

Executive Summary

The African Peer Review Mechanism (APRM) examines four areas – Democracy and Good Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic – based on a variety of international codes and standards. In addition it identifies corruption as a significant cross-cutting issue that is mentioned throughout the guiding APRM texts. This report, commissioned by the Ministry of Economic Planning and Development, is intended to assist Malawi in preparing for peer review by identifying the major gaps between its practices and the APRM codes and standards.

The authors note that Malawi has a new government, which has signalled its commitment to reform. While Malawi has made many positive changes since the advent of multiparty democracy in 1994 and is, overall, a far more free and democratic country, it is not the brief of this report to offset discussion of problems or governance gaps with praise for the positive developments in Malawi. However, the analysis expressed here must address the broad patterns of recent years, noting, where appropriate, new developments. The conclusions expressed reflect the consensus of expert opinion gathered through a six-week review of existing written material and intensive interviews with government, business, academics, parliament, and a variety of non-governmental organisations.

Key Issues for Malawi

The following are the most crucial gaps identified between Malawi government practice and APRM codes and standards:

Economic Management and Governance: Malawi has significant gaps with APRM standards in this area. Through a variety of United Nations, African Union and international standards, the APRM requires sound fiscal management, transparency, accountability, regular public disclosure and well-funded, independent auditing and anti-corruption institutions.

- **A Crisis of Debt and Donor Confidence:** Economic governance is the second section of the APRM but it is discussed first in this report because of the four aspects of governance evaluated by the APRM, Malawi has by far the worst performance in fiscal and economic governance. The government has been living well beyond its means for several years, which has brought Malawi to the verge of an unstoppable debt and deficit-spending spiral. If present trends continue interest on domestic debt will within months consume the majority of government revenues. Donors, dismayed corruption and failure to stick to agreed budgets, have withheld budget support and cannot be counted on to bail Malawi out of the present crisis. The fiscal sums are unavoidable: Unless the government deficit is quickly and dramatically cut in the next few months, Malawi will be forced to borrow still more, print money – which will lead to hyper-inflation – and/or stop paying salaries and curtail core government activities.

Malawi has done itself grave damage through its management of donor affairs and disregard for principles of sound budgeting and financial management. Perceptions of Malawi, which affect investment and donor aid, have accumulated over many years and cannot be turned around by a few symbolic acts. However, if Malawi announces its intention to become a leader in governance reform and innovation and follows that announcement by steadily implementing a series of reforms over several years, it has the potential to get donors and investors to see the nation in a different light. That, in turn, has potential to tap into large reserves of new donor funds, but only in the longer-term.

- **Sound Laws, Refusal to Obey:** Nearly all of the experts interviewed for this inception report noted that what Malawi lacks is not law (although there are a significant shortcomings that need focus), but disciplined implementation and leadership to command compliance with existing rules. The government has developed an internal culture of impunity in which regulations, laws and the constitution itself are routinely ignored and violations are rarely punished. Present and former senior members of the economic ministries, numerous government reports and non-government experts note that the budget plans prepared by government bear little resemblance to actual spending. The budget process was described variously as “fiction”, “theatre” and “a game.” The failure to stick to its word on fiscal matters has deeply damaged Malawi’s reputation among donors. Unrestrained presidential power and inadequate checks and balances need urgent attention.
- **The Shadow Budget:** Although Malawi drafts a formal budget approved by parliament, the present cash management system is tantamount to a hidden second budget that is not accountable to parliament and determined not by rational strategy but political influence behind the scenes. Without consultation, some areas of spending are expanded greatly while other crucial areas, which Malawi has pledged to

protect under its Poverty Reduction Strategy, have been cut. Some cuts have had the effect of subverting key institutions of accountability, including parliament, the Anti-Corruption Bureau, Ombudsman and Auditor General.

Democracy and Good Political Governance: Malawi has made significant improvements to its constitutional structures from the pre-1994 period. Important new institutions, such as the ACB, Ombudsman and Human Rights Commission have been established. However, two key areas deserve special attention.

- **Electoral Reform:** Without the careful public deliberation it deserves, Malawi has shifted from an electoral system demanding majority rule to one permitting presidential rule by a minority. Experience in Zambia and Kenya show that the present arrangements will, in the longer-term, lead to greater reliance on ethnic and regional loyalties as leaders only have to shore up support of a large minority faction. Tensions surrounding the electoral system were compounded by credible complaints of unfair election management and diversion of government resources toward ruling party campaigns. The APRM codes call for independent electoral commissions, fair access to the media by all parties, transparent political party financing. The codes also impose a duty on politicians to look beyond the short-term political expediency and ask whether political structures over the long-term promote or detract from social peace and good governance. In key ways the Malawi system does not meet this test.
- **Respect for the Rule of Law:** The loose attitude toward rules evidenced in the fiscal sphere has spread to the political realm. In crucial ways, the rule of law and the constitution have been eroded as political forces put short-term expediency ahead of principle. Crucial aspects of the balance of powers have been intentionally subverted by the past administration. Malawi needs to strengthen key checks on executive power by shoring up parliamentary independence, electoral fairness and fiscal oversight.

Corporate Governance: Malawi needs to take action to improve the business and investment climate by improving regulation, responding more quickly to tariff and trade problems and reducing the costs of doing business in the country. Laws governing money laundering, bankruptcy, commercial dispute settlement and shareholder rights and reporting requirements are weak.

Corruption: Cited as a major issue in all four areas of APRM governance, corruption is a major and growing problem in Malawi, which grows out of the lax management of government financial affairs. It also has been a significant factor in the withdrawal of donor aid and lending.

Socio-Economic Governance: Economic development and achievement of the UN Millennium Development Goals are the key areas of focus in this APRM section. While Malawi's Poverty Reduction Strategy was initially praised as sound by international observers, the nation is moving away from the UN goals. The fiscal crisis is increasingly starving social sectors of funding. Weak reporting and management have compounded problems of declining resources. To make progress, Malawi needs to fundamentally rethink its strategy in many social sectors, concentrate effort on growth and aggressively follow through on the sound work already begun on a growth strategy by government and the National Action Group.

Such an initiative will require consistent delivery over a five to 10 year period. There has been a fundamental shift in attitudes among donor nations. More funds are available but they are increasingly being concentrated on a few well-performing nations who most enthusiastically embrace good governance and the fight against corruption.

The APRM Process

The African Peer Review Mechanism is a six- to nine-month process that begins with a preliminary consultation by the APRM Secretariat.

- **Country Structures:** The country under review is expected to appoint an APRM co-ordinator or focal point to assist the APRM Secretariat in making appointments and gathering information. In addition, the country must create a panel including civil society to co-ordinate public input into the process.
- **Self-Assessment and Action Plan:** Once these bodies are in place, the country begins a detailed national self-assessment using the APRM Self-Assessment Questionnaire, which is to be completed with broad civil society participation. The country is expected to produce a National Programme of Action that should explain specific, time-bound steps that the country intends to take to bring itself into conformance with Nepad and APRM standards and which are required to address the major developmental, economic and political shortcomings identified in the nation.

- **What the APRM Will Examine:** The APRM Secretariat will conduct background research and prepare a paper on the nation's major issues, which will guide the three-week in-country visit by the APRM Secretariat. The APRM Secretariat will examine the self-assessment, National Programme of Action, existing governance literature and a wide variety of interviews to be conducted the in- country visit.
- **Standards:** The APRM report will evaluate a country against its pledges and the variety of African Union, United Nations and other international standards of governance and best practice, which are listed in Appendix A. The process will consider the country's historical circumstances and levels of governance upon acceding and expect it to make concerted progress.

Malawi's Progress Since Ending One-Party Rule

The purpose of this study, like peer review itself, is to identify areas where governance in Malawi falls short of African and international standards. However, in identifying problems it is important not to lose sight of the positive things that have been accomplished in the 10 years since Malawi ended one-party rule. This is but a partial list, but ought to be borne in mind when considering the subsequent analysis on governance in Malawi.

- Malawi has successfully moved from a repressive one-party state that existed for 30 years to a pluralistic political environment in the past decade. Its citizens hammered out a new constitution in 1994/5 that is largely fair and equitable, enshrines a bill of rights and cannot be whimsically amended. Malawi is a democratising society, although not yet a fully mature democracy.
- Malawi has held three national elections for president and parliament since 1994, and local government elections in 2000, although observers note that these elections have become increasingly problematic.
- Several important new institutions were created post 1994 to safeguard governance: the Ombudsman's Office, the Malawi Human Rights Commission, the Law Commission and the Anti-Corruption Bureau.
- Malawi is one of the few African countries that has not experienced civil or inter-state war since independence.
- The third-term debate and the 1993 referendum on multiparty politics offer strong evidence that Malawi society has learned fundamental lessons from the Banda era and is prepared to assert itself, which is a sign of maturing democratic practice.
- The judiciary successfully overturned attempts to remove independent-minded judges from the bench, and is seen as independent from the executive and legislature. Judges enjoy relatively secure tenure.
- Freedom of expression is guaranteed in the Constitution, and the print media in particular is becoming increasingly vocal and vigorous. Independent private radio stations are emerging to challenge the dominance of the state broadcaster, the Malawi Broadcasting Corporation. Other personal freedoms have largely improved since the Banda era, and do not appear to be under threat.
- Malawi has developed a poverty reduction strategy and has generated sound economic recovery plans such as the Malawi Economic Growth Strategy.
- Despite declining overall health indicators, HIV infection rates have stabilised, and, considering its meagre resources, immunisation levels are high with over 85% of children under age one vaccinated. As a result, measles and polio have been virtually eliminated. Medical training is appropriately focused on public and community health, and by recruiting applicants from rural areas has a relatively high staff retention rate.
- Malawians have had access to universal primary education since 1995.
- The National Action Group has been established as a regular forum for business and government to interact and consult on policy and identify top priorities for government action.
- Different institutions in Malawi are promulgating and enacting codes of good conduct.
- Laws have been developed in an attempt to improve financial management – chiefly the new Public Finance Management Act, Procurement Act, and Public Audit Act.