government has to engage multiple stakeholders who are to contribute to the policy. Thus, the government is required to adopt a pluralist model for policy analysis which holds that politics represents the struggle among groups to influence public policy (Cochran & Malone, 2014). The role of government is primarily to establish the legal and regulatory rules in the group struggle. The rationale is that individuals, groups and politicians have overlapping memberships, which prevents any one group from moving too far from moderate values and any single interest from consistently dominating other groups. Pluralists claim that the power of each group is checked by the power of competing groups, resulting in a marketplace of policymaking in almost perfect competition.

The study reveals that policy formulation by the government adopts a pluralistic approach, thus, various stakeholders, who are experts in the particular field of the policy pursuit, are engaged. Among others, the stakeholders include CSOs. However, the study reveals further that since the government controls the policy formulation process, they chose which CSOs to engage in the process of consultation. This

therefore has seen critical governance CSOs being sidelined in most of the policies that are formulated and adopted by the government. This is evidenced with what was lamented by the governance CSOs that they are not given meaningful opportunity to contribute on policy issues. For instance, recent development on proposed electoral reforms, after all proper consultations were made, the executive arm of government changed the content to fit their interest which was to shoot down the bill; which they succeeded in parliament.

In addition, as alleged that the NGO law (2018) amendment was done in hiding by only engaging the CSOs who sympathize with the government. As such the law in draft form is being perceived as a political tool to be used to infiltrate the CSO space as it propose some laws that are to empower the government with more regulatory power over the CSOs and its spaces. It is imperative to note that infiltration of the CSOs operational space by use of legal instruments has been a common approach used by political elites in some African countries such as Uganda, Ethiopia and Zambia (Braathen, et al., 2018; USAID, 2016; Kaliba, 2014). Kaliba (2014) highlights that in Zambia, a new NGO act from 2009 demanded mandatory registration of NGOs, and re-registration every five years. Organizations could be denied registration due to “public interest”, without any definition of what that entails, leaving it to the discretion of government officials. The act stipulated that the NGO Board, dominated by government officials, had the power to determine the area of operation, and could therefore control activities of NGOs (against fundamental freedom of expression, assembly and association). The board also had the power to provide policy guidelines to harmonize activities and advise on the strategies of NGOs, which thereby run the risk of co-optation. The act violated the constitution of Zambia.

The sidelining of the critical CSOs in most of the policy consultation is further buttressed with the sentiments of T14 who out-rightly gave conditions under which critical governance CSOs are to be considered for policy engagement, one of which, they are to never seen directly confronting the government on matters of good governance but rather use soft approach like contact and dialogue. In essence, as shown by Cochran and Malone (2014) that public policy is but a political process,

political actors are very rational in how they go about the process by choosing who to engage from the CSOs sectors in order to advance their agenda so as to maximize their interest.

Although Braathen et al., (2018) and USAID (2016:126) have argued positive about the government of Malawi in engaging CSOs in policy processes, their assessment is not exhaustive as it only looks at all CSOs in a general category of service delivery. Their study does not critically analyze the inclusion of CSOs that are vocal in critiquing the government in policy consultation.

The study categorically establishes that though there are several channels that the government uses to engage stakeholders on matters of public policy, among which are parliament committees and various ministries and government departments, workshops, the government determine who to engage in the process, particularly from the CSOs sector. In this sense, critical CSOs are not given meaningful opportunity to contribute on public policy matters as they are viewed to be enemies and not development partners. Therefore, the policy consultation is restrictive as the political elites set the agenda and choose who to involve in the processes, particularly in the CSO sector.

5.3 Narrowing of Governance CSOs Space by the Ruling Political Elites

Braathen et al (2018) highlights that over the last 20 years, CSOs promoting democracy and human rights have experienced increasingly restrictive operating environments across the globe, varying from legal restrictions and physical violence to subtler forms of intimidation. Schwab (2013) laments that whether via strict media oversight or burdensome regulatory hurdles for CSOs, governments in numerous countries are restricting the space for CSOs – particularly in the arena of advancing human rights or democratic principles. Steps to suppress or curb civil society freedoms include limiting access to national and foreign funding, erecting barriers to mobile communications, and applying onerous, arbitrary or poorly administrated registration processes. This theme discusses the schemes devised and employed by political elites in efforts to shrink the civil space and, the strategies that governance

CSO use to counter the schemes as strategies used to survive the hostile working environment.

The study is in agreement with Makuwira (2011) who argues that most African countries to date view CSOs as opposition or agents used by opposition parties and donors to bring about political instability in their countries. The Study reveals that though the CSO space is insulated with an act and has constitution back up; the working environment is hostile and limits its growth. Political elites employ various measures to shrink the CSOs space more especially where there are dissent views or heavy demand for public transparency and accountability on the political elites.

5.3.1 Co-opting

As revealed by the study, the rationale behind co-opting is to make the vocal CSO leaders to sympathize with the government. Political actors are very calculative in use of this mechanism by offering the vocal CSO leaders lucrative position in government such as advisory role for the president, Chief Executive Officer for a particular government institution or agency or, the government may incorporate their NGOs in government projects for funding. This in practical has worked for the government; for instance, some CSO leaders who were very vocal and instrumental in organizing 20th July, 2011 national wide demonstration which witnessed 20 people killed, were co-opted into the government system. The then political administration offered positions to some of the CSO leaders to fill post such as presidential advisor on matters of CSOs and Executive Director for Higher Education Students Loans and Grants Board (HESLGB) whilst others were sponsored on several occasions for their activities by the government in order to praise the government on its actions. The co-opting of the CSO leaders into government brings shakeups in the CSO space as the unity of the CSO leaders is destabilized and consistency in pursuit of good governance is compromised. This further creates leadership gap in the CSOs space which takes time to be filled.

5.3.2 Use of State Machinery

Political elites use formal public institutions to instill fear in the critical governance CSO leaders. Institutions such as Malawi Police and Malawi revenue Authority (MRA) are the ones that are commonly abused. This is evidenced with the recent arrest of CSO leaders, Gift Trapence and Reverend Sembereka on 10 July, 2019 on allegations of operating an illegal NGO, despite their NGO being duly registered under company act and that they had miss managed donor funds. In addition, on 8th March, 2020 the same leaders were detained for their consistent demand for resignation of Malawi Electoral Commission Chair over mismanaged elections in 2019. The state only used the Malawi Police Service as an instrument to threaten the CSOs leaders as they never pursued the allegations against the CSOs further in court.

The study is in agreement with Marxists view that the state is not a creation for the interest of all but it originated in conflict situation and operates as a form of instrument of denomination. The state saves the interest of few political elites. This contradicts with the pluralistic view of the state being a neutral arbiter amongst the competing groups and individuals in society; it is an 'umpire' or 'referee' that is capable of protecting each citizen from the encroachments of fellow citizens. Thus, the use of the state institutions by the political elites is meant to protect their self-interest.

The study further establishes that use of state institutions to intimidate CSO leader's by the political elites conflict with the constitution right to freedom of association. The CSOs work within their defined scope of activism as defined by the NGO Act. Thus, they are free to demand transparency and accountability from the political elites as they do not harm anyone in doing so. Furthermore, in line with harm principle, the study is of the view that the state institutions are used to inflict pain on others for personal gains which is not justifiable since the pain inflicted on the CSO leaders is meant to harm them for personal gains by the political elites.

5.3.3 Public Statements

As Makuwila (2014) has argued that many governments in Africa often view CSOs as enemies, the study highlights public statements as one way the political elites over the past two decade have used to explicitly show their discomfort and dislike for critical governance CSOs. Through the public statements, CSOs leaders are castigated publicly on podiums or through government circulars. The rationale is to discredit governance CSO leaders in the country. Mwale (2018) points out that on 7th July, 2018, President Peter Muthalika attacked governance CSOs with a claim that they are being used by donors to destabilize his government as such he demanded the donors to stop funding the CSOs. Through his public speech, the president portrayed the CSOs leaders as useless and without having any sense of purpose in the society. This further made the cronies to the president castigate the CSO leaders in several political rallies and government circulars. Terwindt and Schliermann (2017) assert that labelling, stigmatizing and even criminalizing of CSOs have been used by many African leaders to delegitimize CSOs. Human rights or democracy activists are often labelled as anti-patriotic and foreign, and detrimental to local culture and values. As such, the socio-cultural environment is limited.

5.3.4 Use of Party Zealots

Alluding to castigations in public statements that are publicly endorsed by the political elites, party zealots take advantage of such opportunities for them to show loyalty to their political master by attacking the CSOs leaders using various means. Commonly used techniques for attacking the CSO leaders are messages of threats, petrol bombs, and physical assaults. Mwalubunju and Chisi (2013) attest that from the period of 1994-2012, they were many notable tension periods between the government political elites and governance CSOs leaders which were characterized by intimidation and physical attacks by the elites toward the governance CSOs. Mwalubunju and Chisi (2013) elaborate further that this was much experienced during the period of third term bill during Bakili's regime and the second term of Bingu's regime when Malawi faced acute fuel shortage country wide and lack of forex. CSO leaders who were critiquing the government during the aforementioned periods were heavily threatened and others attacked with petrol booms such as Institute for Policy Interaction (IPI) whose director was Rafiq Hajat and was primary

in the organizations of the 20 July, 2011 national wide demonstrations. All these harmful activities were carried out by party zealots.

Recently, it was reported that thugs invaded Center for Human Rights and Rehabilitation (CHRR) premises and were petrol boomed (Malekezo, 2018). The study reveals that due to these violent undertakings by the party zealots, limit the space for CSOs and, most CSO leaders leave in fear without any confidence of protection from state institutions such as Malawi Police Services. In essence, the CSO leaders are harmed by the party zealots without any justification. Rationale, the violent attacks by the party zealots work for the benefit of the ruling political elites hence they condone the act. This defeats the assertion by pluralist that a state is perceived to be neutral and that the state acts in the interests of all citizens, and therefore represents the common good or public interest.

5.3.5 Lawsuit

Lawsuit is one of the tools that political elites use to threaten CSO leaders who advance pursuit for transparency and accountability, particularly on individual elites. A well notable case that is alleged that CSO leaders are handled unfairly for a good cause by the court is that of DR. George Chaponda vs Charles Kajoloweka where the Supreme Court of Appeal ordered that Youth and Society (YAS) Executive Director, Charles Kajoloweka, pay K21 million as a cost in a case he sued President Peter Mutharika to fire his then Cabinet Minister who was implicated in a maize import deal in Zambia. In addition, the CSO leader was also restrained by the court in a Civil Case Number 262 of 2018, Mulli vs Kajolowoka, to stop making any publication or comments on the claim for 8 billion by Mulli in High Court of Malawi Principle Registry, civil cause number 747 of 2012. Mulli through his companies, Pharmaceutical Limited and Chombe food Limited, sued government and claimed K3.1billion which he was paid but he wanted an addition of K8 billion.

Through the courts, the study establishes that the political elites seek to use formal institutions to limit the work of the CSOs. However, the study is of the view that despite the political elites aiming to limit the operational space of the CSOs, the

political elites have the right to justice as such they are justified to access the courts if they view the CSOs infringing their right.

5.3.6 Divide and Rule

Political elites are very strategic in efforts of dividing CSO leaders. Apart from co-opting, elites create parallel CSOs and networks to praise the government and at the same time fight the critical CSOs and networks that are deemed as antigovernment. In some instances, they do not directly create CSOs but rather fund CSOs that are struggling financially and use them for their agenda in the CSO space. This in principal creates camps in the CSO space where one camp is pro-government whilst another camp is labeled antigovernment.

The politics behind divide and rule is to break the building of a strong and consistent CSO space and networks. This has been a common practice for the past decade as Meinhardt and Patel (2003) highlight that the overall performance of CSOs in the second multiparty elections (1999) raised several doubts regarding their efficiency and, more importantly, their neutrality and credibility. Among other reasons for the underperformance was due divisions amongst the CSO leaders as a result of external influence from political elites who divided them. Thus, political elites are very calculative in using the approach in order to weaken the CSOs space.

5.4 Mechanism that the critical governance CSOs are using to survive in hybrid Malawi

As the critical CSOs face a restrictive operating environment, they have turned to develop adaptive measures of surviving the schemes directed toward them by the political elites in order to shrink their space. Braathen et al (2018) assert that while some CSOs have had to close down, most CSOs continue their work by adapting to new realities or resisting governments' attempts to restrict their operations. The theme discusses the strategies which the CSOs are employing to counter the mechanism by the political elites to shrink their space.

5.4.1 Creation of Local Networks

The notion of creating local networks is not a new phenomenon in Malawi's democracy by the CSOs. CSOs have been using this approach for the past two decades as one of the ways of enhancing and securing their operational space. The rationale is that, in a network, CSOs having a common goal come together to form a Consortium, wherein through it their voice for demand for change, policy influence, resource mobilization, service coordination and advocacy for transparency and accountability is amplified because they are unified in pursuit of the goal. Individual or sole institutional efforts by CSOs are usually undermined by the ruling political elites. When the CSOs come together as one, the demand for observation of democratic values is heightened.

However, alluding to the views of T1, it is worth noting that the past two decades have seen creation of local networks of CSOs which have disbanded or died a natural death due to lack of consistency and unity or, mostly have been passive. This therefore has made their voice most of the times not to play significant role on government decision making to the extent they should because the networks in Malawi are not organized, consistent and professional. They do not adopt a strong lobby strategy and are largely event driven. Meinhardt and Patel (2003) highlights that 1999 elections were a challenge for CSOs to play a viable role, as numerous administrative and logistical obstacles confronted the entire electoral process. In a novel to attempt to join hands, the Church NGO consortium was formed, aimed at imparting voter and civic education to the people. However, after the 1999 elections, the Consortium disintegrated with the withdrawal of the sole church component – the CCJP. The Commission withdrew on the order of the Episcopal Conference of Malawi because it held that “the Consortium had departed from the original objective of implementing a community based civic education plan using the church structures.” The same disunity was witnessed in 2011 after CSOs had united to demonstrate against the ill-democratic tendencies of Bingu's regime. After the demonstration, some CSO leaders abandoned the cause and were co-opted into the government system.

Currently the network that has been seen to be effective and consistent in pursuit of good governance is HRDC. It is a Consortium of more than 60 CSOs, a network that looks at the state of governance and human rights in Malawi and at the same time the right of human rights defenders themselves. The network has been effective in demanding transparency and accountability from the government albeit facing heavy resistance from the government political elites.

5.4.2 Affiliating with International Networks

Another strategy that the CSOs employ to protect their space is by joining international networks. The approach which is similar to the creation of local networks is practiced at regional, continental and global level. These international networks aim at fostering CSOs role at national and global level. Thus, among other development roles, they support each other in fighting for CSOs space in countries where they are shrinking through lobbying or issuing of letters to governments that oppress the CSOs leaders. A practical example in Malawi is HRDC which is a sister organization of the Southern Africa Human Rights Defender's Alliance (SAHRDA). The SAHRDA is the region body whilst HRDC is the country body. At continental level there is the Pan African Human Rights Defender's Alliance (PAHRDA) covering all African countries.

The international networks have not only serve the purpose for claiming civil space but also serve to empower local CSOs with knowledge on how to effectively execute their role in a society. Through the sharing of such knowledge in these networks, many local CSOs in Malawi that are critical, have gained stamina in resisting political elites efforts to shrink their space by use of formal process and institutions such as dialogue and contact, observation of rule of law when doing activism, evidence approach activism and use of courts. CSOs such as YAS, CHRR, NEST and HRDC collectively, have benefited from sharing knowledge and best practices through international networks which has enabled them to secure their space from political infiltration by the elites.

5.4.3 Aligning with Political Parties

The study establishes that the work of critical CSOs is political in nature as they deal with political actors who are keen to shrink their space. Since their work is to provide checks and balance, the ruling elites perceive them to be antigovernment in their approach. This therefore compels the CSOs leaders to work hand in hand with opposition political parties as a way of gaining relevance and endorsement from the opposition elites in executing their watch dog role. The approach has been effective in the past two decades, notably during the second term of Bakili Muluzi, who was pushing for constitution amendment to allow him to contest for third term. The CSOs worked hand in hand with the opposition elites to bring down the third term bill which they were successful. In addition, the CSOs were backed up in their national wide demonstrations by the opposition parties during the second term of Bingu's regime when Malawi faced acute fuel shortage country wide and lack of forex (Mwalubunju & Chisi, 2013). In addition, the recent national wide demonstrations, 2018 and 2019, that were organized by HRDC were endorsed by the opposition parties. The opposition political elites affirmed their endorsement by directly participating in almost all the matches the CSOs facilitated. This in essence gave significance to the CSOs work and relevance of their existence in Malawi's polity.

The study further establishes that CSOs align themselves with political parties that serve their interest at that particular time, thus either the political party in government or those in opposition. For instance, Mwalubunju and Chisi (2013) note that during the first term of Bingu's regime, the ruling political elites were at peace with the critical CSOs and sided with them over the opposition political elites who were advancing for section 65 in parliament to impeach the president. On the contrary, the CSOs and government were of the view of budget to pass first, impeachment deliberations were to follow. The CSOs stand was to push parliament was to pass budget first as it would serve a common good for all citizens than section 65 which was only meant to maximize interest of few politicians. The president sided with the CSOs and the CSOs were seen to be relevant as they organized demonstrations against parliament in order to force to pass the bill. In essence, the CSOs are rational in siding with political parties as they endorse their watch dog role and attest to the relevance of their existence in polity.

5.4.4 Use of Media

As argued by other scholars that media is a fourth arm of government due to its ability to influence citizenry behavior and perception on issues (Manda, 2013), CSOs have turned to rely heavily on all platforms of media, that is, social, print, and digital. During the first decade after reintroduction of multiparty elections in Malawi, CSOs use of media was limited as such their role in the new democratic Malawi was limited to mainly service delivery. The only media platforms available for use were radios and newspapers. During the second decade, other platforms of mass media emerged termed social media which encompass Facebook, WhatsApp, Twitter, among others. These new platforms have helped to amplify the stand of CSOs in providing checks and balances by directly interacting with the citizenry.

With the increase of independent media houses, CSOs usually conduct press briefings where they are able to clearly clarify their motives which wasn't possible in the past decade. Through such initiatives, the CSOs have gained public trust as the citizenry is able to follow through the work of the CSOs in pursuit for transparency and accountability. Norris et al., (2003, p.11) point out that the rationale for the use of media by CSO for activism is to frame what needs to be communicated to the audience by selecting how to prioritize some facts, images, or developments over others, thereby unconsciously promoting one particular interpretation of events. Gitlin (1980, p.7) describes media frames as "persistent patterns of cognition, interpretation, and presentation...by which symbol handlers routinely organize discourse, whether verbal or visual". Through framing, the media may help distribute power in society, because when the media slants, "those favored by the slant become more powerful, freer to do what they want ... those who lose the framing contest become weaker, less free to do (or say) what they want" (Entman, 2007, p.170). Through media frames, as pointed out by T3, CSO leaders publicly declare on platforms such as Facebook, Twitter and WhatsApp on the threats they are receiving from the ruling political elites or the plans they intend to execute to silence them. This draws public sympathy and indirectly they are shielded by the citizenry from being harmed by the elites.

In practical, media has expanded and improved the work environment for CSOs as they are able to advance their activism agenda effectively through the various forms. The study agrees with the views of practitioners such as Schwab (2013) who

ascribes to the view that information and communication technologies have opened up spaces of power, influence and association to new configurations of actors, leading to a significant growth of online civil society activity, and enabling networks to be built across geographical, social and physical divides. These networks allow greater numbers of people to aggregate and collectively address societal challenges. This in turned has seen the creation of a stronger CSOs space which does not only require physical interaction. This has seen a creation of CSOs space with active citizen participation.

5.4.5 Keeping Book Records Clean

As a way of dealing with political elite orders of using government institutions such as MPS and MRA on the CSOs, the CSO leaders resolve to keep their records clean in order not to create any room for the elites to use against them. The clean record track is to be made in all their projects under their organizations, characters they interact with and, how they manage their personal lives. Political elites mainly target to find issues that will be highlighted as gross errors committed by the CSO leaders in order to prove them unworthy of public trust and question their motives. Referring to the arrest of CSO leaders, Gift Trapence and Reverend Sembereka on 10 July, 2019, on allegations of operating an illegal NGO, despite their NGO being duly registered under company act and, that they had miss managed donor funds. The study establishes that the motive of the state was to discredit the two CSO leaders in order for the public to lose trust in them. The state failed to pursue the matter further as they only intended to use the MPS to defame the CSO leaders by exposing them – though not proven so – as being corrupt. Due to such possible attacks, the CSOs endeavor to keep their book records clean to flee from such intimidations from the political elites.

5.4.6 Evidence based Advocacy

Evidence based advocacy has become a working strategy that CSOs are using as a strong tool to counter the mechanism of shrinking their space. With this approach, CSOs bring forth demands before the ruling political elites that are being experienced by the citizens in their communities and have proof attached to them. The approach is usually research based for the results to inform CSOs leaders how to move forward with activism in order to demand for change or influence government decision on a

particular policy. Pollard and Court (2005, pg. 5) define evidence based approach to “include any systematic process of critical investigation and evaluation, theory building, data collection, analysis and codification related to development policy and practice, inclusive self-reflection by practitioners oriented towards the enhancement of direct practice.”

Rabeharisoa et al. (2013) describe evidence based approach activism through a conceptual model which among other elements underlines that:

CSOs which engage in evidence-based activism collect experiences and build experiential knowledge, and that is how they give shape to concerned groups and delineate their preoccupations, and; they articulate credentialed knowledge with experiential knowledge in order to make the latter politically relevant, e.g. to capture other stakeholders’ interests and raise the issues

Pollard and Court (2005) believe that advocacy CSOs influence policy position as they point out that;

Many of those working within CSOs could also be termed ‘policymakers’. CSOs are often the leaders of practical development projects, and must plan, implement and monitor activities that have a great impact on the lives of poor people. Whereas their advocacy and mediation work often aims to change the policy of governments and donors, both the practical activities and the ethical guidelines, working plans and opinions expressed by CSOs can constitute policy in itself. As CSOs try to improve their organisations and their work, they must be receptive to the knowledge and ideas that research can bring (p. 6).

The study establishes that the 2018 and 2019 spate of national wide demonstration that were facilitated by HRDC had petitions which were well articulated by pointing out issues that were practically drawn from experiential knowledge the citizenry were daily encountering, for instance, shortage of drugs in public hospitals, which needed political will to address the challenges. Such approach of activism garnered support from the citizenry hence they patronized the demonstrations since the petitions captured the practical concerns and demands of the public.

The study however reveals that in as much as the CSO leaders claim to use evidence in their activism, most of the times they merely react to situation rather than coming up with methodologies that assist them to have informed positions on situations or policy matters. As pointed out by T13 and echoed the same by T12 and T14 that CSOs lack strategic approach to policy matters which require research to inform them, they have ended up mostly being reactive and event driven. This usually leads to execution of disjointed activities at times. Thus, in as much as the CSOs claim to use evidence approach in their activism, the study is of the view that they are rather reactionary most of the times and not particularly evidence based in most of their approaches to activism.

5.4.7 Reporting Abuses to National and International Human Rights

Institutions

There are several institutions that CSOs report the various abuses that they face from the ruling political elites. Locally, CSOs mainly rely MHRC, as the institution that is mandated to receive and address their political grievances. The MHRC is a constitution body which draws its mandate from the Constitution and MHRC Act. Its mandate is to promote and protect human rights in Malawi in the broadest sense possible and investigates violations of human rights on its own motion or upon complaints received from any person, class of person or body. The study reveals that despite the Commission having such constitutional powers, it has never assisted the CSOs effectively to address their atrocities which are perpetuated by the political elites.

The critical CSOs find it more effective to report their abuses to international institutions such as African Union through the human rights sessions hosted by the Human Rights African Union Commission (HRAUC). In addition, they report to United Nations (UN), where they submit shadow reports which give the civil society perspective on the state of affairs on human rights in the country. The government is also required to submit its own report on the status of human rights in the country. Through this system of double reporting, the UN is provided with a better and balance view of the status quo of human rights in Malawi which helps to notify, particularly the international community, the condition of human rights in the country. This

prompts the international community to respond in various ways against the state such as sanctions and freezing of aid funds where it proven it has suppressed the CSOs, in order to safeguard the civil space and rights of the CSO leaders.

5.4.8 Confrontation

Borgh and Terwindt (2012) hold the view that the ability to engage in policy dialogue can be widened when the government formally recognizes the role of CSOs and of the citizens' right to consultation and participation, and when it sets up corresponding institutions for engagement. In agreeing with the view, Sida (2013) asserts that where the government is unwilling to engage in such invited spaces, CSOs seek to 'claim space'. T13 ascribes to the view that CSO space is not freely given but rather is to be claimed. The study reveals that the claiming of the civil space in Malawi takes various forms one of which is by directly confronting the political elites. The common forms of confrontation used by the CSOs are demonstrations, litigation and naming and shaming through use of media.

Demonstrations have proven to be effective approach for claiming civil space in the past decade. In 2011, 2018 and 2019 Malawi has witnessed demonstrations that have been held jointly by the CSOs leaders which successfully mounted pressure on the political elites such that they yielded to their demand for change though not absolute. The demonstrations have always been organized as a result of failure to accommodate the views of the CSOs on particular policy direction by the government or failure to uphold rule of law. It is however worth to note that the premise for conducting demonstrations by the CSOs is not merely to demand change but also a way of showing their relevance in community by having the ability to mobilize the citizenry together to hold the political elites accountable. Court is another way which CSO leaders use to directly confront the ruling political elites. The essence of using court is for the CSOs to have legal backing in their action in pursuit for transparency and accountability from the political elites. The CSOs either use courts just to seek for interpretation of the law where political elites infringe their right (s) such as freedom to demonstrate or, pursue full lawsuit by suing political elites in order to seek remedy from the courts where the elites refute to be held accountable due to arrogance. Similarly with public statements, CSOs have turned to use the approach as a way of

retaliating to political elites where they feel not accommodated, particularly by not being given opportunity to contribute on policy or emerging issues. The rationale is to expose the flaws of the political elites and their arrogance. This in return brings about element of relevance for the CSOs in polity.

5.5 Conclusion

The study has revealed that political elites use various mechanisms to shrink the CSOs space. Political elites relentless labour to shrink the CSOs space through ways such as co-opting, use of public statements or party zealots, lawsuit, divide and rule, use of state institutions. The research findings show that a state is an instrument used for dominion of a few. The ruling political elite use state institutions to safeguard their personal gains by silencing critical CSOs to not demand transparency and accountability. Critical CSOs are perceived to be antigovernment as such they are equaled to political opponents wherever they voice out dissent views against any government policy stand. Thus, the working environment of the CSOs is limited albeit having a constitution framework shielding the CSOs space. In addition, the research is of the view that the state does not play an umpire role in an open society with groups of different interest. The dominance of political elites creates no space for tolerance of dissent views, particularly critical CSOs.

The research has established that the CSOs have adopted measures that have helped them to sustain, grow and insulate their space from political infiltration. The study unearthed the following as strategies that CSOs are using to counter shrinking mechanism employed by political elites; creation of local networks, joining international networks, use of media, keeping book records clean, evidence based advocacy, confrontation, lawsuit, co-opting and responding to international weave of interest, aligning with political parties and reporting abuses to national and international human rights institution. In view of the findings, the study establishes that the CSOs have been using set institutions which include constitution provisions and the NGO Act of 2000 in executing their watch dog role. The harm inflicted on the critical CSOs leaders by the ruling political elites has no vindication since their watch dog role is not to harm the political elites but rather to enhance and institutionalize democratic values – transparency and accountability – in Malawi.

CHAPTER 6

CONCLUSION

6.1 Summary

The purpose of the study was to find out the strategies that the critical governance CSOs are using to survive in hybrid democratic Malawi. The study has achieved its goal by using qualitative method to unearthing 8 strategies that the advocacy CSOs are using and these include; Creation of Local Networks, Affiliating with International Networks, Aligning with Political Parties, Heavy use of Media, Keeping Book Records Clean, Evidence based Advocacy, Reporting abuses to National and International Human Rights Institutions, Co-opting and Responsive to International Weave of Interest and Confrontation. The strategies are employed simultaneously and are independent of each other.

The study findings which are empirical, add new knowledge in academia in understanding how advocacy CSOs that are consistent in demanding transparency and accountability in hybrid regimes survive, with a particular focus on Malawi. In addition, the findings are important to inform the ruling political elites on the existing gaps mainly manifested in their intolerance of dissent views from the advocacy CSO which are meant to enhance democracy tenants, such as transparency and accountability, as development partners. It must however be noted that the findings are not a generalization for all CSOs globally, operating in hybrid regimes, as the political environments differ from state to state.

As a way of making recommendations to the ruling political elites and advocacy CSOs, the study provide the following direction:

Harmonized CSOs strategic plan- In as much as the advocacy CSOs are able to create local networks with common goals, the research has revealed that their goals are usually reactive to situations hence they are not consistence in their watchdog role. It is therefore important for the CSOs to develop a

working strategic plan that will guide their activism in executing their good governance agenda.

Critical Governance CSOs should always be apolitical - alluding to research findings where ruling political elites are always referring critical governance CSOs to agents used by political elites, critical governance CSOs should desist from showing any political affiliation when executing their watchdog role. The key is to be unbiased and instill professional ethical standards when executing watch dog role in civil space.

Political will and tolerance by political actors – as revealed and established by the research findings, political elites have always perceived critical governance CSOs as opposition. Political actors should be oriented on the role of critical governance CSOs in demand transparency and accountability as a way of fostering good governance. Political actors should show tolerance by viewing and treating critical governance CSOs as development partners and not political opponents.

The study provides one potential area for further research. It is therefore recommended that an investigative study can be conducted on local CSOs and funding regime. There are many competing views in the civil and political realm as to whether local CSOs funding sources and management of the funds should be regulated by the government as a way of holding the CSOs accountable. An in-depth study in this area is important to establish the merits and demerits of monitored funding system for local CSOs by the government.

REFERENCES

- Anifowose, R. (1999). *State, Society and Nation: Elements of Politics*. Lagos: Malthouse Press Limited
- Bryman, A. (2001). *Social research methods*. New York, United States of America: Oxford University Press.
- Braathen, E., Houeland, C & Aasen, B. (2018). *Civil Society Under Pressure. Synthesis study of evaluations of Civil Society Human Rights Work in Southern and Eastern Africa*. The Norwegian Institute for Urban and Regional Research (NIBR), Oslo Metropolitan University (OsloMet).
- Birdsall. K & Kelly. K., (2007). *Pioneers, Partners, and Providers. The dynamics of Civil Society AIDS funding in Southern Africa*. Johannesburg: OSISA
- Cerny. P. G. (2006). *Plurality, Pluralism, and Power: Pluralism: Developments in the Theory and Practice of Democracy*. International Political Science Association, Research Committee No. 16
- Chirwa W.C., (2014). *Democracy and Participation. A review by AfriMAP and Open Society Initiative for Southern Africa*. Johannesburg, South Africa.
- Clark, J (2000). *Civil Society, NGOs, and Development in Ethiopia: A Snapshot View*. The International Bank for Reconstruction and Development. Washington, D.C.U.S.A.
- Cochran C. L. & Malone. E. F (2014). *Public Policy: Perspectives and Choices*. 5th Ed, Lynne Rienner, USA.
- Creswel J.W (2003). *Research design: Qualitative, Quantitative and Mixed Methods Approaches* (2nd Ed.). London: Sage publications.

- Desse, F. (2012). *The Role and Structure of Civil Society Organizations in National and Global Governance: Evolution and outlook between now and 2030*. Working Paper 6, European Union.
- Edward, M. (2006). *Civil Society*. Cambridge: Polity Press
- Entman, R. M. (2007). Framing Bias: Media in the Distribution of Power. *Journal of Communication*, 57(1), 163–173.
<https://doi.org/10.1111/j.1460-2466.2006.00336.x>
- Freedom House (2006). *Nations in Transit 2006*.available at URL: www.freedomhouse.org.
- Freedom House, (2007). *Nations in Transit 2006*.
 available at URL: www.freedomhouse.org.
- Freedom in the World (2008-2018). Freedom in the World
 available at URL: www.freedomh
- Hearn, J., (2007). African NGOs: The new compradors?. *Development and Change* 38(6): 1095–1110.
- Hegre, H., Gates, S. & Jones P. M. (2003). Democratic Waves? *Global Patterns of Democratization, 1800–2000*. Scott Gates Center for the Study of Civil War, PRIO (CSCW) & Norwegian University of Science and Technology (NTNU)
- Holtug, N. (2002). The Harm Principle. *Ethical Theory and Moral Practice*, 5(4), 357- 389. Retrieved June 16, 2021, from <http://www.jstor.org/stable/27504250>
- Kanny. A. (2006). *An Illustrated Brief History of Western Philosophy*. Malden, USA: Blackwell Publishing.
- Kurian T. K., Alt J. E., Chambers S., Garrett, G., Levi, M., & McClain P. D. (2011). *The Encyclopedia of Political Science*. Library of Congress, Washington, DC, United States of America.
- Makuwira, J. (2011). Civil Society Organizations (CSOs) and the Changing Nature of African Politics: The Case of the CSO–Government Relationship in Malawi. *Journal of Asian and African Studies* 46(6): 615-628
- Meinhardt, H & Patel, N (2003). Malawi's Process of Democratic Transition; *An analysis of Political Developments Between 1990 and 2003*. Konrad-Adenauer-Stiftug, Lilongwe, Malawi.
- Mkandawire, T., (2000). *Non-Organic Intellectual and Learning in Policy-Making Africa*. Stockholm: learning in Development Co-operation EGDI publications
- Mozaffar, S. (1997). *Democratic Transitions in Africa*. Bridgewater State University. Boston.

- Pasha A. G, (2005). *Role of Civil Society Organization in Governance*. 6th Global Forum on Reinventing Governance towards Participatory and Transparent Governance. Seoul, Korea.
- Patel, N & Svasand, L. (2013). *Government and politics in Malawi*. Zomba, Malawi: Kachere Books
- Neji. N, (2011). Civil Society and Democratic Governance in Nigeria. *Journal of the Society for Peace Studies and Practic*. 111- 125
- Salamon, L. M & Anheier, H. (1999). *Global Civil Society: Dimensions of the Nonprofit Sector*. The Johns Hopkins Center for Civil Society Studies. Baltimore
- Salamon, L.M.. & Anheier, H.K., (1997). *The Third World's Third Sister in Cooperative Perspective, Working Paper of John Hopkins Comparative Nonprofit Sector Project*. The John Hopkins University Institute of Policy Studies.
- Sato, Y. (2013). *Rational Choice Theory*. Tohoku University, Japan.
- Saunders, B. (2016). *Reformulating Mill's Harm Principle, Mind*, (Vol. 125). University of Southampton.
- Schwab,. K, (2013). *The Future role of Civil Society*. World Economic Forum Report, Geneva,Switzerland
- Terwindt, C. & Schliemann, C. (2017). *Tricky Business: Space for Civil Society in natural Resource Struggles*. Henrich Boll Stiftung, Publication Series on Democracy, Volume 47.
- The Economist Intelligence Unit (2006). *Index of Democracy*.
URL: www.economist.com.
- The The Economist Intelligence Unit (2017). *Democracy Index. Free Speech Under Attack*. available at URL: www.economist.com.
- The Economist Intelligence Unit (2018). *Democracy Index 2018: Me too? Political participation, protest and democracy*. June 6, 2018, available at URL: www.economist.com.
- USAID, (2016). *The 2015 CSO Sustainability Index For Sub-Saharan Africa*. United States Agency for International Development, Washington D.C.

APPENDICES

Appendix 1: Table 2 Showing Coding of Quoted Respondents

Key Respondent	Code Number
HRDC	T1
CHRR	T2
YAS	T3
NEST	T4
VSO	T5
CS	T6
IPE	T7
CONGOMA	T8
MHRC	T9
MCP	T10
UDF	T11
Academician (CU)	T12
Academician (CHANCO)	T13
Presidential Advisor on CSOs	T14

Appendix 2: Structured Interview Guide for Academia

Name of the respondent:

Name of Institution

Designation

A. Working relationship between governance CSOs and government in Malawi

1. Do you view the government creates a working environment that enables governance CSOs to serve their purpose?
2. Are registration and other legal requirements for nongovernmental organizations particularly burdensome or intended to prevent them from functioning freely
3. Are civil society group (s) who are into good governance advocacy given meaningful opportunity or consulted on policies or legislations?
4. Do you view the government honoring the voice of governance CSOs such that it influences change on the direction to a pending or ongoing decision/policy taken by the government?

B. Silencing of governance CSOs by the ruling political elites

5. Do you think political elites shrink governance CSOs space in Malawi's?
6. If yes, why do you think they shrink the CSOs space? Explain.
7. In your own experience/observation, what are the measures used by the political elites to shrink the CSOs space? Explain.
8. Do you view the ruling political elites as an impediment to performance, growth and survival of governance CSOs in Malawi? Explain.

C. Strategies governance CSOs use to respond to the silencing mechanisms by ruling elites

9. From your experience, what has been the response of the governance CSOs to the mechanism employed by the political elites in efforts to shrink their space? Explain.
10. Based on your experience, what are some of the strategies that governance CSOs use to counter the efforts by the political elites to shrink there space? Explain each if they are any.

11. If yes to above, in your own assessment, how effective have the strategies been in countering the mechanism to shrink their space? Explain.

D. Recommendations/comments

Appendix 3: Structured Interview Guide for Governance CSOs

Name of the respondent:

Name of Organization and scope

Designation

How long has your institution existed?

A. Working relationship between governance CSOs and government in Malawi

1. Are registration and other legal requirements for nongovernmental organizations particularly burdensome or intended to prevent you from functioning freely?
2. As civil society group (s) who are into good governance advocacy, are you given meaningful opportunity or consulted on policies or legislation?
3. Is your critical voice considered by the government such that you can influence change on the direction to a pending or ongoing decision taken by the government?
4. Are the funders of your organizations free from government pressure?
5. Do you view the government creating a working environment that enables you to serve your advocacy purpose?

B. Shrinking of governance CSOs space by the ruling political elites

6. Do you freely interact with the ruling political elites?
7. Has your institution or yourself ever been limited by the ruling political elites from executing advocacy role? If yes, explain.
8. What where the mechanism the political elites used/use to limit your advocacy role?
9. Why do you think you were being limited from your advocacy role by the political elites?
10. Do you view the ruling political elites as an impediment to your performance and survival of governance CSOs in Malawi?

C. Strategies governance CSOs use to respond to the silencing mechanisms by ruling elites

11. How did you respond to the approach (es) used by the political elites to limit your advocacy role?
12. What are the strategies you used/using to counter the efforts by the political elites to limit your advocacy role?
13. How effective were/are the strategies you employ (ed) in countering the limiting mechanism by the ruling political elites?

D. Recommendations/Comments

Appendix 4: Structured Interview Guide for Political Parties

Name of the respondent:

Name of Political Party

Designation

A. Working relationship between governance CSOs and government in Malawi

1. Are civil society group (s) who are into good governance advocacy given meaningful opportunity or consulted on policies or legislation?
2. Are registration and other legal requirements for nongovernmental organizations particularly burdensome or intended to prevent them from functioning freely?
3. Do you view the government honors the voice of governance CSOs such that it influence change on the direction to a pending or ongoing decision/policy taken by the government?
4. Do you view the government creates a working environment that enables advocacy governance CSOs to serve their purpose?

B. Silencing of governance CSOs by the ruling political elites

5. Do you freely interact with governance CSOs?
6. Do political elites work to limit governance CSOs advocacy role?
7. Why do you think political elites limit advocacy role by the CSOs? Explain.
8. What are the mechanisms used by the political elites to limit governance CSOs advocacy role? Explain.
9. Do you view the ruling political elites as an impediment to performance, growth and survival of governance CSOs in Malawi? Explain.

C. Strategies governance CSOs use to respond to the silencing mechanisms by ruling elites

10. From your experience, what has been the response of the governance CSOs to the limiting mechanism that the political elites employ against them? Explain.

11. Based on your experience and observation, what are some of the strategies that you see the governance CSOs use to counter the efforts by the political elites to limit their role? Explain.
12. How effective are the strategies that the governance CSOs in countering the limiting mechanism of their advocacy role by the ruling political elites?

E. Recommendations/comments

Appendix 5: Structured Interview Guide for CONGOMA

Name of the respondent

Name of Organization and scope

Designation

How long has your institution existed?

A. Working relationship between governance CSOs and government in Malawi

1. Describe the registration process for NGOs in Malawi
2. Which are the key legal requirements for operation of NGOs in this country? Explain
3. Are registration and other legal requirements for nongovernmental organizations particularly burdensome or intended to prevent you from functioning freely? Explain.
4. With the recent drafted NGO act, is it a legal instrument that safe guards the interest of non-governmental organizations?
5. As a council for non-governmental organization, are civil society group (s) who are into good governance advocacy, given meaningful opportunity or consulted on relevant policies or legislation by the government?
6. As a council for non-governmental organization, do you think the voices of CSOs who are into good governance advocacy heard by the government such that they influence change on the direction to a pending or ongoing decision taken by the government? Explain
7. Are the donors for governance CSOs into advocacy free from government pressure? If no, explain the type of pressure if any
8. Do you view the government creating a working environment that enables you and civil society group (s) who are into good governance advocacy to serve your purpose?

B. Limiting of Governance CSOs by the ruling political elites

9. In your own observation and experience, do you see who are into good governance advocacy freely interacting with the ruling political elites? Explain.

10. Are governance CSOs limited by the ruling political elites in executing their advocacy role?
11. If yes to 9, why do you think they limited by the ruling political elites? Explain
12. With regards to 10, what are the ways these elites use to limit them? Explain.
13. Do you view the ruling political elites as an impediment to performance and survival of governance CSOs in Malawi? Explain.
14. As a council, have you ever received complaints from any of your member that they were being limited by the elites as such needed your help?
15. If yes to 14, what was your response?
16. Do you have a system in place which addresses such issues raised in 13 and 14? Explain!

C. Strategies governance CSOs use to respond to the silencing mechanisms by ruling elites

17. In your own observation and experience, what are the strategies that into good governance advocacy using to counter the efforts by the political elites to limit their operational space? Explain.
18. How effective are these strategies in countering the limiting mechanism? Explain.

D. Recommendations/comments