

Malawi and the African Peer Review Mechanism

A Review of National Readiness and
Recommendations for Participation



Final Report to the Malawi Ministry of Economic Planning and Development
By the South African Institute of International Affairs
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Foreword

In keeping with the Malawi government's desire to accede to the African Peer Review Mechanism, the Ministry of Economic Planning and Development commissioned the South African Institute of International Affairs (SAIIA) to prepare a preliminary assessment of the implications of peer review for Malawi and a set of recommendations.

This report is based on a review of published documents and the views expressed to the research team through an extensive set of interviews in Malawi including officials in government, members of the donor community, representatives of civil society and business.

This report reflects the considered judgement of its authors at a particular point in time and is not a prediction of what an actual peer review team might conclude when Malawi is formally reviewed.

The SAIIA research team was led by Ross Herbert, assisted by Ayesha Kajee, Steven Gruzd and George Lwanda.

SAIIA is an independent research organisation, based at Witwatersrand University in Johannesburg. Its research – available at www.saiia.org.za -- is focused principally on Africa with significant projects dedicated to parliament and civil society, the Southern African Development Community, dysfunctional states, war and organised crime, global best practices in governance, political party development in Africa, and terrorism.

The SAIIA staff on this report are all part of the SAIIA Nepad and Governance project, which is dedicated to examining Nepad, the African Peer Review Mechanism, and researching governance and developmental successes on the continent, which are produced through video, the *eAfrica* online magazine and research studies.

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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.

African Peer Review – An Overview

The African Peer Review Mechanism (APRM) grew out of the New Partnership for Africa's Development and was formally launched by the African Union at its Durban Summit in 2002.

Details of its intended implementation have shifted somewhat over time as the process has unfolded. In its present form, APRM is supposed to take six to nine months from inception to completion of the written report. Once the report is complete, the panel of Heads of State governing APRM – the APR Forum – will take an additional period to consider the report and what (if any) comment or action is necessitated by the review. Follow-up reviews are to be conducted every three to five years.

In the envisioned process, peer review is somewhat of a misnomer. While the Heads of State, who compose the APR Forum, ultimately will review and potentially act on each report, peer reviews are actually conducted by technical experts under the supervision of an independent panel of seven eminent persons.

APRM texts divide the areas to be reviewed into four main sections: Democracy and Good Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic Governance. In addition, corruption is mentioned in all four sections as a cross-cutting issue, which is dealt with in this report as a separate section.

The APR process follows five broad phases:

1. The process begins with an **initial consultation** between the APR Secretariat and the country to be reviewed. This consultation should provide an overview of the process and work out the terms of a memorandum of understanding governing the review.

The country under review is required to create an **APR Focal Point** to co-ordinate with the APR Secretariat. The 2004 Kigali meeting of the APR heads of state also adopted recommendations that “participating countries immediately take steps to identify or establish broad-based and all-inclusive APRM National Coordinating Structures where they do not already exist.” This structure would be responsible for sending the Self-Assessment Questionnaire to a wide variety of stakeholders.

Once its structures are in place, the APR Secretariat and the country under review simultaneously (but independently) compile preliminary documents. The APR Secretariat must prepare a **background document** assessing the country to be reviewed, drawing on up-to-date information from national, sub-regional, regional and international organisations. The APR Secretariat also prepares a document outlining the nation's major issues. For this work, the APR Secretariat will require the country focal point to gather relevant laws, treaty ratifications, budgets and development plans and forward them to the APR Secretariat.

At the same time, the country must complete the **APR self-assessment questionnaire** and gather broad input from civil society. In addition, the government must also draft a paper outlining the nation's big issues and draft a **National Programme of Action** that should contain clear steps and deadlines for how the country intends to bring itself into conformance with APR codes and standards, the African Union Charter and UN obligations. (See Appendix A, List of APR Standards and Codes)

These targeted commitments must reflect obligations to: protect human rights; observe free and fair political processes; practice sound fiscal management; promote robust corporate and macro-economic governance; adhere to fixed terms of office for heads of state; pursue transparent and consultative

Goals of the APRM

“And the primary purpose of the APRM is described as: “To foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs of capacity building.”

“The overarching goal of the APRM is for all participating countries to accelerate their progress towards adopting and implementing the priorities and programs of The New Partnership for Africa's Development (“NEPAD”), achieving the mutually agreed objectives and compliance with best practice in respect of each of the areas of governance and development. This can only be achieved through the sustained efforts of the country itself, involving all stakeholders. It requires that each country carefully assess its own situation through a broad participatory process led by the government that results in a Program of Action with time bound objectives to guide all stakeholders in the actions required by government, private sector and civil society to achieve the country's vision.”

– APRM Self-Assessment Questionnaire

policy-making; and preserve a meaningful separation of powers among the executive, parliament and judiciary. A nation must also vow to uphold the rule of law and strive to meet the UN Millennium Development Goals – a collection of internationally recognised targets for halving global poverty, diseases and illiteracy by 2015.

To ensure that it competently addresses the many technical aspects of governance, the APR Secretariat may collaborate with various outside institutions able to make relevant contributions to the background analysis paper. These include the UN Economic Commission for Africa (economic governance and management) and the African Development Bank (banking and financial standards). For matters related to human rights, democracy and political governance, the APR Forum may request assistance from various African Union bodies, including the African Commission on Human and Peoples' Rights, the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution, the Peace and Security Council, the Pan-African Parliament and the Conference on Security, Stability, Development and Cooperation.

2. Based on the above documents, the APR Secretariat then writes a report outlining the central issues on which the review process will be focused. In **stage two** a team of experts visits the country under review and meets with government, business, academics, parliamentarians, the media and other members of civil society to assess the draft national Programme of Action. Team members are not permanent staff and are appointed only for work on a given country visit and report.

The country visit is to last three weeks. The visiting team will consist of one member of the panel of eminent persons, one administrative person and four experts drawn from partner institutions, including the UN Development Programme, UN Economic Commission for Africa, the African Development Bank and African Union bodies.

3. During **stage three**, the country review team drafts its report and shares its findings with the government being assessed. Any responses from the government under review are then appended to the team report and, if needed, the national Programme of Action is modified according to the team's findings.
4. The Panel of Eminent Persons takes over the process in **stage four**, writing recommendations for policy reforms based on the findings of the review team. The heads of state in the APR Forum then discuss the panel's recommendations with the leader of the country under review.

In **stage five**, which must be completed within six months of the start of the review, the final report is made public and tabled in the African Union, Pan-African Parliament, Peace and Security Council, Economic, Social and Cultural Council and other relevant bodies. The APR Secretariat also follows up on commitments made, holds regional workshops to share best practices identified in the reviews and offers technical support to assist countries in fulfilling their APR plans.

How Countries Will Be Judged

The APR process is designed so that countries at different levels of development and governance can join. Participating countries will not be judged against a hard pass-fail system. Rather, the review intends to candidly assess the country's biggest problems, identify needed actions and secure commitments from the country under review for fixing those problems.

The codes and standards referred to in the APRM documents (and listed in Appendix A) range from United Nations treaties to African Union declarations and protocols to international financial standards embraced by the AU. Some codes, such as international banking supervision codes, are quite specific in their requirements while others are substantially more general.

The APR questionnaire asks whether the country under review has ratified the designated treaties and codes and whether they have taken the requisite steps to give such agreements legal force by adopting them into national law or setting up the required institutions and systems to give the treaties effect. However, whether or not a given country has ratified an individual code of conduct, treaty or AU declaration, **the act of acceding to peer review obliges the country to honor the full body of AU law and any codes and standards referred to in the APRM documents.**

The APR questionnaire is divided into four sections: Democracy and Good Political Governance, Economic Governance and Management, Corporate Governance and Socio-Economic Governance. Each section of the draft questionnaire (to be appended to SAIIA's final report) includes a list of relevant standards, major objectives, questions under each objective and indicators, which help flesh out the intent of the questions. The objectives in each section are in the table on the following page.

In many cases, the codes – for example, those pertaining to electoral fairness or human rights – do not prescribe highly detailed requirements. The review will necessarily apply standards of common sense to assess whether the country complies with the spirit of the codes of conduct.

The APR Secretariat and the Panel of Eminent Persons note that the questionnaire is only a starting point in conducting a country analysis. Because questions or indicators are not on the questionnaire does not mean that the reviewers will ignore them. Broadly the questionnaire looks at five areas:

- The extent of ratification and compliance with agreements, treaties and declarations adopted by the African Union or internationally accepted standards and declarations endorsed by the AU.
- Weaknesses in systems, laws and institutions.
- Compliance with such systems, laws or institutional requirements.
- Early warning indicators that point toward areas requiring action.
- The extent to which the country has implemented its agreed action plans.

The format used by the APRM is designed to assess a country in a structured way that reflects on the lessons learned in recent African political and economic history. The final National Programme of Action and APR report should focus on practical solutions rather than theoretical questions or issues of historical blame.

Governance Objectives of the African Peer Review Mechanism				
Democracy and Good Political Governance	Economic Governance and Management	Corporate Governance	Socio-Economic Governance	Cross-Cutting Issue: Corruption
1: Prevent and reduce intra- and inter-country conflicts 2: Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and supremacy of the Constitution 3: Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments 4: Uphold the separation of powers, including the protection of the independence of the judiciary and of an effective parliament 5: Ensure accountable, efficient and effective public office holders and civil servants 6: Fighting corruption in the political sphere 7: Promotion and protection of the rights of women 8: Promotion and protection of the rights of children and young persons 9: Promotion and protection of the rights of vulnerable groups including internally displaced persons and refugees	1: Promote macroeconomic policies that support sustainable development 2: Implement sound, transparent and predictable government economic policies 3: Promote sound public finance management 4: Fight corruption and money laundering 5: Accelerate regional integration by participating in the harmonisation of monetary, trade and investment policies	1: Promote an enabling environment and effective regulatory framework for economic activities 2: Ensure that corporations act as good corporate citizens with regards to human rights, social responsibility and environmental sustainability 3: Promote adoption of codes of good business ethics in achieving the objectives of the corporation 4: Ensure that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair and just manner 5: Provide for accountability of corporations, directors and officers	1: Promote self-reliance in development and build capacity for self-sustaining development 2: Accelerate socio-economic development to achieve sustainable development and poverty eradication 3: Strengthen policies, delivery mechanisms and outcomes in key social areas including education and combating of HIV/AIDS and other communicable diseases 4: Ensuring affordable access to water, sanitation, energy, finance (including micro-finance), markets, ICT, shelter and land to all citizens, especially the rural poor 5: Progress towards gender equality in all critical areas of concern, including equal access to education for girls at all levels 6: Encourage broad-based participation in development by all stakeholders at all levels	Political Objective 5: Ensure accountable, efficient and effective public office holders and civil servants Political Objective 6: Fighting corruption in the political sphere Economic Objective 2: Implement sound, transparent and predictable government economic policies Economic Objective 3: Promote sound public finance management Economic Objective 4: Fight corruption and money laundering
Source: <i>Objectives, Standards, Criteria And Indicators For The African Peer Review Mechanism (APRM)</i> , African Union, 2003				

SECTION 1: ECONOMIC GOVERNANCE AND MANAGEMENT

Economic governance is the second section of the APRM Self-Assessment Questionnaire, but we have chosen to begin this inception report with this section because economic governance and management is unquestionably the weakest of all four areas of governance in Malawi.

Politicians are ultimately responsible for economic management but the central questions affecting Malawi's political governance revolve around economic choices. As a result, beginning with economic governance seems a more logical starting point before delving into political governance.

The APRM questionnaire looks to a variety of both qualitative and quantitative questions and indicators to assess performance. The major objectives are listed in the box at right and the questions under each objective can be found in Appendix B.

As noted elsewhere in this report, Malawi faces potentially catastrophic fiscal, economic and demographic trends that if left untended have the potential to force the nation down the destructive path followed by Sierra Leone, Rwanda, Democratic Republic of Congo, Liberia and Somalia.

Even a cursory study of state failure in Africa shows that conflict and civil war has always been preceded by prolonged failure to manage national fiscal and economic affairs. Conflict and violence are inevitable consequences as regimes fail to manage economically. Eventually poverty intensifies to such a point that different segments of society are pitted against one another for even basic needs. It is beyond the scope of this preliminary review to catalogue the full range of procedural and financial management problems, which have already been addressed in a wide variety of more in-depth studies. The Malawi Financial Accountability Action Plan alone identifies some 65 initiatives to reform aspects of the national financial management system.

Many of these reforms have already been passed into law or begun by various arms of government. However, a wide variety of interviews support the conclusion that new systems and reforms have been implemented ineffectively and sporadically and suffered from wilful, recurring subversion by senior politicians and civil servants.

Overall, the Malawi government is grossly failing to accurately budget and control spending, which runs counter to AU commitments to transparent and accountable government that delivers effective social development results.

Among the wide range of sources consulted – business, academia, accounting professionals, auditors, parliament and government itself – there was very broad consensus on this conclusion.

The Economics Association of Malawi (ECAMA) said, "There continues to be a huge problem on budget implementation, monitoring and evaluation. Ministries do not stick to expenditure rates as per funding. There is a lot of budget switching to non-productive line items when actual funding is done. The Ministry

Preamble To Economic Governance Section Of APRM Self-Assessment Questionnaire

"The Africa crisis is generally viewed as a political crisis with economic consequences. It should, however, be acknowledged that the economic disorder of African countries over the past decades may have aggravated the political turmoil and further deteriorated the living conditions of large segments of the African population.

The economic disorder of Africa has both internal and external dimensions. These include, among others: inefficient revenue mobilisation and aid dependency; weak central banks and inefficient financial sectors; non-transparent budgetary procedures and ineffective oversight by parliamentary and other auditing bodies; unfriendly environment for private investments, characterised by pervasive corruption, poor economic infrastructures and unpredictable public administrations."

APRM Objectives: Economic Governance and Management

1. Promote macroeconomic policies that support sustainable development
2. Implement sound, transparent and predictable government economic policies
3. Promote sound public finance management
4. Fight corruption and money laundering
5. Accelerate regional integration by participating in the harmonisation of monetary, trade and investment policies

Source: APRM Country Self-Assessment, Draft January 2004

of Finance ... does not seem to check expenditure returns to ensure whether what was paid for is where the money has gone.”¹

It is important to note that at this writing, Malawi has a new government and several newly passed but not yet fully implemented laws, including the Public Finance Management Act, the Procurement Act and the Public Audit Act.

It is beyond the scope of this review to examine minutely the new laws and codes. While such laws would be considered by a peer review, it is clear from interviews and a wide variety of reports that lack of implementation rather than lack of rules has been Malawi's biggest economic governance problem.

“The law is generally fine. The application of the law is terrible,” noted Kevin Carpenter, a partner at the PriceWaterhouseCoopers auditing firm.²

The country has a 10-year track record of budget mismanagement, which points to a culture of impunity for those violating the rules. Evidence and interviews suggest this culture is pervasive in all ministries and at all levels.

Positive signals have come since the new administration has taken over, but many sources expressed doubt whether the signals of discipline are merely intended to persuade donors to renew funding or whether they reflect a genuine determination to change practices and enforce rules.

As the Parliament's Budget and Finance Committee noted in assessing the last budget, “We welcome ... Government[’s commitment to] ... limit expenditures to available resources without recourse to domestic borrowing. However, we have heard this many times before, but are yet to see the Government live up to its word.”³

Many causes contribute to this cluster of budget control problems, but the following were the issues most frequently cited in interviews and budget analyses.

- Budgets as approved by parliament bear little resemblance to actual spending and are frequently massively revised without parliamentary approval or coherent regard for national development or anti-poverty commitments, which led sources to variously describe the budget process as “a complete fiction”, “theatre” and “a play or circus.”
- Systems for preventing spending beyond approved budgets do not work in practice and clear rules against overspending are wilfully violated. The cash budgeting system does not achieve its goal of confining spending to available resources and creates chaos in execution of

“We believe in just, honest, transparent, accountable and participatory government and probity in public life. We therefore undertake to combat and eradicate corruption, which both retards economic development and undermines the moral fabric of society”

— African Union Declaration on Democracy, Political, Economic, and Corporate Governance (2002) Article 8

Over 55% of experts surveyed believe the government rarely or never acts in an accountable manner.

— Centre for Social Research

“Weaknesses in financial controls in Malawi are not the result of a lack of rules or inadequate regulations. Currently, problems seem to occur because there are relatively few sanctions for non-compliance with existing rules and no strategy to induce compliance. In effect, financial accountability has not, to date, been an especially important performance requirement at senior levels in the public service.”

— Ministry of Finance, Financial Accountability Action Plan

“Budget information should be presented in a way that facilitates policy analysis and promotes accountability.”

— IMF Code on Good Practices on Fiscal Transparency Article 3.2

“The public should be provided with full information on past, current and projected fiscal activity of government.”

— IMF Code on Good Practices on Fiscal Transparency, Article 2.1

“There are no mechanisms to check whether work outlined in contracts is actually done. The invoices come in, and ministry staff are forced to pay, under directives from the minister.”

— Victor Banda, Anti-Corruption Bureau

“Significant expenditures have routinely occurred outside the formal budgetary process.”

— Malawi Financial Accountability Action Plan

¹ Economics Association of Malawi, Initial Comments On The 2002/2003 Budget, ECAMA website, www.ecama.sdn.org.mw/budget-comments.htm.

² Carpenter K, Partner. PriceWaterhouseCoopers Blantyre, personal interview. 14 July 2004.

³ Report on the 2003/04 Budget, Budget and Finance Committee of Parliament, Malawi National Assembly, 23 July 2003, p 4.

The Consensus Position: Economic Governance

Budget controls

Malawi Poverty Reduction Strategy, 2002: "The way government spends money is no longer decided through a process of careful analysis, discussion and selection of priorities, but through the success of each ministry in winning resources through extra-budgetary requests."

Dr Milton Kutengele, Ministry of Economic Planning and Development (MEPD): "Since we moved to the cash budget system ... we've not really followed principles. There is no political will to only spend what we have. Pressure is exerted to overspend, and then we say 'The Minister or the President sanctioned it.'"

"Any new system including the Integrated Financial Management and Information System (IFMIS) needs political will. A system is only as bad or as good as the intentions of its managers. People can easily make a system fail, depending on their motives. ... people's intentions are still evil in many ways, and they can bend any system."ⁱ

Grant Hawes, Canadian International Development Agency (CIDA): "There is rampant over-expenditure and no budget control. The government admits it has no idea of what it has spent."ⁱⁱ

Malawi Economic Justice Network (MEJN): "Currently, there is over-commitment and over-expenditure in Government, which is going unpunished."ⁱⁱⁱ

Economics Association of Malawi (ECAMA): "There are generally [a] lot of variances in budget approved estimates and performance year in year out. Budgets that always exhibit variances are not worthy of the name."^{iv}

Victor Banda, Anti-Corruption Bureau (ACB): "There are no mechanisms to check whether work outlined in contracts is actually done. The invoices come in, and ministries pay. Staff are often forced to pay, under directives from the minister."^v

ECAMA: "There continues to be a huge problem on budget implementation, monitoring and evaluation. Ministries do not stick to expenditure rates as per funding. The Ministry of Finance ... does not seem to check expenditure returns to ensure whether what was paid for is where the money has gone."^{vi}

Malawi Economic Justice Network (MEJN): "There is over-commitment and over-expenditure in Government, which is going unpunished."^{vii}

Spending priorities

Senior Finance Ministry Official: "No one pays any attention to the national budget. Why should they pay any attention to the MTEF? It is complete fiction!"

MEJN: "Macroeconomic stability... will not be realised in 2003/04 because of the huge increases in expenditure allocations to State Residences, the Office of the President and Cabinet, the National Intelligence Bureau, the National Assembly, and the Ministry of Foreign Affairs."^{viii}

Sources: See endnotes in Appendix E

Malawi Confederation of Chambers of Commerce and Industry (MCCCI): "[Mr Finance Minister,] as long as we maintain state residences that are ... 70 km apart, as long as you continue to offer your cabinet colleagues, MPs and top civil servants fuel allowances that can take them to England and back every month, as long as you continue to allow the Executive branch to travel all over the country and beyond, as long as you continue to be lenient on culprits of corruption and as long as you continue to allow parastatal chairmen to spend lavishly as though they were full time employees, you will never have sufficient Revenues to support the Expenditures."^{ix}

Budget & Finance Committee: "Although cross-cutting issues are mentioned in this year's budget, there is no indication as to whether or not this year's budget improves on last year's efforts. ... This year's budget has included Mk10.8 billion of Budgetary Support, when we know that it is not yet certain whether or not budgetary support will resume."^x

Confidence in Government

Budget & Finance Committee, Parliament: "We welcome ... Government[s] commitment to] ... limit expenditures to available resources without recourse to domestic borrowing. However, we have heard this many times before, but are yet to see the Government live up to its word."^{xi}

MCCCI: "Government is asking people to tighten their belts while they are loosening theirs because it is expecting the people to get thin while they are getting fat."^{xii}

MEJN: "We doubt that fiscal prudence will be adhered to in the course of implementing the 2003/04 Budget. ... Taking a cursory look at previous budgets, the problems faced are the same and the solutions proposed each year are also the same."^{xiii}

Malawi Financial Accountability Action Plan: "Significant expenditures have routinely occurred outside the formal budgetary process."

Procurement

Victor Banda, ACB: "The executive gets involved in procurements and contracts. He is too involved in running government business. Operations should be left to the technical staff."^{xiv}

Dr M Kutengele, MEPD: "The Central Tender Board had problems. Directors pushed their own interests in organising who won tenders."^{xv}

Victor Banda, ACB: "By disbanding the Central Tender Board, we're now just spreading and decentralising the problem. We will still have a problem in Malawi, as long as someone important still can say, 'No. We'll choose this one, not that one.' There is no final accountability."^{xvi}

government programmes. A Principal Secretary admitted: “Since we moved to the cash budget system in 1994/95. We’ve not had a balanced budget, and we’ve not really followed principles. Pressure is exerted to overspend, and then we say ‘The Minister or the President sanctioned it.’”⁴

- Assessments of actual spending and audits are prepared too slowly to allow corrective action, which is contrary to the fiscal transparency standards requiring annual audited reporting, mid-year reports to parliament and quarterly spending reports published elsewhere.
- Auditor general’s reports go to parliament only two or three years after the period in question.
- Politicians and civil servants frequently and massively overspend without enforcement of censure or penalties, although penalties have been incorporated into the Public Finance Management Act.
- Major reductions in approved budgets or authorisations to exceed budget are supposed to be approved by cabinet but in practice are granted by the Secretary of the Treasury. This is an extremely poor financial control procedure because it opens a single administrator to intense political pressure. Power to approve budget revisions is vested with parliament in the constitution but is not respected. Power to revise spending authority should be removed entirely from the Secretary and Cabinet and should be vested with parliament, which should approve all expenditures to maintain the proper balance of power between branches of government.
- Department heads within ministries are not informed of or held accountable to the spending allocations relating to their function, which is a violation of basic tenets of project management best practice. The lack of clear spending authority for each function within a ministry hampers effectiveness and contributes to a system-wide culture of lack of accountability. Interviews indicated that the lack of departmental budgets created active incentives for departments to spend quickly to prevent other departments from spending available funds first.
- New systems to tighten spending control are being implemented too slowly and sporadically across departments. Computerisation of the budget, which could help control overspending problems, is incomplete eight years after the project began. IFMIS – the electronic system that amongst other things prevents cheques being written against negative bank balances – has been discussed since 1996, and is not yet fully operational.
- Politicians do not follow either the Medium Term Expenditure Framework or annual budgets, which renders execution of the MPRS ineffective. A senior finance ministry official waved the budget document at our researchers and said, “No one pays any attention to the national budget. Why would they pay any attention to the MTEF? It is complete fiction.”
- The internal audit function is weak and should be moved from the presidency, which has been the biggest culprit in overspending, to the treasury or a genuinely independent body.
- Assets are not controlled physically or properly managed and depreciated in financial records.
- No controls are exerted on accumulation of arrears or extra-budgetary liabilities.
- Systems to fight corruption are weak and the executive has actively blocked some of the most economically and politically sensitive prosecutions. The Anti-Corruption Bureau confirmed that the Director of Public Prosecutions has refused consent for prosecution in 37 corruption cases, almost all involving high-profile Malawians. The 5% of cases where consent was withheld represent about 90% of the high-value cases, including the former education minister and current vice president and other important figures.⁵
- Resources for the Anti-Corruption Bureau in the 2002/03 budget were cut by two-thirds and other financial control functions left understaffed while spending for external presidential travel was tripled.
- Systems to ensure fair tendering and procurement are weak and actively subverted by civil servants and politicians. The presidency has actively involved itself in even minor procurement decisions and control procedures and officials have been too weak to pressures to bend proper procurement rules. The government has drafted a civil servants’ code and a principal secretary’s guide, but these do not appear to address this systemic weakness.

⁴ Kutengele M, Principal Secretary, Ministry of Economic Development and Planning, personal interview, 7 July 2004.

⁵ Mtegha HM, Director, Anti-Corruption Bureau, personal interview, 8 July 2004.

“The Central Tender Board had problems. Directors pushed their own interests in organising who won tenders,” said a principal secretary.⁶ Another official said, “The executive gets involved in procurements and contracts. Operations should be left to the technical staff. By disbanding the Central Tender Board, we’re now just spreading and decentralising the problem. We will still have a problem in Malawi, as long as someone important still can say, ‘No. We’ll choose this one, not that one.’ There is no final accountability.”⁷

Key Fiscal Reform Priorities/Gaps

Unsustainable Economic Management: After 1994, Malawi improved various aspects of macro-economic management. But after 1999 the government’s economic stewardship has declined markedly. Present trends are unsustainable and point to severe economic trauma unless government spending and deficits are quickly reduced. The Economics Association of Malawi estimates that, based on cash flow in the first three months of this fiscal year, the government is set to exceed the budget approved by parliament by 40%.⁸ The association noted that supposedly protected pro-poor spending was Mk2 billion less than budgeted but statehood expenditures in the past year were Mk12.7 billion – a full Mk 10 billion more than budgeted.

Although the Reserve Bank has been able to force treasury-bill interest rates down substantially (by approximately 10 percentage points to 34.5% in May 2004), the expense on debt has not accelerated as quickly as it might have. However, continued heavy government borrowing and printing money have the effect of adding major inflationary pressure and contributing to further depreciation of the currency.

Inaccurate, Unclear Budget Information: Government has an obligation under APRM codes to conduct fiscal affairs with transparency and public accountability. Both are increasingly recognised internationally as necessary adjuncts to formal anti-corruption efforts and part of the compact elected officials are expected to honour with citizens.

The codes are clear on a number of points on which Malawi is lacking. The AU’s Durban Declaration on Democracy, Political, Economic, and Corporate Governance (2002 Article 8) commits APRM countries to “just, honest, transparent, accountable and participatory government and probity in public life. We therefore undertake to combat and eradicate corruption, which both retards economic development and undermines the moral fabric of society.”

The APRM has embraced the IMF Code of Good Practices on Fiscal Transparency (article 2.1), which notes: “The public should be provided with full information on past, current and projected fiscal activity of government.”

Selected Elements of Code of Good Practice in Fiscal Transparency

2.1 The public should be provided with full information on the past, current, and projected fiscal activity of government.

2.2 A commitment should be made to the timely publication of fiscal information.

3.1 The budget documentation should specify fiscal policy objectives, the macroeconomic framework, the policy basis for the budget, and identifiable major fiscal risks.

3.1.1 A statement of fiscal policy objectives and an assessment of fiscal sustainability should provide the framework for the annual budget.

3.1.2 Any fiscal rules that have been adopted (e.g., a balanced budget requirement or borrowing limits for subnational levels of government) should be clearly specified.

3.1.3 The annual budget should be prepared and presented within a comprehensive and consistent quantitative macroeconomic framework, and the main assumptions underlying the budget should be provided.

3.1.5 Major fiscal risks should be identified and quantified where possible, including variations in economic assumptions and the uncertain costs of specific expenditure commitments (e.g., financial restructuring).

3.2 Budget information should be presented in a way that facilitates policy analysis and promotes accountability.

3.3 Procedures for the execution and monitoring of approved expenditure and for collecting revenue should be clearly specified.

3.3.1 There should be a comprehensive, integrated accounting system which provides a reliable basis for assessing payment arrears.

3.3.2 Procurement and employment regulations should be standardized and accessible to all interested parties.

3.3.3 Budget execution should be internally audited, and audit procedures should be open to review.

3.3.4 The national tax administration should be legally protected from political direction and should report regularly to the public on its activities.

3.4 There should be regular fiscal reporting to the legislature and the public.

3.4.1 A mid-year report on budget developments should be presented to the legislature. More frequent (at least quarterly) reports should also be published.

3.4.2 Final accounts should be presented to the legislature within a year of the end of the fiscal year.

4.1 Fiscal data should meet accepted data quality standards.

4.2 Fiscal information should be subjected to independent scrutiny.

Source: *Code of Good Practices on Fiscal Transparency*

⁶ Kutengela M, Principal Secretary, Ministry of Economic Development and Planning, personal interview, 7 July 2004.

⁷ Banda V, Assistant Director, Anti-Corruption Bureau, personal interview, 8 July 2004.

⁸ Munthali, Gedion, “Ecama queries budget figures,” *The Nation*, 11 August 2003

- **Timeliness:** Article 3.4 of the IMF code notes that governments should produce reports on actual spending within a year of the close of the fiscal year. Malawi has consistently released statements two years after fiscal yearend. The code also states that governments should make a mid-year fiscal report to parliament and publish quarterly reports on its spending. Malawi does neither. Under the Malawi Poverty Reduction Strategy, upon which debt relief is based, government is obliged to conduct an annual public expenditure review. None has been conducted since 2001. The draft MPRS report for the full 2002/3 year was presented for the first time on 1 July 2004⁹ even though MPRS assessments ought to be done prior to preparation of the annual national budget.
- **Accuracy:** A wide variety of sources noted that the fiscal system produced poor quality information that did not reflect reality, focused on intentions with little or no data gathering to determine outcomes of programme activities or spending. The problem is particularly acute in supposed pro-poor expenditures (PPEs).
- **Availability:** Transparency in fiscal management requires that budgets and actual spending reports are made available freely to the public, the media and civil service in a timely manner. In the past, Malawi has made budget documents available but there were far too few copies available to meet the needs of the media, parliamentarians and civil servants. The government printer has not restocked. Many officials interviewed did not have copies of even basic budget documents and in some cases Ministry of Finance officials have had to ask parliament to obtain actual spending figures from their own ministry.

To ensure smooth functioning of securities markets and proper business planning, the code on fiscal transparency calls for making budget information available to interested parties and analysts, who serve the role as proxies who funnel information to broader constituencies. The Economics Association of Malawi (ECAMA) “expressed its concern that it was still difficult to review PPEs (pro-poor expenditures) and the MPRS (Malawi Poverty Reduction Strategy Paper) because information and data from the Ministry of Finance and Economic Planning was not being released despite an earlier promise. That government was still looking at the format was not a convincing reason. Without information no meaningful analyses could be made and ECAMA could only make guesses and speculate on the performance of the economy and the budget.” ECAMA lamented that “it seemed that IMF/World Bank has better information on Malawi than local organisations.”¹⁰

Freedom of Information Law: The Malawi Financial Accountability Action Plan notes that the country lacks a freedom of information law, which other countries have used to good effect in fighting corruption. Several African Union codes directly require such transparency.

Malawi Has Badly Mismanaged Vital Relationships With Donors: Malawi is deeply dependent on bilateral donors and the IMF and World Bank for recurrent and development budgets. Without their fiscal support the country faces a severe budget crunch that will force deep cuts in government services, which will retard development for years to come. Despite the importance to the nation of maintaining those relationships, the government has badly mismanaged them. Malawi consistently failed to take seriously donor concerns about proper fiscal management and accountability. In certain instances, such as the relationship with the Danish government and the maize scandal, the Muluzi administration grossly mishandled donor relationships.

Donor Comments on MPRS Review

“All sub-goals: No information provided for reasons for having no information

“Data presented on cross cutting themes is noticeably absent or poor quality. We are not sure if this reflects a lack of data or lack of commitment to provide timely data.

“There are questions of the reliability of the picture presented. Available data for budget releases against plan have not been included.

“It is very disappointing that the Review fails to adequately reference and analyse performance against the core MPRS indicators that have been developed.

“There is almost no reflection on programme or service performance.

“There is no reflection on reasons behind lack of progress.

“In the annexed matrices the inputs recorded do not include references to funds budgeted or spent, nor do they make comparisons between actual and planned inputs.

“The focus on inputs without adequate reference to PPEs, recurrent or capital expenditures limits the usefulness of the report”

⁹ DFID correspondence to Ministry of Economic Planning and Development on 2002/03 MPRS review, 21 July 2004

¹⁰ ECAMA Meeting With IMF, 5th November 2002 at Kang'ombe House. www.ecama.sdnpp.org.mw/ecama-imf.htm

Such incidents combined with the pattern of failure to abide by commitments to probity and accountability led to a major sustained decline in donor funds since 2000. The most recent meeting with donors regarding the review of the Malawi Poverty Reduction Strategy illustrates this trend.

Ben Botolo, director of monitoring and evaluation in the Ministry of Economic Planning and Development, told donors that the government could not account for 38% of the estimated Mk 60 billion in government spending in FY 2002/3. "What we are saying is that out of Mk 60 billion, we only know of Mk37 billion that was used. We don't know what happened to the rest because of lack of data," Botolo said, according to the *Nation* newspaper.¹¹

Grant Hawes, director of the Canadian International Development Agency in Malawi, responded with a widely shared donor view: "What I am hearing here is that you have no idea how the money was spent. That creates an extremely difficult climate for donors when we take this document to our headquarters to justify budget support."¹²

Donor Aid Shifting to Better Performing Countries:

Although humanitarian and famine relief aid are often unaffected by governance questions, there is a clear long-term trend of donors withdrawing funding from countries that are not seen to be making substantial effort to fight corruption and improve fiscal management.

The APRM standards do not expressly impose obligations regarding the conduct of relations with donors. However, given the great strategic importance to the nation of sustaining funding flows, it is clear that improving Malawi's credibility with donors must be a top national priority.

The new US aid programme, the Millennium Challenge Account (see indicators next page), is illustrative of broader trends reshaping donor aid, which represents a long-term strategic threat to Malawi, if the nation does not make fundamental improvements to governance.

The US is increasing overall development aid by 100% and putting all of the new funding through the MCA, which only gives funds to nations performing better than average on indicators of governance. Malawi fails to meet the US MCA aid standards for governance in the red categories.

The MCA looks at three broad categories, each of which is composed of several sub-indicators of governance: ruling justly (6 indicators); investing in people (4 indicators); and economic freedom (6 indicators). The MCA requires that countries perform at or above average over a period of time.

In Malawi, the MCA noted a negative trend in civil liberties, a poor and declining trend of fiscal policy, a worsening corruption trend and the complete absence of a credit rating system.

Escalation of Domestic Debt and Failure to Cut Deficit Will Bring Severe Crisis:

Even after aid levels were cut,

"Malawi has acquired such a poor international reputation for meeting its commitments that donors will not risk providing budget support until the new government has demonstrated that it is genuinely different from the previous one."

"The previous government continually failed to control expenditure to live within its means. Every year government expenditure exceeded the limit approved by Parliament in the budget, often by wide margins. ... The over expenditure was in the same areas every year. These areas were of no benefit to most Malawians – such as travel, state residences, foreign affairs, defence and 'special activities.'"

"A responsible government would have reacted to the drop in revenue by cutting back expenditure in low priority areas. However, the previous government made little attempt to cut expenditure"

– Alan Whitworth, DFID, The Nation, 11 August 2004

Donors Shifting Resources Away from Poor Governance Countries

Canada: Doubling aid to Africa, concentrating all of increase on six countries – excluding Malawi

Denmark: Concentrating aid on fewer, better performing countries

Netherlands: Withdrawing aid from non-performing countries

UK: 300% increase in aid to Africa 1997-2007, but shifting resources to better managed economies

USA: Expanding development aid 50%, all of increase to countries meeting above average good governance scores

¹¹ Ntonya, George, "K23 billion lost by government", *The Nation*, 2 July 2004

¹² Ntonya, George, "K23 billion lost by government", *The Nation*, 2 July 2004

Malawi failed to adjust its spending to the new realities and has run up potentially catastrophic levels of domestic debt. Interest on domestic debt is the largest single expenditure item and threatens to consume all domestic revenues if radical action is not taken in the next few months. A senior donor representative did not mince words: "The domestic debt situation is beyond crisis proportions. There is \$800 million in debt stock; interest rates are at 35-40%. The government keeps borrowing and the rates will rise. It is now impossible to stop the spiral. Bilateral donors, who make up the majority of Malawi's budget support, won't disburse until after Christmas."¹³

That estimate was recently confirmed by the Ministry of Economic Planning and Development, which noted that domestic debt has accelerated from Mk26 billion in June 2002 to Mk54.3 billion in June 2003. "That in itself is a crisis [and] we shall not be surprised to see the domestic debt rising to about Mk80 billion or Mk90 billion in 2003/2004 if the accumulation level remained the same," Botolo said.¹⁴

MEJN noted that that "The 2003/04 Budget appears to be an inadequate vehicle for garnering the donor confidence required for the re-introduction of an IMF Programme in Malawi. When all is said and done, the increased expenditure allocations to the economic ministries may amount to merely throwing good money after bad."¹⁵

IMF officials note that unless Malawi produces and scrupulously follows a budget that cuts spending and domestic borrowing, the Fund will not restart a lending programme. Without an IMF programme, other donors will not increase budget support. Continued domestic borrowing also is crowding commercial borrowers out of the credit market, which undermines the local economy and inevitably will lead to hyperinflation and potentially catastrophic economic instability.¹⁶ As a result of the debt crisis and overspending, Malawi is likely to spend many years to work off its debt and return to serious progress on developmental issues.¹⁷

Commentators on Malawi's budget note that government simply expects donor assistance to magically materialise, and seems to have no strategy to restore donor confidence. Parliament's Budget and Finance Committee said that despite the Government's own review that recommended "in crafting a budget, a worst [case]scenario should be adopted by excluding donor funds ... this year's budget has included Mk10.8 billion of Budgetary Support, when we know that it is not yet certain whether or not budgetary support will resume."¹⁸

¹³ Hawes G, Director. Canadian International Development Agency (CIDA) Malawi, personal interview, 9 July 2004.

¹⁴ Ntonya, George, "K23 billion lost by government", *The Nation*, 2 July 2004

¹⁵ Response to Malawi National Draft Budget 2003/2004, Malawi Economic Justice Network (MEJN), 2003, p 10.

¹⁶ Debt background: The World Bank Operations Evaluation Department, 2003, *Debt Relief for the Poorest – An OED Review of the HIPC Initiative*, notes that Malawi reached HIPC decision point in December 2000 but its completion point is floating (p 62). The value of debt relief calculated then was \$1 billion. "In Malawi, the study concludes that many of the key structural reforms necessary to attain HIPC objectives will have to wait until after the completion point. In most cases, the triggers included existing conditions from ongoing programmes ... In Malawi, while not explicitly included in HIPC completion point conditions, the key structural reforms were covered in a World Bank Structural Adjustment Credit that was approved at roughly the same time as the HIPC decision point," the study noted (p 83).

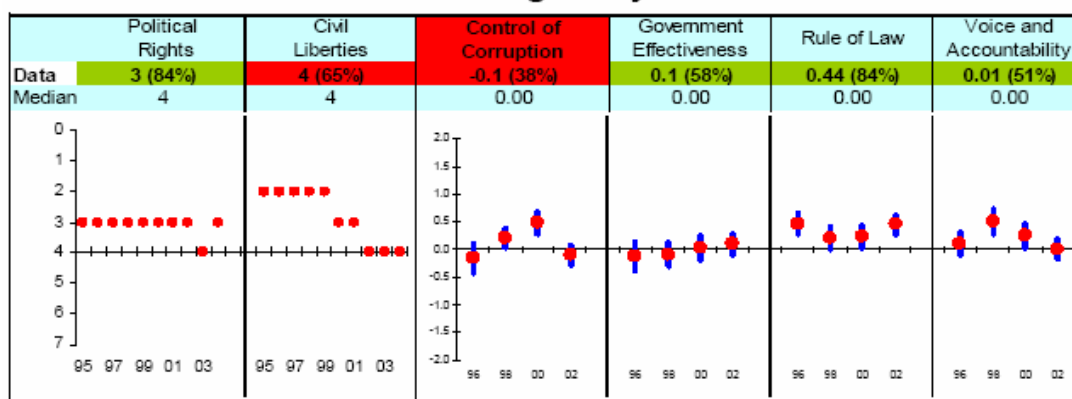
¹⁷ World Bank Operations Evaluation Department, 2003, *Debt Relief for the Poorest – An OED Review of the HIPC Initiative*, p 85

¹⁸ Report on the 2003/04 Budget, Budget and Finance Committee of Parliament, Malawi National Assembly, 23 July 2003. p 7.

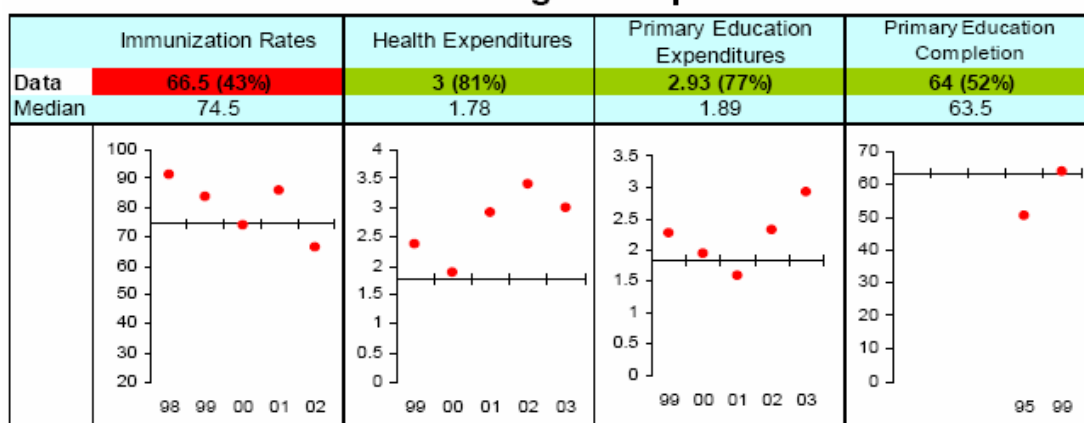
US Millennium Challenge Account Rankings of Malawi

The following charts show the ratings of Malawi according to the MCA. The horizontal line represents the average performance of countries that meet the programme's low-income threshold. The red dots represent Malawi's rating. The programme requires that the country's rating over time be above average. Categories in red do not qualify because they either fail to exceed the average over time or show a declining trend.

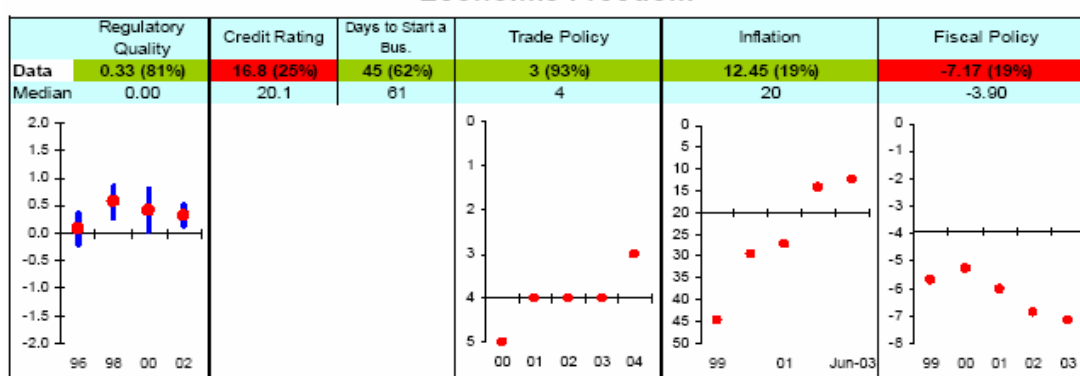
Ruling Justly



Investing in People



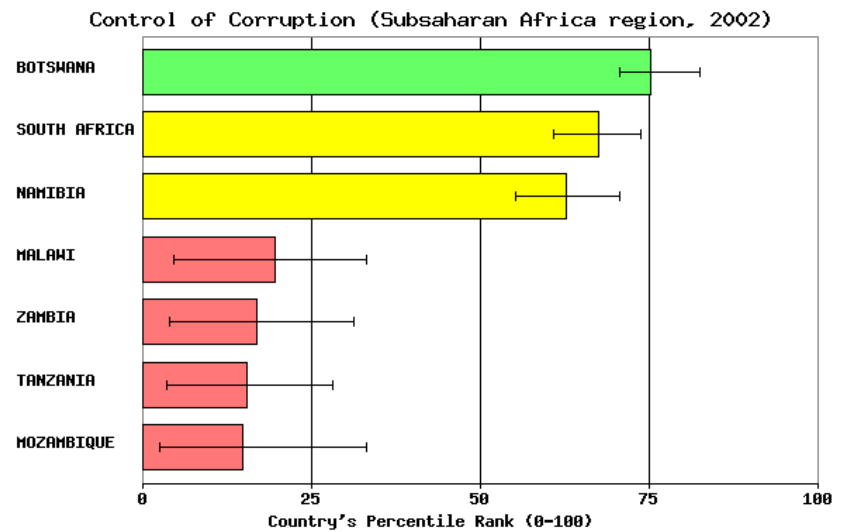
Economic Freedom



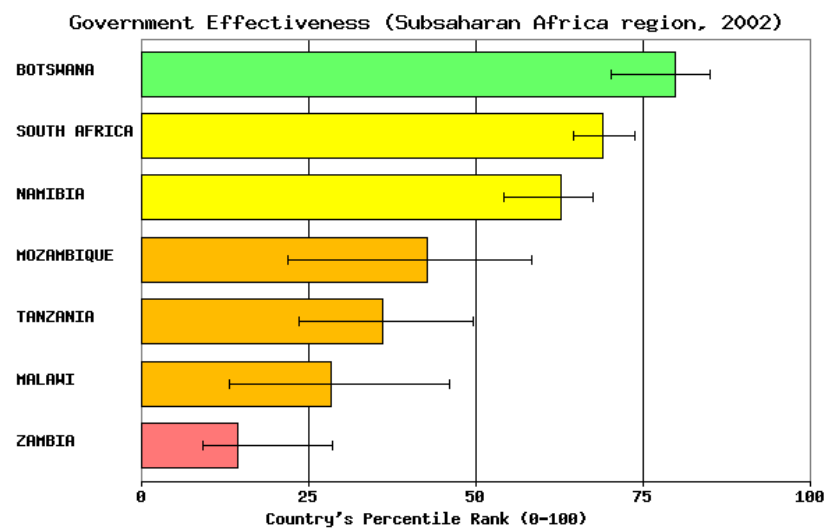
Note: The Board of the MCC will consider performance under these indicators plus qualitative and other materials in choosing countries eligible to submit compact proposals to MCC. The first number is the country's score and percentage in () is their ranking relative to other candidate countries (0% the worst, 50% the median, and 100% the best.) Graphs: higher is better, the horizontal-axis has been drawn through the median, the red dot is the data point, and the blue vertical bar is the standard error. Indicators highlighted in green are above the median as currently calculated and those in red are below. Medians may change as new data becomes available.

World Bank Institute Governance Rankings

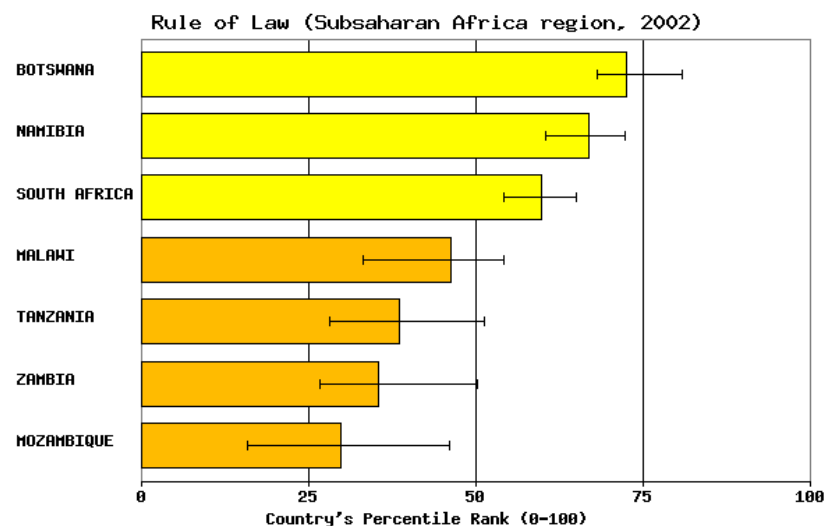
The following charts present six dimensions of the quality of governance as measured in a global study by the World Bank Institute. If the bar for a country is at the 25 percentile rank, it means 75% of nations in the world have a better ranking in that attribute. If a nation ranked at 100% it would mean its performance was equal to the best in the world.



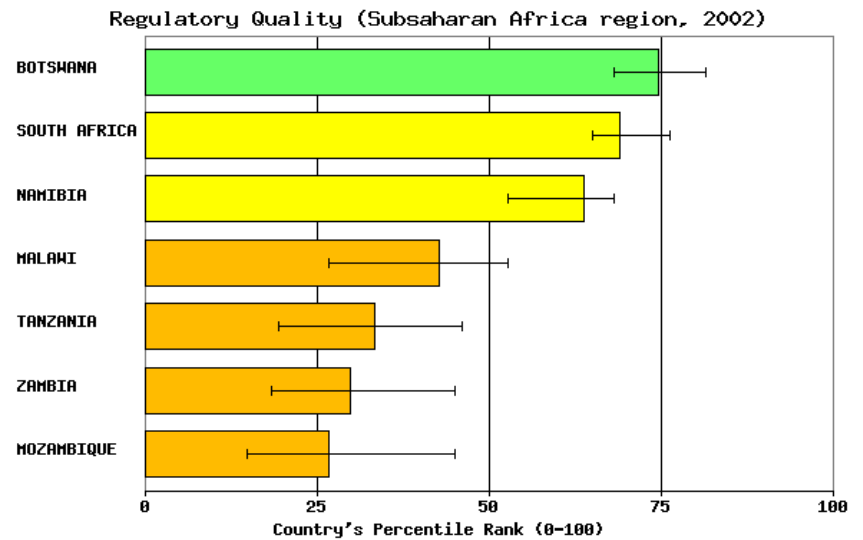
Source: D. Kaufmann, A. Kraay and M. Mastruzzi, 2003: Governance Matters III: Governance Indicators for 1996-2002 (<http://www.worldbank.org/ubi/governance/pubs/govmatters3.html>)



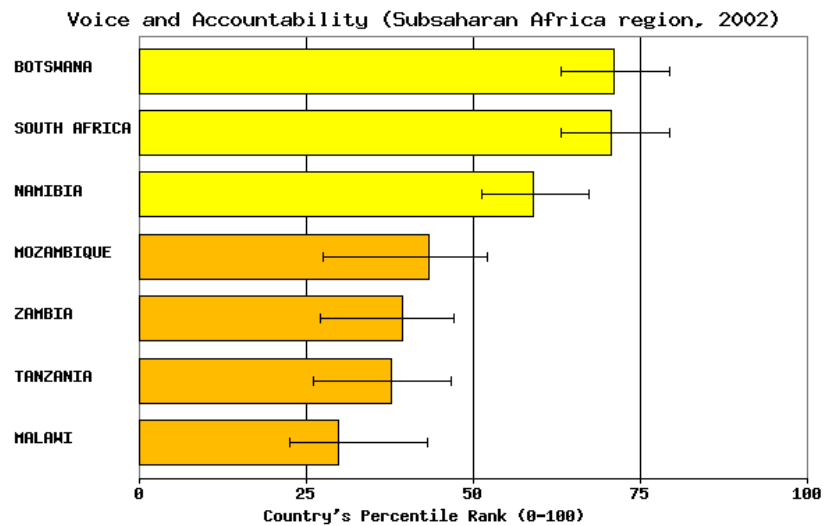
Source: D. Kaufmann, A. Kraay and M. Mastruzzi, 2003: Governance Matters III: Governance Indicators for 1996-2002 (<http://www.worldbank.org/ubi/governance/pubs/govmatters3.html>)



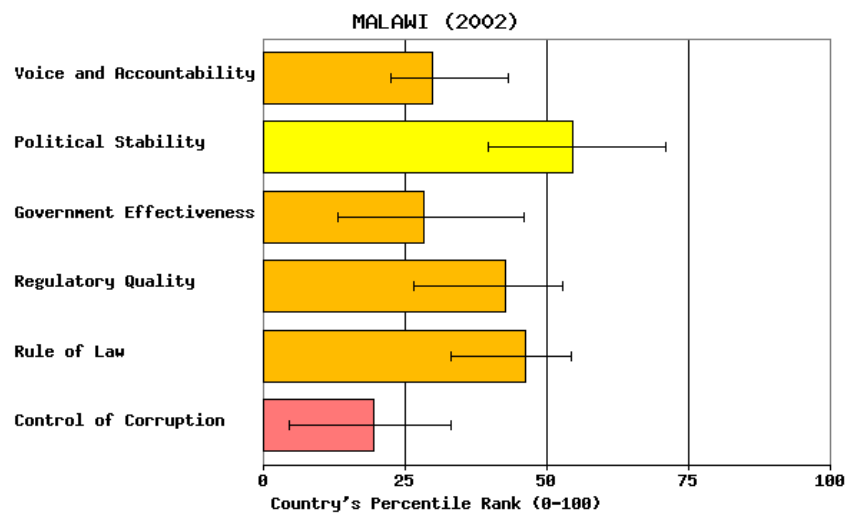
Source: D. Kaufmann, A. Kraay and M. Mastruzzi, 2003: Governance Matters III: Governance Indicators for 1996-2002 (<http://www.worldbank.org/ubi/governance/pubs/govmatters3.html>)



Source: D. Kaufmann, A. Kraay and M. Mastruzzi, 2003: Governance Matters III: Governance Indicators for 1996-2002 (<http://www.worldbank.org/ubi/governance/pubs/govmatters3.html>)



Source: D. Kaufmann, A. Kraay and M. Mastruzzi, 2003: Governance Matters III: Governance Indicators for 1996-2002 (<http://www.worldbank.org/ubi/governance/pubs/govmatters3.html>)



Source: D. Kaufmann, A. Kraay and M. Mastruzzi, 2003: Governance Matters III: Governance Indicators for 1996-2002 (<http://www.worldbank.org/ubi/governance/pubs/govmatters3.html>)

The Malawi Economic Justice Network (MEJN) states: “With respect to grants, the 2003/04 Budget assumes that there will be a resumption of donor support to Malawi in the course of the fiscal year. We find this rather presumptuous in a General Elections year whereby the budgetary provisions for State Residences, OPC [Office of the President and Cabinet], the National Intelligence Bureau, the National Assembly, and the Ministry of Foreign Affairs have been increased by substantial margins (see Table 1, below).”¹⁹

There Is No Effective Credit Control System:

Although parliament nominally approves the nation’s spending plans, in practice officials routinely spend unauthorised funds either by applying pressure on the Secretary of the Treasury for higher budget ceilings, which require no other authorisation, or by deals directly with suppliers, which are later submitted for payment despite their lack of budgetary authorisation. As the Malawi Financial Accountability Action Plan noted:²⁰ “Significant expenditures have routinely occurred outside the formal budgetary process. ... Unpaid utility bills have accounted for a large part of the arrears that have accumulated on government books. Ministries have often used the funds intended for utility payments in order to pay for other discretionary items, leaving themselves with no funds with no funds to cover amounts owing for utilities.”

The Auditor General’s report found 133 government accounts were overdrawn, to a total value of Mk1.8 billion and unbudgeted arrears amounted to 7% of total expenditure in 2000/01

The Auditor General received no response to letters he wrote to 28 ministries requesting further information on expenditure.

“There has been persistent and significant divergence between approved and actual expenditures ... Budget execution has been undermined by pressures to finance new and unbudgeted activities at the expense of the identified priorities.”

“The way government spends money is no longer decided through a process of careful analysis, discussion and selection of priorities, but through the success of each ministry in winning resources through extra-budgetary requests.”

– Malawi Poverty Reduction Strategy, 2002

There is no enforcement of rules or punishment meted out to individuals or departments who incur debts or make purchases on credit not authorised in budget votes. This lack of budgetary control was reported by a wide variety of officials in various government departments. Such arrears amounted to 2.5% of GDP in 2000/01, which is more than 7% of total expenditure.²¹ One illustrative example is the non-payment of Mk 2 billion in electricity arrears to Escom in the 2002/03 fiscal year.²²

There Is No Effective Asset Control: The government does not have proper financial records of or physical control of assets, according to both the auditor general and accountant general. There have been frequent incidents of theft of office equipment, loss of stores, and misappropriation. While our team was in country, the MEPD had computer hard drives stolen from their offices, and the top floor of the Ministry of Agriculture and Irrigation building burnt down. The lack of asset recordkeeping contributes to purchase of new assets when assets from past projects stand idle. It also contributes to a poor maintenance because the costs of lost assets and depreciation are not properly included in government accounts.²³

Parliamentary Authority Over Budget Allocations Is Regularly Bypassed: The government systematically bypasses the constitutional control over spending assigned to parliament. The auditor general reports that this year marks the first time in many years that government has received supplementary spending authority from parliament even though spending has frequently significantly exceeded the amounts approved by parliament.²⁴ Moreover, the auditor general, as the agent of parliament, has been consistently ignored by government controlling officers when he has sought explanations of overspending. The Public Finance Management Act imposes penalties but none have yet been imposed.

¹⁹ Response to Malawi National Draft Budget 2003/2004, Malawi Economic Justice Network (MEJN), 2003, p 7.

²⁰ Ministry of Finance and Economic Planning, Malawi Financial Accountability Action Plan, 11 March 2003 section 2.1, point 4.

²¹ 2002/03 Post-Budget Report, Budget and Finance Committee of Parliament, 3 July 2002, p 8.

²² Ministry of Economic Planning and Development, Economic Report 2003, Budget Document No. 2, p 107.

²³ The present cash-basis of government accounting does not conform with Generally Accepted Accounting Principles, which requires accounting for both liabilities owed and assets, including receivables, prepayments, and depreciation on plant and equipment. See Ministry of Finance and Economic Planning, Malawi Financial Accountability Action Plan, 11 March 2003 section 2.2 point 23.

²⁴ Kalongonda. HA., Auditor General, personal interview, 7 July 2004.

- When individuals or entire ministries seek to spend more than the amounts allocated to them in budget votes, they do not have to present a justification to parliament or obtain its authorisation. Instead, officials apply pressure on the Secretary of the Treasury, who is able to allocate additional funds without regard to parliamentary approval.
- When revenue and grants are inadequate to cover the intended budget vote, parliament is not consulted on how to make the new allocations, which are made by the Ministry of Finance. Institutions such as the Anti-Corruption Bureau and the parliament itself can be denied funds by the executive through this mechanism, which is a major contravention of the spirit and letter of separation of powers embedded in the constitution and widely acknowledged as a requirement of effective parliamentary democracy.

Table 1: Expenditure Allocations, Mk '000

Ministry /Institution	2002/03 approved	2003/04	% Change
State Residence	256,915.90	327,573.00	27.5
OPC	485,165.00	868,709.00	79.1
The 1 st Vice President Office	64,708.70	75,082.00	16.0
The 2 nd Vice President Office	0	54,000.00	-
The National Assembly	387,328.00	491,384.00	26.7
National Intelligence Bureau	60,313.00	158,000.00	162.0
Ministry of Foreign Affairs	821,201.00	1,228,554.90	49.6
Ministry of Education	5,051,920.70	6,412,180.40	26.9
Poverty Alleviation Trust Fund	0	1,995.70	-
Immigration Department	106,949.50	141,350.60	32.2
Administrator General	7,744.80	13,531.60	74.7
Human Rights Commission	30,627.50	41,662.80	36.0
Anti-Corruption Bureau	61,433.00	82,000.00	33.5

Source: Response to Malawi National Draft Budget 2003/2004, Malawi Economic Justice Network (MEJN), 2003, p 9

- When HIPC funds are available, parliament is not consulted on how they are to be divided among departments. Parliament's Budget and Finance Committee noted that the choice of projects included items not on the agreed list of MRSP projects, there was no transparency in making allocations.²⁵
- The Budget and Finance Committee report also noted that "Some ministries used much less than the amounts allocated to them from HIPC funds. ... None of the PPEs [pro-poor expenditure programmes] used 100% of its HIPC allocation."²⁶

Diversion of HIPC Relief: A fundamental requirement of the HIPC debt relief programme is that countries receiving debt forgiveness pledge to apply the funds freed by HIPC for certain activities stipulated in the national PRSP plan without reducing the amount of funding that previously went to those activities from the recipient government's own revenues. Malawi has not abided by this key provision, which is a potential further threat to re-establishing donor aid flows. As the World Bank Operations Evaluation

"Although overall resources available to key sectors (e.g. health, education, and agriculture) had increased, governments' own resources [to pro-poor expenditures] declined since the decision point relative to pre-HIPC allocations"

— World Bank

"Only 18 percent of the health budget is spent on primary health service ... The highest share of the agriculture budget is spent on administration. ... Expenditures on agricultural research and extension as a percentage of GDP have fallen, with extension spending declining from 0.6 percent in 1995/96 to 0.3 percent in 2000/01."

– Malawi Poverty Reduction Strategy, 2002

²⁵ 2002/03 Post-Budget Report, Budget and Finance Committee of Parliament, 3 July 2002, p 8.

²⁶ 2002/03 Post-Budget Report, Budget and Finance Committee of Parliament, 3 July 2002, p 7.

Department noted in a study, “The Malawi case study found that although overall resources available to key sectors (e.g. health, education, and agriculture) had increased, governments’ own resources [to pro-poor expenditures] declined since the decision point relative to pre-HIPC allocation.”²⁷

Such HIPC diversion occurred at a time when other areas of spending unrelated to PRSP priorities increased rapidly. For example, foreign travel by the president nearly tripled in the 2002/03 budget while allocations to social service ministries and key institutions of justice and public accountability declined. Such changes mean that government spent a smaller proportion of funds on protected programmes than prior to HIPC relief, which is the exact opposite of the effect intended.

²⁷ World Bank Operations Evaluation Department, 2003, *Debt Relief for the Poorest – An OED Review of the HIPC Initiative*, p 84.

SECTION 2: DEMOCRACY AND GOOD POLITICAL GOVERNANCE

Introduction

Good political governance occurs when governments develop and foster efficient, accountable institutions that enhance the lives of their people and empower ordinary people to make choices on how they are governed. Good political governance underpins the three other forms of governance examined in Peer Review – economic, corporate, and socio-economic.

Joining the APRM imposes a duty on acceding countries to look beyond the democratic basics to assess the fairness and practical effectiveness of their political and economic systems. Countries must ensure that a spirit of fairness, respect for human rights and the rule of law are central to all interactions between citizens and government. Their absence, while possible in the medium term, inevitably leads to decline and conflict in the longer term.

The political systems of Africa's collapsed states – Somalia, Rwanda, the Democratic Republic of Congo, Liberia, Sierra Leone and the Central African Republic – all failed because checks and balances on executive power were ineffective and constitutions failed to anticipate human nature in crafting constitutional and political rules. Poor governance in these states set in motion a vicious cycle of excessive executive power, misuse of resources, abuse of human rights, public protest, which leads to further repression and ultimately to violence and war.

The APRM seeks to measure performance of African governments against accepted continental and global norms and standards, to emulate successes, avoid failures and learn from other countries. Democracy and political governance cannot be measured in absolute terms or by ticking off a list of laws or institutions. Rather, assessment requires use of common sense and comparison with other countries known to have suffered from similar issues.

This section is guided by the APRM Objectives and Questions (see Appendix B, part 1). Accordingly, this section examines the extent to which Malawi's current political and institutional arrangements promote harmony or perpetuate conflict; strengthen or infringe on human rights; and whether they distribute justice, societal benefits and obligations equitably, or lead to dysfunction.

The APRM Country Self-Assessment includes nine major objectives to be met under the Democracy and Good Political Governance section:

1. Prevent and reduce intra- and inter-country conflicts
2. Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and supremacy of the Constitution
3. Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments
4. Uphold the separation of powers, including the protection of the independence of the judiciary and of an effective parliament
5. Ensure accountable, efficient and effective public office holders and civil servants
6. Fighting corruption in the political sphere
7. Promotion and protection of the rights of women
8. Promotion and protection of the rights of children and young persons
9. Promotion and protection of the rights of vulnerable groups including internally displaced persons and refugees

Source: APRM Country Self-Assessment

THE CONSENSUS POSITION: POLITICAL GOVERNANCE

Rule of Law

Aubrey Mvula, Decentralisation Secretariat: "Our Constitution is like a powerful Mercedes Benz that's parked in the garage. Sometimes the driver is hopeless or incompetent. Sometimes he's not given petrol."ⁱ

Daphne Casey, United Nations Development Programme (UNDP): "Does Malawi have in place the minimum requirements to practice good governance? Yes. The problem is in implementation, resources, personnel. We then see detours, deviations."ⁱⁱ

Chikosa Ulendo Banda, Law Lecturer: "This government does not respect the Constitution. Every time the Constitution provides an obstacle, they try to amend it."ⁱⁱⁱ

Malawi Economic Justice Network (MEJN): "Civil society would like to get the commitment of whosoever will govern this country to respect the Constitution and the Laws of Malawi"^{iv}

Enock Chibwana, ex-Ombudsman: "When the Human Rights Commission wanted to investigate a police brutality case...the Inspector General of Police famously told them, 'I don't take instructions from you.' Police feel they are above the law."^v

Kathryn English, United States Agency for International Development (USAID): "Malawi does not really require major legal changes. It's the political will to implement things that matters."^{vi}

Justin Malawezi, MP: "Civil servants should serve any government that is in power. But we have a heavily politicised civil service that over the last five years, has repeatedly flouted rules and procedures."

Al Osman, 102.5 Capital Radio:

"We got pressure from MACRA [the Malawi Communications Regulatory Authority], and threats from the ruling party, for not giving the UDF our support, and for broadcasting when we dashed with Muluzi."^{vii}

Presidential Power

Dr John Lwanda, academic: "While assiduously declaring himself a democrat orally and in print, [Muluzi] went on to interfere with civil service appointments, engaged in manipulation of the judiciary, turned a blind eye to the violence of the youth wing of the UDF and attempted to and successfully changed aspects of the constitution to suit partisan interests and sense of timing."^{viii}

Enock Chibwana, ex-Ombudsman: "The Office of the Ombudsman met resistance from senior public officials. It was a new concept, and a thorn in the flesh. In Third World countries, those in power are not ready to have their powers trimmed, investigated or controlled."^{ix}

Victor Banda, Anti-Corruption Bureau: "The president can overturn recommendations [by tender boards]. It's hard to challenge him. The president is the president, and can do what he wants."^x

Kathryn English, USAID: "The president can fire people at will. There are no terms and conditions, no mediations and arbitrations. Often the relevant parliamentary committees are bypassed or ignored. The president is still the big bwana around here."^{xi}

Roosevelt Gondwe, Clerk of Parliament: "The President is only required to inform Parliament of the title of any treaties he accedes to; and nothing beyond that."^{xii}

Parliament

Michael Nyirenda, GTZ:

"Parliament is used like a dub. They pass laws that they never debate. The decisions are made from outside. In our current situation with many small parties, parliament becomes a game of who has the cash. Once MPs are enticed by the UDF, they lose all integrity and just keep quiet. Very few MPs go to parliament to serve the people."^{xiii}

MEJN: "It is time that Parliamentarians, as part of the checks and balances system, lead by example by checking Parliament's own huge appetite for expenditure at the expense of the nation's economic and socio-political interests."^{xiv}

Supreme Court Justice A Msosa:

"It's like the executive and legislature are on one side, like brother and sister. I believe the President uses the House to advance his interests. And Parliament debating treaties already signed is like finding out about your bride only after the wedding."^{xv}

Roosevelt Gondwe, Clerk of Parliament: "It's a numbers game. If you have the numbers, you'll get it. Good intentions are not enough in the House."^{xvi}

Judiciary

Supreme Court Justice A Msosa: "When Parliament tried to impeach three judges for 'incompetence' no one believed them. It was full of malice, and was an embarrassment to the country."^{xvii}

Enock Chibwana, ex-Ombudsman: "Judges are intimidated in this country. The system is being tamed for the benefit of the few."^{xviii}

Chikosa Ulendo Banda, Law Lecturer: "The Judiciary in Malawi has been timid. It is not willing to be the guardian of human rights. They are only aggressive when they are not judging the executive."^{xix}

Sources: See endnotes in Appendix E

Preventing and Managing Conflict

This section of the APRM questionnaire looks at both conflict with other states and within the state. The following are some of the key questions asked in the questionnaire.

Inter-State Conflict: What are the key sources of conflict in your country and in neighbouring countries that impact on your country's peace and security? Describe the country's efforts towards securing its borders from encroachment; describe efforts and recommendations of sub-regional authorities toward maintaining peace.

Intra-State Conflict: Describe efforts toward power decentralisation; describe methods of resource allocation; list early warning signals that point to potential conflict or strife; provide evidence of political arrangements that enable societal divisions to be reconciled; what measures have been taken to maintain progress.

Malawi has never experienced civil war nor armed hostilities with any neighbours in the four decades since independence from Britain. Malawi has, thus far, peacefully managed relations between its ethnic and religious groups.²⁸ Although the 1994 constitution brought many important reforms that were missing during the Banda era, there remain important weaknesses in constitutional order, the political and electoral systems, and in political culture and leadership.

The overall state of governance is poor in all four focus areas of the APRM. Without dramatic change, the state of governance itself represents a significant long-term threat to civil peace.

The national budget system remains dysfunctional while poverty and disease grow worse. The budget deficit is huge and expanding, which is raising debt to unsustainable levels. Within months the nation's interest bill threatens to grow larger than total tax revenues. Politicians and civil servants have routinely failed to follow budgets, accounting laws or heed warnings that donors – upon which the nation is deeply dependent – will not accept such undisciplined management. Donors have slashed funding, which worsens the national deficit and makes combating poverty all the more difficult.

Political Party Militia: Malawi has a long tradition of youth organisations aligned to political parties, which have been involved in violations of human rights, intimidation and violence against voters and opposition politicians and generally creating a climate of fear. Under Banda such groups became a law unto themselves, to the extent that at one stage they did battle with the army. In the post-Banda era, new political youth militia were formed in support of the ruling party and perpetrated a wide variety of human rights violations and acts of intimidation surrounding the third-term debate and the 1999 and 2004 elections (see Intimidation of opposition and Human Rights sections below).

In 2003, the Human Rights Commission reported “increased intimidation and violence orchestrated by the ruling party's militia, the ‘Young Democrats’”²⁹ Referring to the Young Democrats, and the frequent

“By 2004 adopt, and in some cases recommit, to the fundamental tenets of a democratic society as stipulated in the CSSDCA Solemn Declaration as an African common position, namely, a Constitution and a Bill of Rights provision, where applicable, free and fair elections, an independent judiciary, freedom of expression and subordination of the military to legitimate civilian authority; rejection of unconstitutional changes of government; and implement these principles by 2005, where they are not already applicable.”

– Conference on Security, Stability, Development and Culture in Africa 2000 MOU Indicator III B(14)

“We will ensure that our respective national constitutions reflect the democratic ethos and provide for demonstrably accountable governance.”

– AU Durban Declaration on Democracy, Political, Economic, and Corporate Governance (2002) Article 13

“[We] Accept the necessity for significant improvement in the African electoral process including the establishment of truly independent national electoral Commissions and other appropriate mechanisms to ensure transparency, fairness, and credibility of elections.”

– CSSDCA Solemn Declaration

²⁸ According to the CIA's *World Factbook*, 55% of Malawians are Protestants, 20% are Roman Catholic, 20% are Muslim, while 3% follow indigenous beliefs and 2% follow other religions. Sixty percent of the population are Maravi, 18% are Lomwe, 13% are Yao and 9% are Ngoni. The Yao in the south are predominantly Muslim, and mainly support the ruling United Democratic Front (UDF); the predominantly Christian Tumbuka-Henga in the north have supported the Alliance for Democracy (AFORD) (but its support base crumbled in the May 2004 poll) and the centre is a Malawi Congress Party (MCP) stronghold. See Hughes T, *The Erratic Pulse of the Warm Heart of Africa*, South African Institute of International Affairs, 2002.

²⁹ United Nations Integrated Regional Information Networks (IRIN), www.irinnews.com, 25 June 2004.

acquiescence of the police to their use of violence, a leading Malawian academic said, 'During the UDF's second term of office, there has not been any political tolerance'³⁰

Ken Lipenga, now Minister of Information said, "It is common knowledge that some UDF politicians have used the boys to perpetrate violence. Just recently some of our own boys were used to disrupt our own party primary elections. Politicians who use violence are failures or believe that they will fail in the elections."³¹

When a Lilongwe official was to be arrested by the Anti-Corruption Bureau, youth militia occupied the ACB offices and threatened violence while police stood by and declined to protect an important institution of government. Instead of bringing the official before a judge for a bail hearing, the ACB was forced to negotiate bail privately.³²

The APRM codes impose a duty on governments to actively promote social harmony and an atmosphere of accountability and respect for the rule of law. Youth militia should be disbanded and their organisers investigated and prosecuted. They are a significant violation of democratic best practice because they establish an atmosphere of lack of accountability, promote a public message that actions of the ruling party are above the law and that it is the policy of state to selectively apply the law. These messages have the effect of encouraging destructive counter actions and breeding cynicism about democracy itself.

Early Warning – Religion, Ethnicity and Politics: One purpose of APRM is to help participating countries to focus on the early warning signs that, if unattended, can lead to conflict. Malawi has long avoided conflict across religious lines, but its recent history suggests parallels with the confluence of politics, regionalism and religion in Ivory Coast, northern Ghana and northern Nigeria. All three of those countries previously had no modern history of religious conflict but in the aftermath of autocratic rule, political organisations with regional and religious bases gradually began to encourage inter-religious animosity. The strong regional bases of Malawi's main political parties, accusation of vote rigging and growing public doubts surrounding politics have the potential to lead to future conflict if a more amicable political climate is not found.

This danger was articulated by a participant at a post-election conference in July 2004 in Blantyre, who said "Why pretend we're not realistic in Malawi? We love our ethnicity. We love our tribes. All parties must make tribalism their ideology. We hate each other regionally, so why not have a federal system?"

The Public Affairs Committee recognised the religious volatility in Malawi in June 2003, following the arrest of alleged Al Maida operatives, commenting that: "Religious divisions will take us nowhere as Malawians. It is easy to start religious conflicts but difficult to stop them."³³

Negative Effects Of The Third-Term Debate: In a variety of ways the third-term debate – where in 2002, the United Democratic Front tried (but narrowly failed) to alter Malawi's Constitution to permit President Bacilli Muluzi to run for a third presidential term – was damaging to the nation's political atmosphere and ran contrary to the government's duty to promote respect for the rule of law. The Constitution states that 'every person shall have the right to assemble and demonstrate with others peacefully and unarmed.'³⁴ This right was compromised when government banned protests against the third term in 2002. The judiciary failed to protect this freedom.

As the UNDP noted in its *Malawi 2003 State of Governance Report*, "Rather than facilitating dialogue, the Government resorted to bullying and heavy-handed tactics. Demonstrations were banned, and when the court ruled in favour of the right to assembly and to demonstrate [both enshrined in APRM standards], the Government appeared to disregard the ruling."³⁵

The Public Affairs Committee noted "with concern the decreasing level of inter-party and intra-party political tolerance. ... We are aware that some political party members, including MPs, who spoke out openly against the Third Term Bid, have constantly been victims of such intolerance within the UDF Party. ... National unity that completely excludes other legitimate groups in society is mere lip service and a lame excuse for deceiving the masses."³⁶

³⁰ Kanyongolo E, law lecturer, Chancellor College, quoted in IRIN 25 June 2004.

³¹ Lipenga K, quoted in 'Shades of Mugabe's Zimbabwe in Malawi', *eAfrica*, April 2004.

³² Mtegha HM, Director, Anti-Corruption Bureau, personal interview, 9 July 2004.

³³ Tamani B, Chairman, Public Affairs Committee, press release, 30 June 2003.

³⁴ The Constitution of the Republic of Malawi, revised January 2004, Chapter IV, Paragraph 38.

³⁵ UNDP Malawi, *Malawi 2003 State of Governance Report*, September 2003, p 33.

³⁶ Tamani B, Chairman of the Public Affairs Committee (PAC), press release, 27 May 2003.

Growing Disillusionment with Politics: The third-term quest coincided with growing poverty, gross failure of government to manage its fiscal affairs according to the law, instances of grand corruption where government acted to protect rather than investigate the culprits and a famine tinged with accusations that politicians corruptly sold off grain reserves while the poor starved. Such events contributed to the findings of a public opinion survey by the Centre for Social Research, which found 85% of people “believe that civil and human rights provided for in the constitution are only respected sometimes, rarely or never by authorities.”³⁷

Fostering Democracy and the Rule of Law

Elections: Malawi has held three national multi-party parliamentary and presidential elections in the past decade (in 1994, 1999 and 2004) and local government elections in 2000, following 30 years of one-party rule by Dr Kamas Banda and his Malawi Congress Party. However, the 1999 and 2004 polls fail to meet the APRM standards for good democratic practice. The APRM self-assessment questionnaire calls for “specific actions or events that demonstrate that pluralism in [the] country allows for free and fair competition in order to promote good political governance.”³⁸ The section below outlines key weaknesses in the electoral process.

Incompetent, Partisan Election Management: Voters and observers, both local and foreign, were extremely dissatisfied with how the 1999 and 2004 elections were managed. Elections in Malawi are administered by the Malawi Electoral Commission (MEC), a body chaired by a judge and composed of representatives of political parties. With the MEC comprising of political party representatives, the Malawi system opens the institution of elections to accusations of manipulation and favouritism, which has contributed to a cycle of rising partisanship. The top administrative official was removed for incompetence in the final days before the 2004 vote. Many of the problems highlighted below point to a weak MEC, unable and unwilling to firmly stop manipulation of the electoral process. Poor planning, lack of resources and political interference hampered the MEC. The institutional credibility and independence of the body was undermined when its members were summarily fired and locked out of their offices by police in 1999, which was contrary to laws requiring parliament to approve dismissals. The APRM codes expressly call for an independent election supervisory body:

- The Conference On Security, Stability, Development And Cooperation In Africa (CSSDCA) MOU (Durban 2002) calls for African states to “establish by 2003 where they do not exist, independent national electoral commissions and/or other appropriate mechanisms and institutions to ensure free, fair, and transparent elections in all African countries.”³⁹
- The CSSDCA “Core Values” also call for “the conduct of electoral processes in a transparent and credible manner and a concomitant obligation by the parties and candidates to abide by the outcome of such processes in order to enhance national and continental stability.”

Several people interviewed remarked on how the Malawi Electoral Commission had been systematically weakened after 1994. A prominent lawyer summed up the plummeting confidence in Malawi’s electoral system: “In 1994 the international community said our elections were ‘free and fair.’ In 1999, they said they

“Democracy in Malawi has taken several steps backwards in view of how our elections went.”

– Supreme Court Justice

“The Electoral Commission should clearly be a body of unquestioned probity and should enjoy widespread confidence across as many different political points of view as possible.”

-- Law Commission

“Principle” vi) organisation of free and regular elections, in conformity with existing texts; vii) guarantee of freedom of expression and freedom of the press, including guaranteeing access to the media for all political stake-holders

– OAU Declaration on Unconstitutional Changes of Government (2000)

“[Signatories agree to] conclude by 2004 legal mechanisms for the institution of campaign finance reform including disclosure of campaign funding sources and for proportionate state funding of all political parties, to ensure transparency, equity and accountability in electoral contests.”

– CSSDCA MOU, Article 20, 2002

³⁷ UNDP Malawi, *Malawi 2003 State of Governance Report*, September 2003, p 43.

³⁸ Draft Country self-assessment for APRM, Nepad Secretariat, Midrand, South Africa, 2004, p 23.

³⁹ Indicator III B(18)

were ‘substantially free and fair.’ In 2004, they were ‘substantially free, but very unfair’. Democracy is not consolidating in Malawi. It is going downhill.’⁴⁰

Chaotic Voter Registration: In both the 1999 and 2004 polls, the registration of voters was so chaotic and open to manipulation that the polling day had to be postponed. In 1999, NGOs reported that some 160,000 potential voters were denied the right to register, especially in the northern and central regions. The official turnout was however declared to be 92%. In 2004, over a million voters were first removed after a “clean-up” of the voters’ roll and then reinstated due to public outcry, and names had to be checked on three different lists. Over a million extra ballots were printed, leading to charges of deliberately planned electoral fraud, and a legal challenge where the High Court ordered the extra ballots recalled, only to be overturned by the Supreme Court of Appeal who feared the consequences of a long delayed election. A senior judge admitted, “perhaps we fell short, in that we did not insist that the MEC account for all the ballots.”⁴¹ The MEC blamed the international community for providing too little financial support, and for providing it too late. A continuous registration process and a national identity card system would alleviate some of these problems.

Ruling Party dominance of electronic media and exclusion of opposition views prevents voters from making informed decisions
Media dominance in the 1999 election campaign⁴²

Party	Number of adverts	Percent of total
UDF	295	78
Electoral alliance	17	4
MCP	8	2
AFORD	8	2
United Party	4	1
Others	48	13

Biased Media Coverage: Malawi’s largely illiterate and predominantly rural population relies heavily on radio for information. In the month before the 2004 vote, the state-owned Malawi Broadcasting Corporation (MBC) allocated 97.7% of its election coverage to the UDF/AFORD/NCD alliance, and TV Malawi devoted 79.5% of election-related coverage to these three parties. All such coverage was positive or neutral.⁴³

MP and former vice president Justin Malawezi relates that in the pre-election period, after being invited to participate in an hour long discussion on the state radio station, he was taken off air after 30 minutes, allegedly on the instructions of former president Muluzi.⁴⁴

Tim Neale, who ran the Commonwealth media monitoring unit in Malawi for six months before the 2004 elections, said “State radio gave interviews with the other party leaders, but covered UDF rallies live, where Muluzi campaigned for Bingu, for hours on end, and then repeated the whole thing in the afternoon, and it went on TVM that night and the next morning too, in full. That’s just not a level playing field.”⁴⁵ Newspapers are however critical of government, as seen before and after the 2004 poll, partly because politicians who own these papers have split from the UDF.⁴⁶ (See also the Human Rights section).

⁴⁰ Kasambara R, 14 July 2004.

⁴¹ Msosa, A, personal interview, 13 July 2004.

⁴² Ott M, Phiri KM & N Patel, *Malawi’s Second Democratic Elections*, Christian Literature Association, 2000, p 179.

⁴³ European Union Election Observer Mission to Malawi, May 2004.

⁴⁴ Malawezi, J. personal interview, 12 August 2004

⁴⁵ Neale T, Head of Commonwealth Media Monitoring Unit, personal interview 14 July 2004.

⁴⁶ Jamiesson R, founder and owner of the independent weekly *The Chronicle*, personal interview, 13 July 2004.

THE CONSENSUS POSITION: ELECTIONS

The 1999 Election

Judge IJ Mtambo: “The requirement of election of the President by a majority of the electorate ... is satisfied by a candidate who obtains more votes of the votes cast at the poll than any other candidate.... I am of the view that the framers of the Constitution could not have intended the absurdity of a continuous series of presidential elections with no assurance that any of them will produce a winner.”

Elton Singini Law Commissioner

“The Constitution says one thing, but the courts have given a strange interpretation [in reference to the above decision on the validity of the 1999 presidential election.] Both the High Court and Supreme Court upheld that majority meant ‘first past the post’ and not ‘50% + 1.’ But the Constitution was not amended to explicitly say that the interpretation was 50%+1, as this would have been an admission by the ruling party that they had lost the election, so they chose to keep quiet about it.”

The 2004 Election

Binton Kuntsaira, MP: “In 2004, our Malawi Electoral Commission acted as if it was handling its first elections.”^{xi}

Justice James Kalaile, Chairman, Malawi Electoral Commission (MEC): “We asked for \$22 million for this election. We got \$14 million. But because it all came so late, we ended up spending close to the \$22 million anyway ... People want the MEC to fail. We are never funded on time. This can’t be permitted.”^{xiii}

Daphne Casey, UNDP: “Donors can only go so far as helping with elections until polling day. Managing that process is then in the hands of nationals.”^{xiv}

Advocate Ralph Kasambara: “In 1994 the international community said our elections were ‘free and fair.’ In 1999, they said they were ‘substantially free and fair.’ In 2004, they were ‘substantially free, but very unfair’. Democracy is not consolidating in Malawi. It is going downhill.”

Technical Review of the Constitution: “The Electoral Commission should clearly be a body of unquestioned probity and that it should enjoy widespread confidence across as many different political points of view as possible.”^{xv}

John Kapito, Consumer Association of Malawi (CAMA):

“As a consumer advocacy group, one of the things we look at are expired products. When they have expired, one remedy is to remove them off the shelf. This Electoral Commission has expired!”^{xvi}

Rafiq Hajar, Institute for Policy Interaction: “The election was a farce, a betrayal of the electoral system. The fault lies in the management process, and with the ruling party, who shuffled district commissioners before the election. The fault is our naiveté. The fault is in fragmentation by opposition and civil society. The fault is with parties personally driven by egomaniacs.”^{xviii}

Ollen Mwalubunju, Centre for Human Rights & Rehabilitation (CHRR): “Violence erupted because people expressed disappointment with the elections. The MEC was not transparent. We waited for results for four days, with silence from the public media. People felt angry – something very fishy was going on.”^{xix}

Tim Neale, Commonwealth media monitor: “State radio gave interviews with the other party leaders, but covered UDF rallies live, where Muluzi campaigned for Bingu, for hours on end, and then repeated the whole thing in the afternoon, and it went on TVM that night and the next morning too, in full. That’s just not a level playing field.”^x

Justice James Kalaile, MEC:

“Some observers are seasoned, some are not. Some have the same pattern of seeing things – especially the international groups. Some understood our problems, others brushed them off. Observers basically see what they want to see. Of course, the source of the observer matters. Some just don’t have a strong background of that particular country. We respect the SADC group. They have been here so many times, so many times.”^{xi}

Justice A Msosa (First MEC Chairman):

“Do the SADC people see anything wrong with what is happening in Zimbabwe? They are in the same boat. They do not want to point out what goes wrong in the next village. We can’t put much weight on what they are saying.”^{xii}

Chikosa Ulendo Banda, Law Lecturer:

“When the African Union does not roundly endorse your election, then you know it was bad. I think SADC was the only dissenter, and look at most of the elections in Southern Africa – look at Zambia, Zimbabwe, Mozambique!”^{xiii}

Boniface Tamani, Public Affairs Committee:

“We are not in a one-party state where media should be confined to the few elites.”^{xiv}

Ollen Mwalubunju, (CHRR):

“Freedom of the press is grossly abused during elections.”^{xv}

Martin Ott, GTZ: “Many of the same issue in the 2004 election came up in 1999. Somehow, we are just not able to learn the lessons. We committed the same mistakes and cannot remember.”

Lellis Braganza, European Union,

“They [the MEC] were just wasting our money. We paid €2 million – it was not properly spent.”^{xvi}

Justice A Msosa (First MEC Chairman):

“Meanwhile [after the 2004 elections] we have a president, and people would rather just proceed with life. We are setting a bad, bad, bad precedent.”

xvii

Sources: See Endnotes in Appendix E

Intimidation of Opposition: During the regime of Kamuzu Banda the Young Pioneers enforced the will of the party and government through intimidation, mob action and allegedly murder. In the “new Malawi” it is evident that a similar force has formed, though whether spontaneously or at the instigation of ruling party officials, remains unclear. They call themselves the Young Democrats. (See also Political Party Militia section above, and Human Rights section below).

As one Young Democrat told SAIIA, “In the run up to 1999 general elections, UDF Director of Youth Henry Moyo used to mobilise the strong ones amongst our groups and advise us to disrupt opposition rallies. He would offer, say, a group of 20 strong young men a vehicle, crates of beer, and Mk1,000 each and advise us to disrupt a rally. After disrupting a rally through the use of violence, he would reward us with another Mk1,000. This has become the trend up to this time. I have been involved in disrupting more than 50 opposition rallies.”⁴⁷

Supremacy of the Constitution and Rule of Law: “The substance of the Constitution is generally acceptable and is admired internationally”⁴⁸ said Malawi’s Law Commission with some pride during its technical review of the highest law in the land in 1998. On paper, it affords ample protection of human rights and freedoms, establishes the rule of law, and provides various checks and balances on abuse of power. The Constitution provides for separation of powers between the executive, legislative and judicial branches of government, and specific oversight institutions such as the Human Rights Commission, the Anti-Corruption Bureau and the Office of the Ombudsman.

In practice, however, the Constitution and the legal network it underpins face severe challenges.

- The 1995 Malawian Constitution has been frequently amended (108 times in less than a decade). Critical oversight functions have been removed – for instance the right to recall MPs by their constituencies, and the provisions for an independent Senate.
- National Democratic Alliance (NDA) leader Brown Mpinganjira was repeatedly arrested on trumped up charges of plotting a failed coup in March 2001. Opposition politicians viewed the charges as an excuse for the President to crackdown on an increasingly vocal opposition.
- Having narrowly secured re-election in 1999, President Muluzi continuously tampered with the governance system. “While assiduously declaring himself a democrat orally and in print, [Muluzi] went on to interfere with civil service appointments, engaged in manipulation of the judiciary, turned a blind eye to the violence of the youth wing of the UDF and attempted to and successfully changed aspects of the constitution to suit partisan interests and sense of timing.”⁴⁹

In its 1998 review of the Malawi Constitution, the Law Commission pointed out a potential problem with Section 80, subsection 2, which said “The President shall be elected by a majority of the electorate through direct, universal and equal suffrage.” They contended that in an election with more than two candidates it was clearly possible that none would receive the majority of more than half. The Commission recommended

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

– UN Universal Declaration of Human Rights (1948) Article 19

“Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

– Article 11, African Charter on Human and People’s Rights

“The Malawi Constitution does not work in practice. There is no political will to enforce or abide by its basic principles.”

– Legal practitioner and law lecturer, Zomba

“Police will continue to feel they are above the law if they are seldom prosecuted.”

– Supreme Court Justice

⁴⁷ Former Young Democrat speaking on condition of anonymity quoted in ‘Malawi’s Young Democrats: A view from the Inside’ eAfrica, April 2004.

⁴⁸ Law Commission Report on the Technical Review of the Constitution, the Malawi Government Gazette, Zomba, 16 November 1998, p.255.

⁴⁹ Lwanda J, “Kwacha: The violence of money in Malawi’s post-Banda politics”, paper prepared at the Centre of African Studies, Edinburgh University, Scotland, 2003, p.20.

that the Constitution be amended to expressly call for a run-off election to eliminate any ambiguity. Many recommendations of that Law Commission review were implemented but that provision was ignored.

After the 1999 elections, these ambiguities led to a lawsuit. Opposition parties challenged the re-election of Bakili Muluzi, charging that he was not elected by a majority, having secured less than 50% of the vote, and that there should have been a run-off election between the top two candidates. In delivering judgement on this case, Judge IJ Mtambo's found that President Muluzi was lawfully re-elected because a "learner's" dictionary noted that majority can mean "the larger part." However, the Oxford English dictionary in full and abridged forms defines majority, particularly as it pertains to electoral matters, as more than half.⁵⁰ It is important to note that in setting procedures for its amendment, the constitution imposes the requirement of a referendum for major or substantive changes but allows minor changes by parliament. To shift from a 50 percent-plus voting system to one in which a president could be conceivably be elected with a tiny majority would seem to qualify as a major change requiring approval, given broad common understanding of "majority."

This judgement was criticised by legal experts. Senior law lecturer Edge Kanyongolo characterised the decision as "pragmatic", because the Constitution did not explicitly provide for a rerun⁵¹.

Elton Singini, Malawi's Law Commissioner said, "The Constitution says one thing, but the courts have given a strange interpretation Both the High Court and Supreme Court upheld that majority meant 'first past the post' and not '50% + 1.' But the Constitution was not amended to explicitly say that the interpretation was 50%+1, as this would have been an admission by the ruling party that they had lost the election, so they chose to keep quiet about it."⁵²

At the presentation of the draft version of this report, Orama Nanthuru from the Malawi Electoral Commission said, "The High Court ruled in favour of the MEC. They declared that 'majority' did not mean '50%+1.' As far as Malawi is concerned, whoever gets more votes wins. I'm not saying I am happy with the decision. But there is certainty. It's not a good situation, but that is the situation."⁵³ The Constitution was not changed, and the political wrangling over the issue continues. Current President Bingu wa Mutharika was elected with less than 36% of the popular vote in 2004.

Decentralisation: Malawi under Dr Banda was run as a highly centralised political system for 30 years. The 1995 Constitution enshrined the democratic participation of citizens at the local government level. The 1998 Local Government Act enacts the constitutional vision of representation for chiefs, regular elections for councillors, demarcation of local boundaries, and a National Local Government Finance Committee to oversee financial disbursements and audit accounts.

The realisation of these principles has proven extremely difficult in Malawi. The decentralisation and devolution process has suffered from political neglect by the President and Cabinet; an over-stretched, under-funded Department of Local Government; competition for legitimacy and power between chiefs, councillors and members of parliament; persistent patronage relationships, where people expect government to provide and simply accept poor services; shallow understanding by citizens of their rights; and a poor economic climate in which to attempt decentralisation.⁵⁴

A recent comprehensive review of the decentralisation process called it "a mixture of some successes but many implementation failures"⁵⁵ with slow progress. Key ministries are reluctant to relinquish powers and functions to local authorities and there is minimal grassroots understanding of or agitation for devolution. The Local Government Act and laws governing line ministries "are inconsistent with the decentralisation policy"⁵⁶ and 17 other Acts require amendment. Financial accounting and resource allocation procedures are rudimentary and uncontrolled. Local development plans are inconsistent with national planning processes, budgets and work plans, including the MPRS. The report lamented that many of the same recommendations had been made in 2001, with minimal improvements.

⁵⁰ Mtambo IJ, High Court Ruling on the Malawi 1999 Presidential Election Case, www.sdn.org.mw/elect99/mainstory.html.

⁵¹ Kanyongolo E, Senior Law Lecturer, Chancellor College, University of Malawi, telephone interview, 5 August 2004.

⁵² Singini EM, Law Commissioner, personal interview 9 July 2004.

⁵³ Nanthuru, O, Malawi Electoral Commission, 16 July 2004.

⁵⁴ Report on the Review of the National Decentralisation Programme of Malawi 2001-2004, joint Malawi Government Donor Team, May 2004.

⁵⁵ *Ibid*, p. ix.

⁵⁶ *Ibid*, p. x.

Promoting And Protecting Human Rights⁵⁷

Chapter IV of the Constitution – known as the Bill of Rights – protects 31 stated rights, which include social, political and economic rights.⁵⁸ Amongst them are right to life, liberty, human dignity and personal freedoms, the rights of women, children, freedom of association, conscience, and opinion, freedom of the press, political rights and access to justice.

Despite considerable improvement in Malawi's human rights record in the past decade compared to the excesses and repression of the 1964-1993 period, and the creation of constitutional and legal provisions as well as institutions to protect and defend basic human rights, observers continue to be concerned at the seemingly shallow commitment by government to a genuine respect for human dignity, and pervasive corruption.

"There was hope when we changed from a single-party to multiparty system a decade ago," said Ollen Mwalubunju, Executive Director of the Centre for Human Rights and Rehabilitation, "but the human rights situation in Malawi has not lived up to expectations, especially in Muluji's second term."⁵⁹

The violent suppression of protests around the 2004 elections reflects a significant lack of respect for human rights. The announcement of the inauguration prior to announcement of election results and the failure of the electoral commission to announce results as stipulated by law would, in any society cause anxiety and protest. To violently suppress legitimate dissent undermines overall respect for democratic institutions and the legitimacy of government.

The US State Department's human rights assessment: "The Constitution specifically provides for equal rights for women, forbids discrimination based on language or culture, and provides for equality and recognition before the law for every citizen; however, in practice, the capacity of government institutions to assure equal rights for all citizens was limited."⁶⁰

Freedom of Expression And Freedom of the Press: Government officials appear not to understand the range and complexity of freedom of speech issues, and have used force to intimidate or intervene when contrary opinions are expressed or disseminated. "We are not in a one-party state where media should be confined to the few elites," said the PAC Chairman.⁶¹

The television show "Big Brother Africa" was banned by parliament in 2003. Although a lawyer successfully argued in court that parliament had tried to deny Malawians their constitutional right to free information and the court

"Despite constitutional guarantees of equal protection [in Malawi], customary practices maintain de facto discrimination against women in education, employment, and business. Traditional rural structures deny women inheritance and property rights, and violence against women is reportedly routine."

— Freedom House, 2003

"Every person shall have the right to freedom of expression. ... The press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to information"

— Malawi Constitution, Chapter IV

"Freedom of expression is critical to the rule of law. I believe that if one freedom is broken, all are broken."

— Newspaper editor

"The principles of democracy, transparency and accountability are well established in the constitution, but actual practice often falls short of the stated ideals. Transparency and accountability are still not fully embedded in public administration and are seen by some officials more as external constraints than internalised values."

— Danish Institute for Human Rights

"Many laws have not yet been reformed following the democratic transition and are being enforced despite being in conflict with the constitution. ... There is a consistent pattern of detention without trial and conviction despite detention for long periods of time. Furthermore, many prisoners who are detained without charge have no legal representation to ensure that their rights are protected."

— Danish Institute for Human Rights

⁵⁷ This section includes the rights of women, children and vulnerable persons (listed under Objectives 7-9 of the APRM Country self-assessment for Questionnaire).

⁵⁸ The Constitution of the Republic of Malawi, revised January 2004, Chapter IV.

⁵⁹ Mwalubunju O, Executive Director, Centre for Human Rights and Rehabilitation, personal interview, 12 July 2004.

⁶⁰ US State Department country report on human rights practices, 2003, section 5

⁶¹ Tamani B, Chairman of the Public Affairs Committee (PAC), press release, 30 June 2003.

decision was upheld, the case reflected a cavalier attitude toward free speech rights.⁶²

There have been several attempts to manipulate or muzzle outspoken journalists. Reporters have been harassed through unwarranted legal action against them (e.g. using libel laws), and by attacks on their person. Printing offices have been broken into and occupied by Young Democrats,⁶³ and the UDF had allegedly drawn up a list of journalists to be assaulted, for discrediting the party.⁶⁴ Heavily armed police attempted to detain opposition coalition spokesperson Kholiwe Mkandawire in Mzimba over a “provocative” interview on Malawi Institute of Journalism radio about results of the 2004 elections.⁶⁵

Women’s Rights: While paragraph 24 of Malawi’s Constitution intends to foster gender equality, discrimination against women is widespread, both through traditional practices and an absence of rule of law, either through deliberate and unpunished transgressions of relevant laws or a lack of capacity by institutions. Reports abound of sexual abuse,⁶⁶ male family members exploiting rights to deceased estates, unequal access to agricultural extension services, training and credit, and even tools and equipment,⁶⁷ and human trafficking in the sex trade to Europe and South Africa.⁶⁸ The Malawi Economic Justice Network (MEJN) calls for gender issues to be mainstreamed, in a similar way that each department is required to budget for and implement HIV/AIDS programmes.⁶⁹ (See also Socio-Economic Development Section).

Children’s Rights: Despite constitutional intent (principally in paragraph 23), a low priority is given to children’s rights. Education is not compulsory and extreme poverty and near-famine conditions have led to large-scale school absences. Only a third of children have easy access to water, and the effects of malnutrition is frequently reported. In the cities, young street beggars are conspicuous. (See also Socio-Economic Development section). Worsening economic conditions have led to the reappearance of practices that were being curtailed after the advent of democracy. Malawi has high rates of child labour on tea and tobacco farms, subsistence farms, and in domestic service – sometimes in conditions of virtual servitude.⁷⁰ The high rate of child labour in Malawi was highlighted during the team’s visit to Malawi in July 2004. Media reports of child sex abuse, especially in traditional initiation ceremonies are common.⁷¹ Incidents of sexual exploitation, child prostitution and child pornography are apparently rising. “The belief that children were unlikely to be HIV positive and the widespread belief that sexual intercourse with virgins can cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the sexual exploitation of minors.”⁷²

Upholding the Separation of Powers

The Malawi constitution affords excessive power to the president, which other branches of government have been only marginally able to check. Malawi’s Constitution provides for distinct roles, functions and duties for the three main arms of government: the executive branch makes policy, represented by the president and his ministers in cabinet; the legislative branch makes laws, composed of members of parliament in the National Assembly, and the judicial branch deliberates on the fairness of laws and policy, represented by the justices of the High Court and Supreme Court of Appeal.

In practice the executive wields disproportionate power, which enables it to get around or subvert parliamentary oversight. The judiciary is generally respected but also has been subject to considerable pressure and intimidation. Several other institutions created to protect the public from abuse of power, such as the Anti Corruption Bureau, the Office of the Ombudsman and the Human Rights Commission, suffer from inadequate allocation of resources, intimidation by thugs on the ruling party’s payroll and removal and redeployment of anyone considered enough of a threat to the elite.

⁶² Independent Foreign Service correspondent, 2003.

⁶³ The Media Institute of Southern Africa, reported in IRIN, 2001.

⁶⁴ Media Institute of Southern Africa statement, reported in IRIN, 2003.

⁶⁵ Independent Foreign Service correspondent, May 2004.

⁶⁶ US Department of State, Country reports on Human Rights Practices – 2003.

⁶⁷ Freedom House’s *Freedom in the World Report*, 2003.

⁶⁸ US Department of State, Country reports on Human Rights Practices – 2003, Section 6f.

⁶⁹ Response to Malawi National Draft Budget 2003/2004, Malawi Economic Justice Network (MEJN), 2003, p 12.

⁷⁰ US Department of State, Country reports on Human Rights Practices – 2003, Section 6d.

⁷¹ *Ibid.*, Section 5.

⁷² *Ibid.*, Section 6d.

Power to Fire at Will: Former President Bakili Muluzi was widely accused of abusing his power: Interviews noted that the president has excessive power to fire key officials, such the governor of the Reserve Bank, who can be dismissed without recourse to any security of tenure. “The president can fire people at will,” said Kathryn English of USAID. “There are no terms and conditions, no mediations and arbitrations. Often the relevant parliamentary committees are bypassed or ignored. The president is still the big bwana around here.”⁷³

The controversy over the appointment and dismissal of senior public servants has continued under the Mutharika administration. In mid-July 2004, the President fired the Director of Public Prosecutions Fahad Assani, replacing him with the very inexperienced Ishmael Wadi, who only graduated from university in 2000. The commander of the army was similarly dismissed. Legal experts have challenged these dismissals as unconstitutional and in breach of employment contracts. The Constitution guarantees the DPP a five-year term, and he can only be removed once serious charges such as incompetence or partisanship are proven. Assani was allegedly fired by the president without receiving a written termination of his contract, which was supposed to run until December 2005, nor was he given a chance to defend his dismissal.

“We have agreed to ... ensure the effective functioning of parliaments and other accountability institutions in our respective countries, including parliamentary committees and anti-corruption bodies”

“We undertake to work with renewed determination to enforce: “the inalienable right the individual to participate by means, of free, credible and democratic political processes in periodically electing their leaders for a fixed term of office”

– AU Declaration on Democracy, Political, Economic, and Corporate Governance (2002), Articles 14 & 7

“Adopt by 2005 a commonly derived Code of Conduct for Political Office, an inviolate constitutional limitation on the tenure of elected political office holders based on nationally stipulated periodic renewal of mandates and governments should scrupulously abide by it.”

– CSSDCA MOU (2000)

“We can’t just be assuming the DPP did something wrong,” said Shabir Latif of legal firm Sacranie Gow in the *Malawi Standard* newspaper. “Today you have the DPP and the Army Commander fired through the radio. Tomorrow it will be someone else. The mayhem will continue as if we are no longer in a democracy.” He continued, “These are not political appointments like that of a Minister, but constitutional and contractually bound. There is no discretion in appointing and firing.”⁷⁴

Anti-Corruption Bureau and Ombudsman: “The president can overturn recommendations [by tender boards]” said an ACB official. “It’s hard to challenge him. The president is the president, and can do what he wants.”⁷⁵

The power to block corruption prosecutions by the ACB through the Director of Public Prosecutions removes the only truly independent means to check presidential abuse of power. The Auditor General, although independent, has been routinely frustrated by executive branch officials who refuse to explain violations of law and budget.

Through his power to reduce budgets approved by parliament, the president has the power to choke the operational strength of the courts, Anti-Corruption Bureau, Ombudsman and even parliament itself.

“The Office of the Ombudsman met resistance from senior public officials” said ex-Ombudsman Enock Chibwana, whose contract was not renewed, despite widespread acknowledgement of his impartiality, toughness and effectiveness.

“It was a new concept, and a thorn in the flesh. In Third World countries, those in power are not ready to have their powers trimmed, investigated or controlled. There is no political will to let the institutions meant to protect governance operate,” Chibwana said.⁷⁶

“Good governance is greatly compromised – we sideline people who really deliver in this society, and Malawi is left with mediocrity,” admitted the Law Society President.⁷⁷

⁷³ English K, U SAID, personal interview, 7 July 2004.

⁷⁴ “Why Assani’s Removal Needs to be Challenged,” *Malawi Standard*, 26 July 2004.

⁷⁵ Banda V, Assistant Director, Anti-Corruption Bureau, personal interview, 8 July 2004.

⁷⁶ Chibwana E, ex-Ombudsman, personal interview, 12 July 2004.

⁷⁷ Mhango C, President, Law Society, telephone interview, 7 August 2004.

Parliament Lacks Teeth and Bolsters the Executive: The National Assembly has increasingly tended to ram bills through the House that threaten the letter and spirit of the Constitution. The powers of parliament are enshrined in the constitution, including provision to protect its funding. However, the president has successfully subverted parliamentary independence in key ways.

Despite constitutional protection of its funding, the presidency has routinely denied funds to parliament, citing the cash budgeting system and funds shortages. Because MPs do not have permanent housing in the capital, parliament cannot meet when and for as long as it chooses. By over filling the legislative agenda, shortening the period parliament sits through denial of funds and consistently not publishing proposed bills in advance, as required, the executive can push parliament to vote on matters that have not been considered properly.

“The president [Muluzi] would frequently waive the requirement that a bill be published 21 days before a vote. They would wait until one or two days before the vote to deny people the opportunity to review the proposed law,” said MP and former minister Aleke Banda.

“It doesn’t matter what parliament wants to do if the ministry of finance says there is no money, there is nothing they can do. MPs don’t have housing and must pay [for accommodation] when in the capital,” Banda said.

Banda and other MPs noted that several committees do not meet for lack of funds. The only reason the core committees of Public Accounts, Legal Affairs and Public Appointments meet and investigate is that they receive direct foreign donor funding.

The overall effect has been to substantially weaken the quality of law and oversight offered by parliament. Laws altered or enacted tend in the main to follow political interests rather than those of the people of Malawi. An alert civil society frequently questions the unconstitutional procedures attempted by both the executive and parliament for the appointment and dismissals of senior public officials.

MEJN said, “It is time that Parliamentarians, as part of the checks and balances system, lead by example by checking Parliament’s own huge appetite for expenditure at the expense of the nation’s economic and socio-political interests.”⁷⁸

One analyst said, “Parliament is used like a club. They pass laws that they never debate. The decisions are made from outside. In our current situation with many small parties, parliament becomes a game of who has the cash. Once MPs are enticed by the UDF, they lose all integrity and just keep quiet. Very few MPs go to parliament to serve the people.”⁷⁹

Charles Mhango, President of the Malawi Law Society:

“It’s like the executive and legislature are on one side, like brother and sister. I believe the President uses the House to advance his interests. And Parliament debating treaties already signed is like finding out about your bride only after the wedding.”

— Senior Judge

“We have agreed to: “ensure the independence of the judicial system that will be able to prevent abuse of power and corruption.”

– AU Declaration on Democracy, Political, Economic, and Corporate Governance (2002)
Article 14

“Ensure independence of the judiciary, particularly through an effective separation of powers, constitutionally guaranteed tenure of office and adequate funding.”

– CSSDCA Solemn Declaration (2000)

“While assiduously declaring himself a democrat orally and in print, [Muluzi] went on to interfere with civil service appointments, engaged in manipulation of the judiciary, turned a blind eye to the violence of the youth wing of the UDF and attempted to and successfully changed aspects of the constitution to suit partisan interests and sense of timing.”

– Dr John Lwanda, academic

“Parliament is used like a club. They pass laws that they never debate. The decisions are made from outside. In our current situation with many small parties, parliament becomes a game of who has the cash. Once MPs are enticed by the UDF, they lose all integrity and just keep quiet. Very few MPs go to parliament to serve the people.”

– GTZ Programme Officer

Charles Mhango, President of the Malawi Law Society: “There is a lack of understanding of the essence of the separation of powers. The executive arm has a lot of influence. It’s not supposed to be like that.”

– Charles Mhango,
President of the Malawi Law Society

⁷⁸ Response to Malawi National Draft Budget 2003/2004, Malawi Economic Justice Network, 2003, p 13.

⁷⁹ Nyirenda M, Programme Officer, GTZ, personal interview, 9 July 2004.

“There is a lack of understanding of the essence of the separation of powers. The executive arm has a lot of influence. It’s not supposed to be like that.”⁸⁰

In the third-term debate, some MPs were lobbying hard to change the Constitution to give Muluzi a third term. To their credit many MPs and segments of civil society resisted the third-term drive, which should be seen as a sign of democratic maturity.

Constitutional lawyer Edge Kanyongolo argued that Parliament did not take the 1998 review of the Constitution by the Law Commission seriously. “They adopted a pick and choose approach, and only changed what suited their interest. By pointing out the holes in the law, the Law Commission gave a gift to the ruling party. They had two choices – strengthen the Constitution, or exploit its weaknesses. They chose the latter.”⁸¹

The National Assembly can debate key financial matters (taxation, remission of debt, charges on the Consolidated Fund) only on the written recommendation of the Minister of Finance. This becomes problematic when the minister may not be an elected MP.⁸²

“It’s like the executive and legislature are on one side, like brother and sister,” said a senior judge. “I believe the President uses the House to advance his interests. And Parliament debating treaties already signed is like finding out about your bride only after the wedding. It is not healthy to have MPs who are also Cabinet Ministers.”⁸³

At the workshop held to present the draft copy of this report on 16 July 2004, a member of the audience confirmed that certain parliamentary committees are grossly under-funded, and some are not funded at all. He claimed that donors tend to hand pick certain committees, and that for example the health and transport committees have not met “for the whole life of parliament. How are committees meant to monitor the budget if organising a workshop can cost Mk 1 million? ... in the window between when the budget is presented, the Executive overwhelms parliament with information and it can’t cope. You can’t expect parliament to do its job if it does not have the resources to meet its obligations.”⁸⁴

Some analysts felt that the current group of parliamentarians may prove more independent, due to increased rivalries between old guard UDF supporters threatened by the current president and his allies. “Disgruntled UDF MPs may spoil for a fight to get back at Bingu,” said Kanyongolo.⁸⁵ Increased numbers of parties and opposition members could change the nature of debate in parliament.

Treaties: The president has the prerogative to sign treaties, agreements and memoranda of understanding without having to consult parliament in advance, and is only obliged to tell the House the title of the commitments he has made on Malawi’s behalf to the international community, including accession to the APRM “Parliament only comes in if he wants the treaty to be enforced locally.”⁸⁶

Judiciary Largely Autonomous, But Financially Dependent: The judiciary has asserted independence, but poor resources and large case backlogs hamper efficiency. It is heavily reliant on donor funding, particularly from the American and European governments.

The Constitution amply protects judicial tenure: “Whimsical dismissal is not easy,” Malawi’s Law Commissioner confirmed.⁸⁷ This has not stopped the House from attempting to do so. The authority and autonomy of the judiciary was seriously undermined in 2002 when parliamentarians voted to impeach three High Court judges for “incompetence” or “misbehaviour” after rulings in separate cases seen as favouring the opposition. “The parliamentary motion flouted an earlier High Court ruling by Justice Bathiel Chiudza Banda, who had ordered that the impeachment proceedings be halted until a constitutionally mandated investigation had concluded.”⁸⁸ The impeachment process failed in all three cases. “When Parliament tried

⁸⁰ Mhango C, President, Law Society, telephone interview, 5 August 2004.

⁸¹ Kanyongolo E, Senior Law Lecturer, Chancellor College, University of Malawi, telephone interview, 5 August 2004.

⁸² Law Commission Report on the Technical Review of the Constitution, The Malawi Government Gazette, Zomba, 16 November 1998, p 267

⁸³ Msosa A, Supreme Court of Appeal, personal interview, 13 July.

⁸⁴ Comment made at presentation of the draft Malawi APRM Study, Lilongwe, 16 July 2004.

⁸⁵ Kanyongolo E, Senior Law Lecturer, Chancellor College, University of Malawi, telephone interview, 5 August 2004.

⁸⁶ Banda CU, Legal Practitioner and Law Lecturer, Chancellor College, Zomba, personal interview, 13 July 2004.

⁸⁷ Singini E, Law Commissioner, Malawi Law Commission, personal interview, 9 July 2004.

⁸⁸ Amnesty International country report 2002.

to impeach three judges for ‘incompetence’ no-one believed them. It was full of malice, and was an embarrassment to the country.”⁸⁹

“I’d say our judiciary is about 90% independent,” said Law Society President Charles Mhango. “The entire legal profession stood up when parliament, influenced by the president, tried to impeach those judges. But there are individuals, who may be judges, who could, for their own reasons, compromise their positions.” He noted that their independence would be greatly enhanced if they had autonomy in deciding on remuneration. “They depend on the executive for salaries.”⁹⁰

However, others feel that the judiciary has not truly upheld its role as a check on the presidency and parliament “The Judiciary in Malawi has been timid,” said a legal practitioner. “It is not willing to be the guardian of human rights. They are only aggressive when they are not judging the executive.”⁹¹

“Judges are intimidated in this country,” said the ex-Ombudsman. “The system is being tamed for the benefit of the few.”⁹²

Providing Accountable, Efficient and Effective Public Officials and Civil Servants

Malawi’s civil service today is a top-heavy, inefficient bureaucracy that is too costly for the country’s available resources. Many appointments are made for political reasons rather than on merit, although a wide variety of sources expressed hope that the recent presidential effort to vet and shrink the number of principal secretaries and senior officials heralds the start of a new era of management. Notwithstanding, there is almost universal consensus that the civil service today lacks the drive and diligence displayed in the Banda era. Sources cite the failure of the presidency and ministers to enforce the fiscal and managerial discipline enshrined in law.

“By the time cases do come to court three or four years down the line, people have died, witnesses have gone, documents have gone missing and the person is acquitted and then they are re-instated to office. It is a vicious cycle of lack of enforcement and punishment,” said Aleke Banda, who has served in various ministerial positions including finance, agriculture and health.

Appointment and dismissal procedures are not transparent. The public has little say on how the civil service operates. Few government departments have codes of conduct, while even fewer seem to enforce them. As mentioned in the sections on economic and corporate governance, there is poor budget control and minimal accountability in the civil service, and among Malawi’s numerous parastatal organisations. “It’s not only about systems,” said a Principal Secretary, “If people have a high appetite to spend, regardless of the systems in place, they will fail to stick to budget.”

The current demand for all senior civil servants to produce their CVs to the President is a positive development that can, if selections are made on a merit basis, restore discipline to the civil service. President Mutharika has slashed the number of cabinet ministers and Principal Secretaries, but there is a need to rationalise even further. There is also a culture of dependency, both in relying on donors to rescue departments, and unquestioningly pushing through policies emanating “from the top.” While top-level administrators are paid on contracts with incentives, bottom-level bureaucrats are very poorly paid, and clandestine behaviour abounds. For example, these civil servants abuse generous allowances for attending meetings.

In the country’s acute budget squeeze, on average about 70% of departmental funds are used to keep head office running, and pro-poor expenditure is what suffers.⁹³

⁸⁹ Msosa A, Supreme Court Justice and first chair of the Malawi Electoral Commission (MC), personal interview, 13 July 2004.

⁹⁰ Mhango C, President, Law Society, telephone interview, 5 August 2004.

⁹¹ Banda CU, Law Lecturer and Practitioner, University of Malawi, personal interview 13 July 2004.

⁹² Chibwana E, ex-Ombudsman, personal interview, 12 July 2004.

⁹³ Kutengele M, Principal Secretary, Ministry of Economic Development and Planning, personal interview, 7 July 2004.

SECTION 3: CROSS-CUTTING ISSUE – CORRUPTION

The APRM designates fighting corruption as a key cross-cutting issue, which is mentioned principally in the political and economic governance sections. In addition, key questions inquire about the steps a country has taken to fight money laundering.

The major codes and standards referred to in the APRM are the AU Maputo Convention on Preventing and Combating Corruption (2003), the AU Durban Declaration on Democracy, Political, Economic and Corporate Governance (2002) and the Solemn Declaration and Memorandum of Understanding of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). The APRM also embraces the UN Convention on Corruption and the area is central to the codes on fiscal transparency, banking regulation and conventions against money laundering.

The codes call for, among other things:

- A genuinely independent anti-corruption authority with an independent budget.
- Transparent and accountable budgeting with quarterly budget reports to the public and semi-annually to parliament.
- Transparent public tendering with clear published standards.
- Steps to fight money laundering and comply with the 40 provisions of the international Financial Action Task Force.
- A code of conduct for public officials.
- Declaration of the assets of politicians and civil servants upon entry and exit of office and regularly between entry and exit.
- Transparent declaration of political party financing.
- Effective independence of the judiciary, parliament and corruption prosecuting authority.

The codes and the APRM questionnaire suggest analysis of corruption on six levels: in terms of the existence of required institutions, the adequacy of laws and procedures, the conformance of government to those laws, analysis of how government handled particular incidents of corruption, the number of prosecutions and the results of cases, and surveys or other measurement of corruption levels. In all areas Malawi's performance is poor and has declined in recent years, which has been a principal contributor to the country's poor economic management, poor spending choices and negative relationship with donors and funding agencies.

The Pervasiveness of Corruption

Absolute measures of corruption levels are impossible because its perpetrators actively seek to hide their

APRM Objectives on Corruption

- Political Objective 5: Ensure accountable, efficient and effective public office holders and civil servants
- Political Objective 6: Fighting corruption in the political sphere
- Economic Objective 2: Implement sound, transparent and predictable government economic policies
- Economic Objective 3: Promote sound public finance management
- Economic Objective 4: Fight corruption and money laundering

Source: APRM Country Self-Assessment Questionnaire, Draft January 2004

Selected Commitments Under the AU Convention On Corruption

"The State Parties to this Convention undertake to abide by the following principles:

1. *Respect for democratic principles and institutions, popular participation, the rule of law and good governance.*
2. *Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments.*
3. *Transparency and accountability in the management of public affairs.*
4. *Promotion of social justice to ensure balanced socio-economic development.*
5. *Condemnation and rejection of acts of corruption, related offences and impunity.*

[Article 5] The State Parties to this Convention undertake to ...

3. *Establish, maintain and strengthen **independent national anticorruption authorities** or agencies.*
4. *Adopt legislative and other measures to create, maintain and **strengthen internal accounting**, auditing and follow-up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services.*
5. *Adopt legislative and other measures to **protect informants** and witnesses in corruption and related offences, including protection of their identities.*
6. *Adopt measures that ensure citizens report instances of corruption without fear of consequent reprisals.*

[Article 7] In order to combat corruption and related offences in the public service, State Parties commit themselves to:

1. *Require all or designated public officials to **declare their assets** at the time of assumption of office during and after their term of office in the public service.*
2. *Create an internal committee or a similar body mandated to establish a **code of conduct** and to monitor its implementation, and sensitize and train public officials on matters of ethics.*
3. ***Develop disciplinary measures** and investigation procedures in corruption and related offences with a view to keeping up with technology and increase the efficiency of those responsible in this regard.*
4. ***Ensure transparency**, equity and efficiency in the management of **tendering** and hiring procedures in the public service.*
5. *Subject to the provisions of domestic legislation, any immunity granted to public officials shall not be an obstacle to the investigation of allegations against and the prosecution of such officials.*

Source: AU Convention on Preventing and Combating Corruption, 2003

THE CONSENSUS POSITION: CORRUPTION

Victor Banda, Anti-Corruption

Bureau: "Corruption is on the increase here. I think our Transparency International rating [of 84th in the world] is flattering ... In 1999 and 2000, we had a lot of high profile anti-corruption cases, involving ministers and judges. Now, we just catch little fish."

Kevin Carpenter, PriceWaterhouse

Coopers: "Corruption is wholesale here. Bribes to the president are openly discussed by international companies in meetings. If a business licence is required, the president is brought in to smooth the process. The economy cannot move while there is this level of corruption."ⁱⁱ

Supreme Court Justice A Msosa:

"We want to fight corruption. But how can we do it if the real big fish are not prosecuted?"ⁱⁱⁱ

Dr M Kutengele, Ministry of

Economic Planning and Development (MEPD) "It's hard to really get hold of the fat cats plundering our natural resources."^{iv}

Kathryn English, USAID:

"A small group of people is strangling this country, and milking the system."^v

Ollen Mwalubunju, CHRR: "The Anti-Corruption Bureau (ACB) is not accountable to the people. It's accountable to State House."^{vi}

Aubrey Mvula, Decentralisation

Secretariat: "The ACB is a pet of the president. So is the Director of Public Prosecutions (DPP)."^{vii}

Patricia Kalua, Transparency International, Malawi: "Corruption is so dynamic and you can't fight it if you are not as dynamic as it is. [The ACB has to be one step ahead, and it needs resources for this]"^{viii}

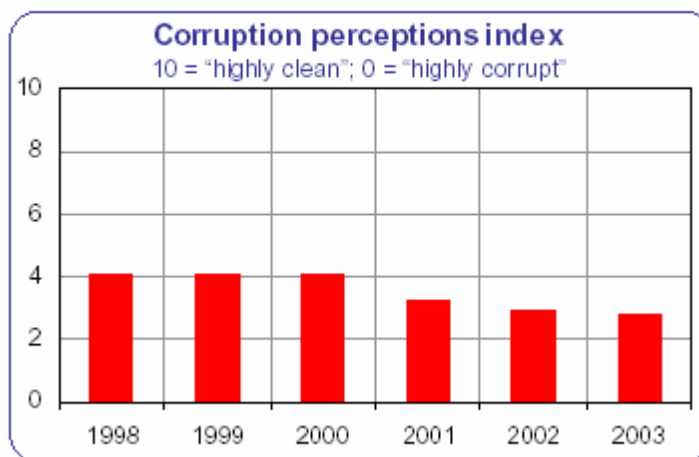
Robert Phiri, Public Affairs

Committee "I am positive about Bingu, he needs to change the spirit of the nation. ... But will ministries and departments will translate his vision into action? If he lets those who are corrupt get away with it, he will be seen to condone it. This is the time he has to be a bit radical."^{ix}

Sources: See Endnotes Appendix E

Observers believe that corruption rose steadily in Malawi under Muluzi, as shown by the chart below. It was developed by Standard Bank from Transparency International's Corruption Perceptions Index.^x

Corruption perceptions index (2003)

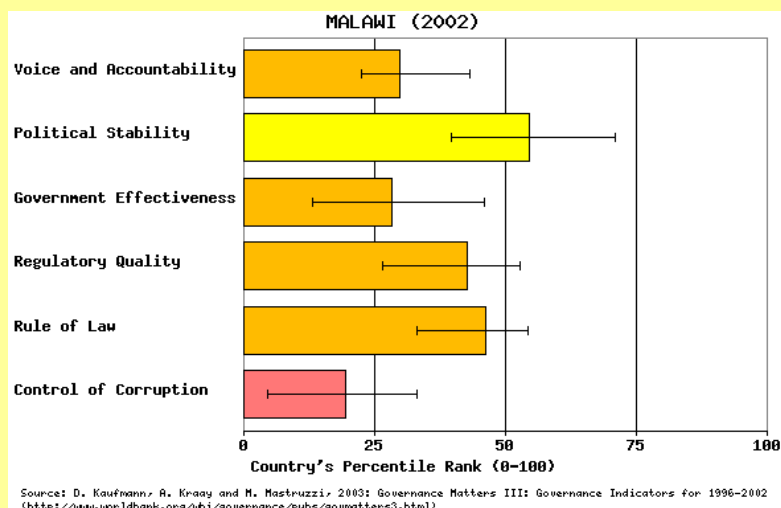


2003 Score: 2.8 where 10 is "highly clean" and 0 is "highly corrupt"

2003 Rank: 83 out of 133 countries surveyed, 1 = least corrupt, 133 = most corrupt

Source: The Transparency International Corruption Survey. It reflects the perceptions of business people, academics and country analysts. The surveys were undertaken over the past three years and no country has been included in the index without results from a minimum of three surveys.

World Bank Institute Ranking of Malawian Governance



Bars above indicate the percentage of countries in the world deemed to have worse governance than Malawi. For example, Malawi's corruption ranking of 20th percentile means 20 percent of countries have worse management of corruption and 80 percent have better.

behaviour. However, a wide variety of sources point to a growing corruption problem. Some Malawians commented in interviews that PPE (pro-poor expenditure) is often known as PPA (personal poverty alleviation).

The table on the previous page reflects the variety of comment gathered for this report in interviews, documents and surveys. The Transparency International survey data show a declining performance as judged by business, academics and country experts. The World Bank Institute chart, also in the table on the previous page, shows how Malawi ranks compared to other countries on six measures of governance. On control of corruption the country ranks below the 25th percentile, which means more than 75% of countries in the world do a better job in this area than Malawi. In several international surveys, investors rank levels of corruption as the biggest deterrent to investment in Africa. Equally, donors rank corruption as a top concern, as discussed earlier. Without investment or aid, Malawi faces a bleak and potentially volatile future. Consequently, fighting corruption ought to be a top priority for government.

Failure to Conform to Law

In the past decade, Malawi government, and particularly the presidency and senior ministers in the last administration, routinely and flagrantly failed to conform to a wide variety of laws and constitutional provisions, as discussed in the previous sections of this report. Although systems to restrain overspending and unauthorised spending exist on paper, they have had no effect in deterring such behaviour by the executive branch.

Institutional Weaknesses

Corruption is a global temptation to those with inside information, influence or government power. In small undeveloped economies government's economic power is far larger than in larger, more developed economies and the opportunities and temptations of corruption are significant. Thus institutional checks and balances ought to be designed to take cognisance of human behaviour and rely on strong independent institutions rather than the goodwill of officeholders to restrain corruption. Given the vast array of powers at the disposal of the presidency and executive branch, Malawi's system of political checks and balances are significantly inadequate to fight corruption. An effective anti-corruption system would require fundamental changes to ensure a much more robust free media, particularly more independent radio and television, a much more independent parliament and judiciary and stronger anti-corruption agencies. While well-intentioned, present institutions lack the power to compel conformance to the law. Lack of timely information, investigation and prosecution has allowed serious instances of corruption to go unpunished.

The Auditor General: This function needs to be significantly strengthened. Its reports only come out two years after the conclusion of the fiscal year. Critically, the executive branch has pervasively refused to comply with the law in responding to the Auditor General's questions on public accounts. In his most recently released report to parliament, the Auditor General compiled lists of unauthorised, unexplained or questionable spending referred these to ministry accounting officers for explanation. A total of 28 ministries and departments refused to provide any reply to the AG's inquiries during the 18 months from the close of the fiscal year to the printing of the AG's report.

Code of Conduct for Public Officials: Malawi has drafted a code of conduct for civil servants and for principal secretaries. These are a positive step, but they lack an effective enforcement body and penalties for transgressions. Critically they do not preclude public officials from engaging in business activities. Officials are prohibited from profiting from procurements or inside information that they are directly involved with. In practice corruption often involves *quid pro quo* arrangements among nominally unrelated officials who support each other's business interests. Thus a ban on civil servants involving themselves in business activity is a necessary change in the Malawi code.

Money Laundering: The APRM questionnaire asks the country to outline what steps it has taken to comply with the international anti-money laundering convention known as the Financial Action Task Force (FATF), which prescribes 40 measures to prevent illicit funds from being moved among financial institutions. Malawi is not a signatory to the FATF and does not comply with its provisions, which are an important aid to fighting corruption. In general, its provisions require banks to maintain detailed records of their customers and actively investigate unexplained transactions, particularly those moving funds outside of the country.

Declaration of Assets and Political Party Finances: Malawi falls short of APRM standards in both of these areas. Although the requirement for asset declarations is enshrined in the constitution, no enabling legislation has been passed in the past decade. The former and present president and the vast majority of

cabinet ministers, members of parliament and senior civil servants have not complied with this crucial provision, required in the APRM codes. Political party finances are also not transparent and a wide variety of reports note that the ruling party abused state vehicles, facilities and state-owned company resources to finance its election drive.

Extremely Weak Financial Reporting: As discussed in the Economic Governance section, Malawi has extremely poor financial management and public reporting of the activities of government. The lack of information prevents the public, media and parliament from playing their vital watchdog roles. Experience around the world shows that without the support of public pressure and transparency, investigation agencies and the police are easily subverted by executive branch officials intent on corruption. The late release of information and its poor quality are compounded by the lack of a Freedom of Information Act empowering interested parties to demand copies of government documents.

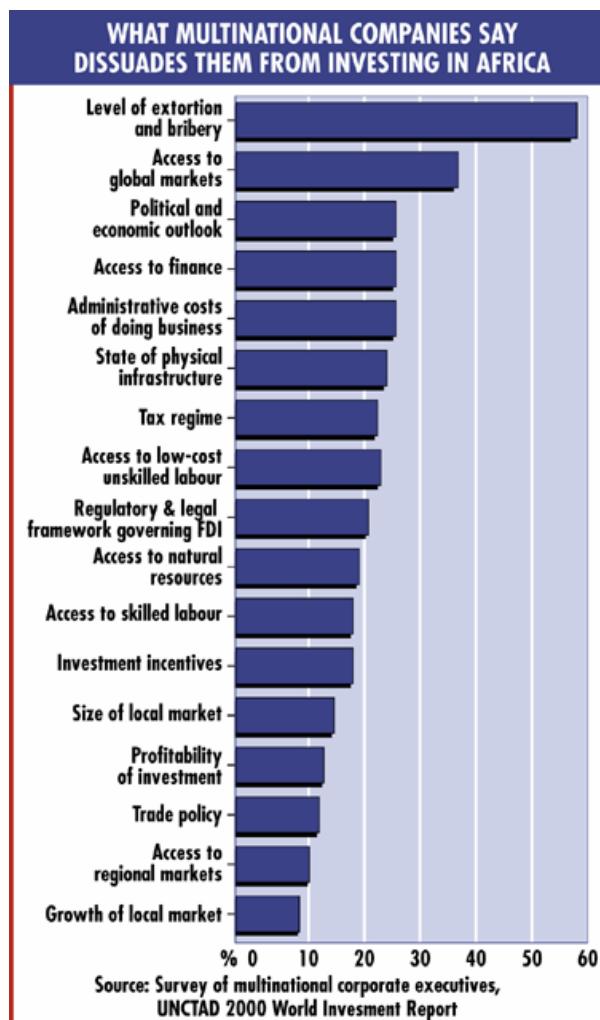
Anti-Corruption Bureau: The Anti-Corruption Bureau and the Ombudsman both play key roles. Created by an Act of Parliament in 1995, the ACB began operations in 1998. It is mandated to investigate and prosecute cases of corruption. One initial weakness was in the official definition of corruption – it only applied to bribery, and convictions were difficult to secure. An April 2004 amendment broadens the definition to include abuse of office, but the law cannot be applied retroactively.

Although independent in law, the ACB's independence has been subverted by the executive in crucial ways. The ACB is chronically under-funded and heavily dependent on donor support. In the current financial year, UK support exceeded the funds it received from Treasury. "We are eight days into the new financial year," said the ACB Director at the time he was interviewed for this report, "and we still don't know our next allocation. If it were not for DFID, we would have sent some staff on leave."⁹⁴

The Bureau has only filled 79 out of 103 positions, and believes it needs at least 125 staff. Currently all eight positions for prosecutors are unfilled, due to inability to pay competitive salaries. Government rejected requests for salary adjustments, and the ACB pays high rental in a building situated above a restaurant with poor security. It had no phones for two months in 2004, until DFID paid a MK 2 million bill. The funding difficulties also impact directly on the quality of prosecution – "Those prosecuted on corruption charges can usually afford the best lawyers and that already intimidates the ACB's lawyers, who are usually inexperienced by contrast. As a result the case is often lost before it starts."⁹⁵

"Institutions to safeguard our constitution are dependent on the executive for funding,' says Law Society President Charles Mhango. "They can't raise money independently. In a way government owns them because government funds them, and thus their independence and efficiency is compromised."⁹⁶

Another key element that curtails the power of the Bureau's operations is the legal requirement that the Director of Public Prosecutions (DPP) – who reports to the Attorney General and ultimately the President -- must give consent to ACB prosecutions. The DPP has on occasion refused consent for one of two accused in the same case. The DPP has refused consent in 37 extremely politically sensitive and high-value cases, including several senior members of the executive, or those connected to them.



⁹⁴ Mtegha HM, Director of the Anti-Corruption Bureau, personal interview, 8 July 2004.

⁹⁵ Kalua, P, Deputy Programme Manager, Promotion of Rule of Law and Improvement of Justice, EU, personal interview, 9 August 2004

⁹⁶ Mhango C, President, Law Society, telephone interview, 7 August 2004.

The Corrupt Practices Act has been amended, importantly expanding the ACB's remit beyond bribery to abuse of office, fraud and conflict of interest. However, despite the recommendation of the Law Commission, DPP consent is still required. The DPP now must offer reasons for denial within 30 days, but there is no recourse if the reasons offered are spurious.⁹⁷

Extra-judicial means also have been used to subvert the ACB. One incident cited by ACB staff deserves note. As the ACB prepared to arrest a politically well-connected city official, members of the Young Democrats forcibly occupied its offices and threatened violence while police stood by and took no action. Although the law required the suspect to be properly arraigned and given a bail hearing, the threats of what is essentially a ruling party militia forced the ACB to bargain over bail conditions outside of court.⁹⁸

Public Procurement: Government purchasing of goods and services has been identified as an area open to large-scale abuse in Malawi. A variety of sources note abuse of public tendering by senior government and civil service officials. Checks against abuses of tendering exist on paper, but in practice the systems in use in Malawi are ineffective at preventing politically well-connected officials from abusing state tendering for personal profit. Tender committees may go through long processes to vet potential suppliers, assess bids and select the best company on merit, but sources note that such decisions have been frequently countermanded or modified by the highest levels of government. The Central Tender Board was disbanded due to pervasive abuse. Currently each ministry handles its own procurement, and is supposed to be monitored by the Directorate for Public Procurement. Some argue that this system merely redistributes corruption throughout the system of governance. (See also Economic Governance and Management Section).

⁹⁷ The revised Corrupt Practices Act of 2003 requires the DPP to provide the ACB with reasons for withholding consent to prosecute within 30 day, otherwise the ACB can prosecute as if consent has been granted.

⁹⁸ Mtegha HM, Director of the Anti-Corruption Bureau, personal interview, 8 July 2004

SECTION 4: CORPORATE GOVERNANCE

Introduction

The African Peer Review Mechanism (APRM) identifies broad corporate governance objectives. It notes that good corporate governance has seven distinguishing characteristics: discipline, transparency, independence, accountability, responsibility, fairness and social responsibility. It also includes pertinent questions to measure a country's compliance with international best practices and standards.

This report will not attempt to complete the country self-assessment questionnaire but will focus on identifying significant gaps between current corporate governance practice in Malawi, and accepted international best practice.

Guided by the APRM Objectives and Questions (see Appendix B, part 3) this section will follow the five broad corporate governance objectives outlined in the APRM Country self-assessment questionnaire (see box to the right).

APRM Corporate Governance Objectives

1. Promote an enabling environment and effective regulatory framework for economic activities.
2. Ensure that corporations act as good corporate citizens with regards to human rights, social responsibility and environmental sustainability
3. Promote adoption of codes of good business ethics in achieving the objectives of the corporation
4. Ensure that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair and just manner
5. Provide for accountability of corporations, directors and officers

Source: APRM Country Self-Assessment

Promoting an Enabling Economic Environment

This objective asks how the regulatory framework facilitates commercial enterprise in the country. It requires the country under review to provide:

- A list of the forms of company ownership permitted, summaries of the laws and institutions governing publicly traded (listed) and non-traded (unlisted) companies, public corporations and financial and banking institutions.
- Details on the institutions where companies must lodge by-laws, directors, shareholder registries and financial reports and details on processes for registering and licensing companies.
- An analysis of the clarity and coherence of rules governing corporate behaviour including company law, labour law and tax law.
- An analysis of the effectiveness of the judiciary and regulators in prosecuting corporate violations of regulation or agreements.
- An analysis of the external and internal factors affecting the economy.
- An outline of the structure of the economy, including ownership patterns, stock exchange rules, percentages of ownership by various classes of investors, an inventory of the various players in the domestic investment/financial sector.
- An outline of government programmes to promote small, micro, medium and informal enterprises.

It should be noted that the APRM self-assessment questions, as presently drafted, do not expressly ask countries to conduct a structured and prioritised analysis of their problems in order of importance. However, this is clearly the intent of the explanations of both the economic and corporate governance sections and the panel of eminent persons has indicated their intention to raise a wide variety of economic governance matters not included in the formal questionnaire.

The above information and analyses were not available at the beginning of this short review so this report will focus on key observations made in the available literature and through interviews with key economic actors.

Overall, the Malawi Economic Growth Strategy is a very solid analysis of the major problems facing the economy and offers a logical, structured approach to solving the nation's most pressing problems. Unlike many countries, Malawi possesses a surplus of in-depth reports on what needs to be done to improve its

economic and corporate governance. Given the extent of existing analysis, an APRM review is, however, likely to question how far government has gone in implementing the identified reform steps.

While ostensibly embracing a free market system, the Banda regime effectively stifled entrepreneurship. Business opportunities were granted to a favoured few, with the result that private enterprise in Malawi is still in its infancy and is not properly regulated.”⁹⁹

Interviews and literature identified the following as the most important elements deserving attention under the heading of Malawi’s business environment:

Economic Volatility: Malawi has suffered from high variability in many macro-economic indicators. Exchange rates have been rapidly declining since 1999, inflation has been high and real interest rates, propelled by excessive government borrowing on domestic markets, are too high for many productive enterprises, which chokes off investment needed to revitalise commercial and agricultural enterprise.

Weak Consultation on Policy: Although the National Action Group (NAG) appears to be an effective venue for government-business dialogue on urgent issues and the joint government-NAG Economic Growth Strategy is a sign of the effectiveness of the NAG, participants note that Malawi has not effectively consulted with business in recent years on a range of crucial policy decisions. “There is a need to make [investing and operating a business] transparent and clear, so that the hoops that have to be jumped through are minimal.”¹⁰⁰

The Chamber of Commerce is weak, under funded and politicised. Significant problems exist over tax policy, inconsistent use of incentives and poorly considered participation in regional trade pacts that have disadvantaged Malawi business.

According to Illovo Sugar’s Brett Stewardson, “The [Malawi Revenue Authority] MRA’s interpretation of tax law changes when the officers or administrators change. Companies are then slapped with penalties as though they are tax evaders.”¹⁰¹ Evidently the MRA needs to outline clearly to businesses what their expectations are to avoid differing interpretations of the tax law.

The use of incentives is another thorny issue, with alleged inconsistencies and erratic application of policy. For example, at the NAG meeting on 8 July 2004, questions were raised about the alleged tax break provided to South African supermarket chain Shoprite to invest in Malawi, with participants asserting that Shoprite’s entry has actually stifled other local business. Participants also noted that suggestions to provide incentives for new ventures in existing sectors have provoked no response from government. “The Chamber of Mines suggested a tax holiday for new mining ventures, similar to that in Australia, where the indirect tax revenues from employees and associated industries doubled as a result.”¹⁰²

On trade pacts that have had negative effects on local business, bilateral agreements with Zimbabwe were cited in several instances. The lack of information available to the public and the generally poor levels of awareness are also a problem. “Trade literacy is crucial to economic governance,” said MEJN Programmes Director Mavuto Bamusi. “Bilateral and multi-lateral trade agreements signed by the government must be made accessible to the public, since these have often been detrimental to Malawians.”¹⁰³

Expensive Business Basics: The Malawi Economic Growth Strategy, NAG participants and interviews emphasised the urgent need for Malawi to cut the costs of doing business by improving transport infrastructure, removing cartels and restrictions driving up the costs of transport, expanding the supply of electricity and improving telecoms and water utilities.

Once again the level of knowledge of new entrants into the market was highlighted as an impediment. “Many don’t know the cost effective legal procedures. To incorporate a company... costs about Mk8,600. Yet lawyers routinely ask for and receive a percentage of the authorised share capital. All you need is two one-kwacha shares. In a recent privatisation deal, a lawyer suggested capitalisation at Mk2 billion, which meant a fee of about Mk 250 million for the lawyer!”¹⁰⁴

Monopolies on infrastructure service provision (particularly in the telecoms and energy sectors) were also cited as obstacles, together with the poor quality of such services. During this study, researchers experienced

⁹⁹ van Dijk G, Representative, World Food Programme, Malawi, personal interview, 9 July 2004.

¹⁰⁰ Chikaonda M, Press Corporation, National Action Group Meeting, Lilongwe, 8 July 2004.

¹⁰¹ Stewardson B, Illovo Sugar, National Action Group Meeting, Lilongwe, 8 July 2004.

¹⁰² Garden N, President, Malawi Chamber of Mines, National Action Group Meeting, Lilongwe, 8 July 2004.

¹⁰³ Bamusi M, Programmes Director, Malawi Economic Justice Network (MEJN), personal interview, 14 July 2004.

¹⁰⁴ Carpenter K, Partner, PriceWaterhouseCoopers Blantyre, personal interview, 14 July 2004.

frequent power cuts in the capital city as well as difficulties in communicating via fixed line telephone networks, which are reportedly overloaded at present. The poor transport infrastructure and the concomitant increased cost of raw materials as well as the cost of getting goods to market also inhibit new ventures. “The production base and production costs here are higher, e.g. building roads in Malawi costs more than in neighbouring countries, thus the price of the eventual product is not competitive.”¹⁰⁵

Improve the Regulatory Environment: The bureaucratic constraints and the poor regulatory environment, particularly the implementation of rules, also garnered frequent critical comment. “The laws as they are established are not really a problem,” said Kevin Carpenter of PriceWaterhouseCoopers. “Some are poorly drafted – for example, the Tax Act lacks definitions. But the bigger problem is the application of these laws....How reliable is the law? Is someone going to change it on a political whim? And is the law going to be applied fairly and evenly to all?”¹⁰⁶

The Chairman of the Society for Chartered Accountants (SOCAM), remarked, “We have made commendable gains in terms of listed companies because it is mandatory for them to comply with corporate governance codes and ethics, but then how many companies do we have that are listed? For the remainder, compliance with corporate governance codes and ethics remain voluntary.”¹⁰⁷ Currently the Malawi Stock Exchange which was inaugurated in March 1995 has only nine companies listed, so most businesses actually fall outside these parameters.

Two new research studies on business impediments rank Malawi ranks below neighbouring states and other low-income countries outside Africa with which it potentially competes for investment. Given Malawi’s high transport costs and land-locked status, it must significantly outperform its neighbours to attract investment.

The table below and the graph on the next page are from *Doing Business in 2004*,¹⁰⁸ a global study of the costs of regulation on business by the World Bank. The charts on pages 46-48 are from the World Economic Forum’s global executive survey on factors impeding investment. According to the World Bank study, it takes an average of 108 days to enforce a contract in Malawi, but costs an average of \$920 (about Mk104,000) to do so, much higher than in most other African countries. To start a business it takes 11 distinct procedures in Malawi. While the time and the costs of starting a business are similar to African averages, the amount spent doing so costs 25% more than what the average Malawian earns in a year.

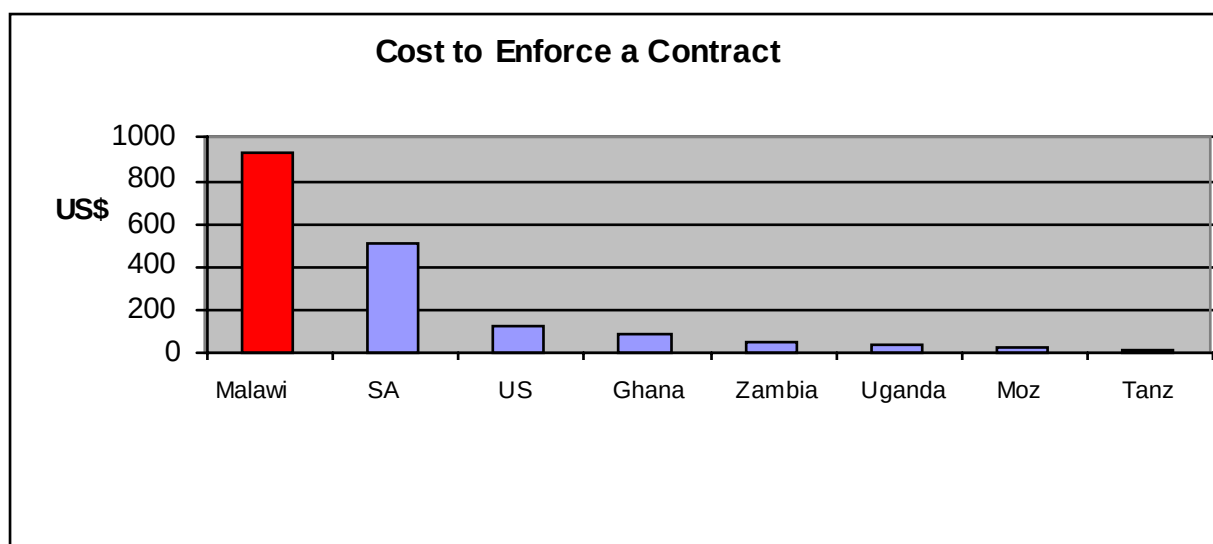
	<i>Starting a Business</i>				<i>Enforcing a Contract</i>			
	No. of Procedures	Days	Cost (US\$)	Cost (% per capita income)	No. of Procedures	Days	Cost (US\$)	Cost (% per capita income)
<i>Botswana</i>	10	97	1076	36.1	22	56	..	..
<i>Ghana</i>	10	84	302	111.7	21	90	80	23.8
<i>Malawi</i>	11	45	201	125.4	16	108	920	520.6
<i>Mozambique</i>	15	153	209	99.6	18	540	20	9.1
<i>Namibia</i>	10	85	332	18.7	..	..	..	..
<i>South Africa</i>	9	38	227	8.7	26	207	510	16.7
<i>Tanzania</i>	13	35	557	199	14	127	10	3.8
<i>Uganda</i>	17	36	338	135.1	16	99	30	10
<i>Zambia</i>	6	40	80	24.1	16	188	50	39.5
<i>USA</i>	5	4	210	0.6	17	365	120	0.4
Source: <i>Doing Business in 2004 – Understanding Regulation</i> , World Bank, 2003, pp 118, 124								

¹⁰⁵ van Dijk G, Representative, World Food Programme, Malawi, personal interview, 9 July 2004.

¹⁰⁶ Carpenter K, Partner, PriceWaterhouseCoopers Blantyre, personal interview, 14 July 2004.

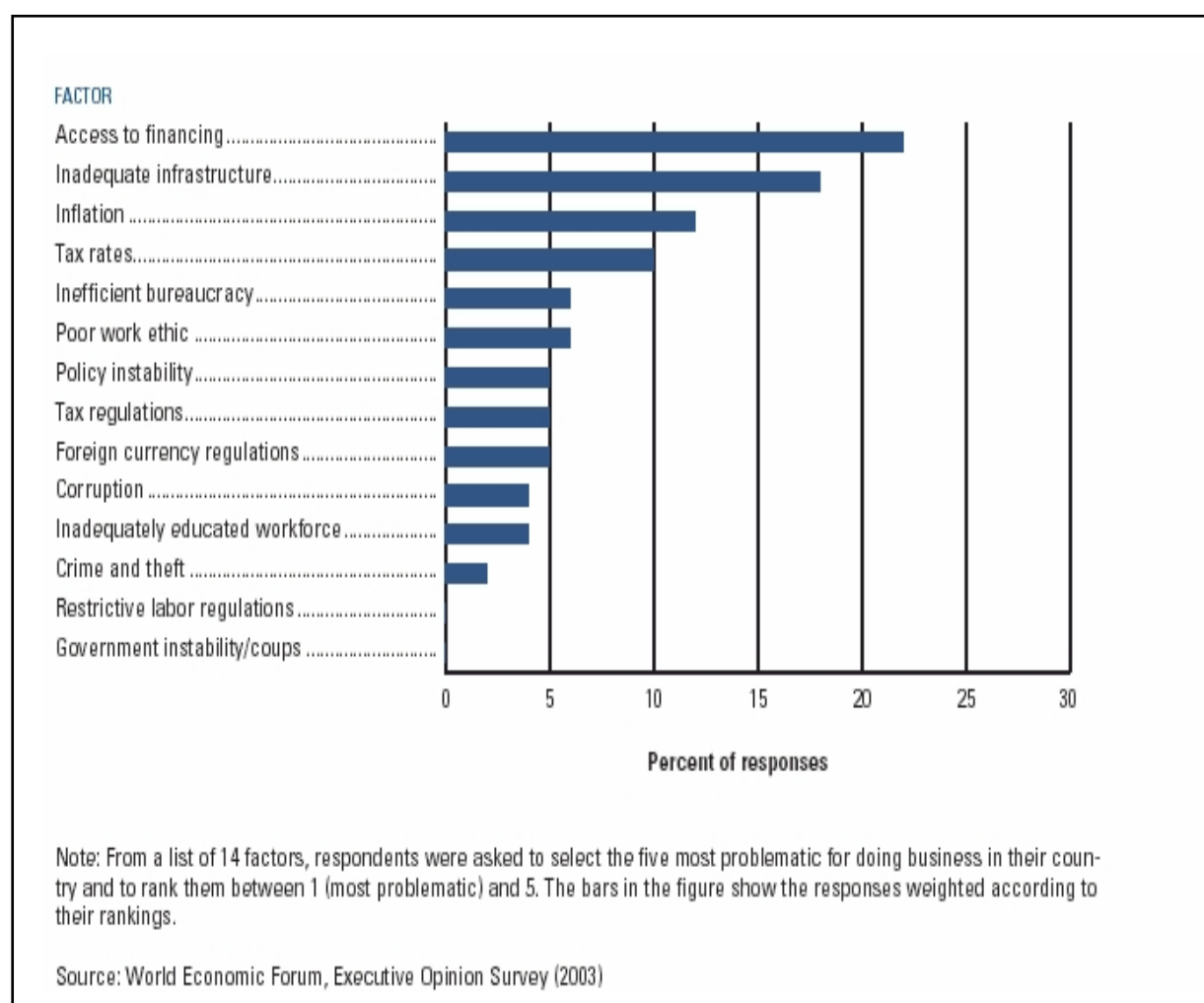
¹⁰⁷ Tembo M, President, Society of Accountants in Malawi (SOCAM), personal interview, 2 July 2004.

¹⁰⁸ World Bank, *Doing Business in 2004 – Understanding Regulation*, 2003.



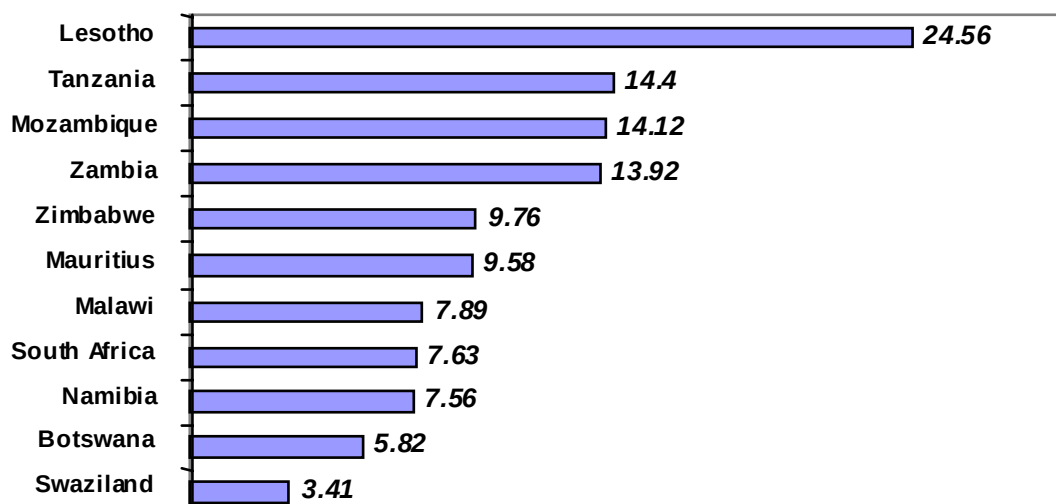
Source: *Doing Business in 2004 – Understanding Regulation*, World Bank, 2003, pp 118, 124

Most Problematic Factors Impeding Business in Malawi



Percent of Executive Time Spent on Permits

What percentage of senior management's time is spent with officials negotiating or obtaining licenses, regulations, permits or tax assessments?

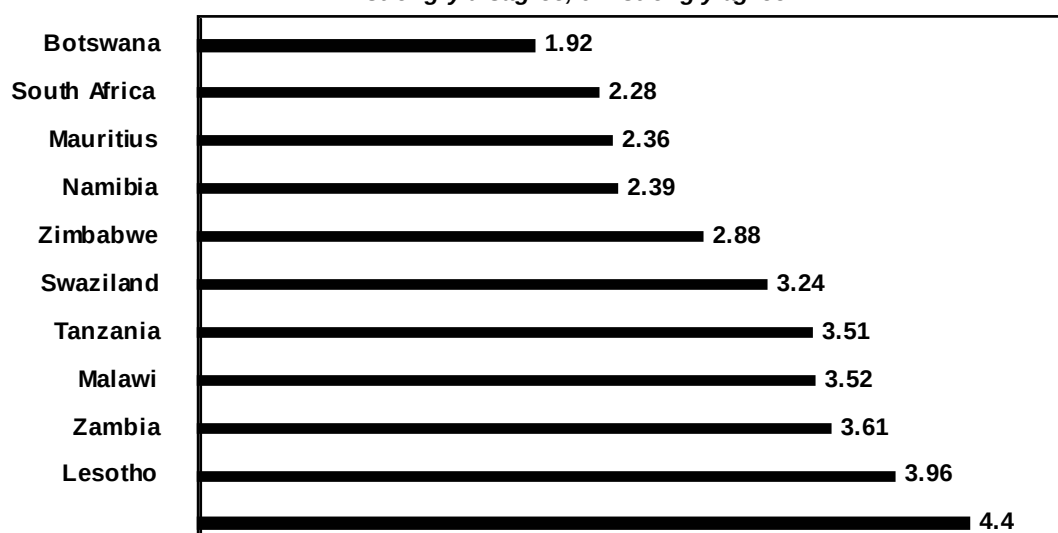


Source: World Economic Forum, *Africa Competitiveness Report 2000/01* survey of business executives.

Trust in Court System to Enforce Contracts

The legal system in your country is not effective at enforcing commercial contracts?

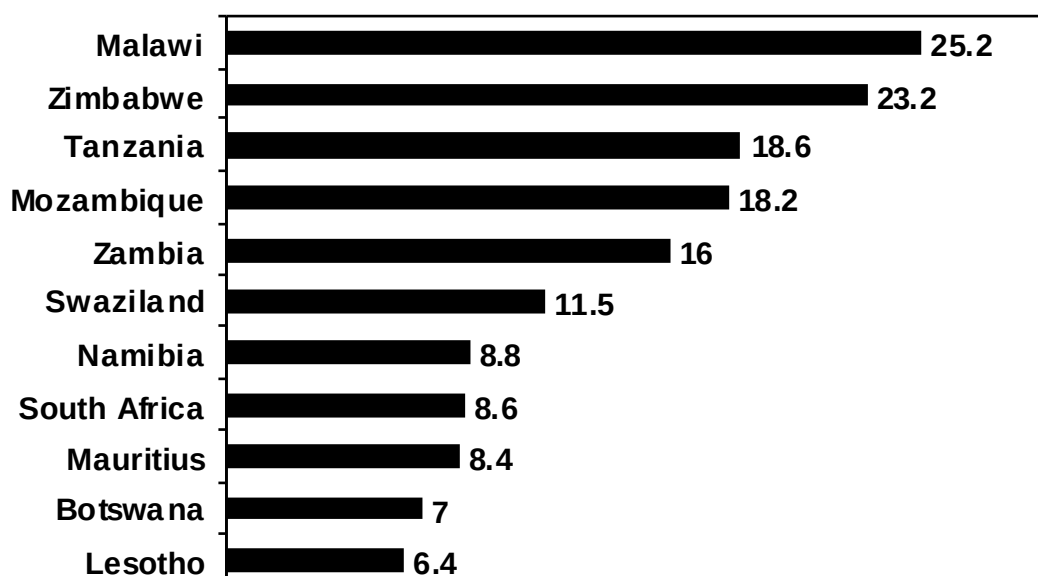
1 = strongly disagree, 6 = strongly agree



Source: World Economic Forum, *Africa Competitiveness Report 2000/01* survey of business executives.

Days Needed to Clear Customs

If you import, how long does it typically take from the time your goods arrive at their port of entry until the time you can claim them from customs?



Source: World Economic Forum, *Africa Competitiveness Report* survey of business executives.

Codes Exist But Are Not Applied: The Companies Act of 1984 provides the main regulatory framework for commercial enterprises in Malawi.¹⁰⁹ However “there is minimal incorporation of corporate governance codes in the act.”¹¹⁰

These sentiments are shared by the Corporate Governance Task Force in their Code of Best Practice for Corporate Governance in Malawi report which recommended that “The Ministry of Commerce and Industry in consultation with relevant stakeholders should initiate the revision of the Companies Act 1984 to reflect the current pressures on entities to be more transparent and the changes taking place in the world and the region.”¹¹¹

Written and Unwritten Investment Incentives: Malawi has two types of investment incentives. The first are clearly documented in relevant pieces of legislation such as the Income Tax Act, the Investment Promotion act and the Customs and Excise Act which are publicly available from the Malawi Investment Promotion Agency (MIPA). The second type are the “discretionary incentives” whose discretion is vested with the Minister of Finance. The opaque awarding of discretionary incentives has led to a lot of public outcry in recent years:

Land Ownership: Recent recommendations that foreigners should not be allowed to own land in Malawi has also led to the questioning by potential investors of the government’s commitment to providing security of property rights.

¹⁰⁹ Other important acts include: The Finance and Audit Act which provide for the administration, control and audit of the public finances of Malawi and the control of the powers of for statutory bodies;

The Banking Act which provides for the regulation of the business of banking in Malawi conducted by commercial banks and financial institutions and to provide for Reserve Bank supervision over banking business;

The Reserve Bank of Malawi Act which establishes the country’s central bank;

The Capital Market Development Act which provides for the development of a capital market; and

The Government Securities Regulations Act which provides for the trade in government securities.

¹¹⁰ Kasambara R, Law Consultant, personal interview, 11 July 2004.

¹¹¹ Corporate Governance Task Force, Code of Best Practice for Corporate Governance in Malawi, 31 October 2001.

Ensuring Good Corporate Citizenship

Outdated Corporate Law: Legislation on corporate governance *per se* in Malawi is still in its developmental stages. “[Corporate governance] has not come to the fore in public debate,” a principal secretary said. “It’s not possible to hold private enterprise accountable, and there is always an aspect of secrecy.”¹¹²

A leading commercial lawyer pointed out that Malawi still uses a 20-year old Companies Act that makes scant reference to corporate governance codes and urgently requires updating to protect the rights of the third party.¹¹³ In 1998, the Society of Accountants in Malawi (SOCAM) facilitated the formation of the Corporate Governance Task Force (CGTF), mandated to draw up a code of best practise for corporate governance in Malawi, which was finally completed three years later, on the 31st October 2001. Adoption of this code by corporations is encouraged by the Task Force but remains voluntary. Amongst its observations and recommendations:

- The CGTF noted the Registrar General’s lack of capacity to follow up on enterprises that do not comply with the provisions of the Companies Act.
- The CGTF recognised the inadequacy of the Companies Act of 1984 in addressing the transparency of corporations, and said that Malawi’s business laws were not keeping pace with global and regional corporate governance trends and standards.
- The CGTF also noted the absence of an Institute of Directors to train, develop and provide support to directors in Malawi.
- An Institute of Accountants has been proposed. This could incorporate the activities of the Society of Accountants Malawi, the Public Accountants Examinations Council, the Malawi Accountants Board and Malawi College of Accountants.¹¹⁴

Lack of Parastatal Regulation: The Ministry of Finance Financial Accountability Action Plan notes that “the most obvious gap in corporate governance in Malawi is associated with statutory bodies and SOCAM (Society of Accountants Malawi) has been quite frank in acknowledging that its long-term goal is to see mandatory governance standards applied in that area.”¹¹⁵

“In terms of enforcing corporate governance codes and ethics one needs to differentiate between the private and statutory sectors. The private sector largely complies to the codes and ethics of corporate governance but with the statutory corporations you really can’t tell”.¹¹⁶

Indeed, if government consistently flouts its own laws; is it fair to expect business to comply? One illustrative example is that quoted by the Economics Association regarding the 2002/2003 Budget, which, they say, “is not consistent with the TEVET Levy Law. The estimated expenditure for salaries for the civil service is Mk9.3 billion yet the estimate indicates payments to TEVET by government to be Mk30 million which is not 1.0% of the wage bill. Are we sending the right signal to the private sector to comply with the law?”¹¹⁷

Since the parastatal sector comprises a large part of Malawi’s economy, government needs to entrench corporate governance codes and ethics in this sector. One suggestion for doing so was to appoint members of the Institute of Directors as board members of the parastatals.¹¹⁸

Parastatal companies are also frequently cited in human rights, election observer and media reports for diverting company personnel, transport and other assets to support ruling party election campaigning. This represents a significant violation of election law, fair democratic practice and fiduciary duty by parastatal managers.

Need for Insurance and Pension Regulation: The Financial Accountability Action Plan notes that there is a lack of proper regulation over pension investments, payout procedures and safeguards in the event

¹¹² Kutengele M, Principal Secretary, Ministry of Economic Development and Planning, personal interview, 7 July 2004.

¹¹³ Kasambara R, Law Consultant, personal interview, 11 July 2004.

¹¹⁴ Ministry of Finance and Economic Planning, *Malawi Financial Accountability Action Plan*, 11 March 2003, Section 2.3, point 52.

¹¹⁵ *Ibid*, Section 3.2

¹¹⁶ Chapola E, Former Vice-President of Insurance Association of Malawi, personal interview, 13 July 2004.

¹¹⁷ Economics Association of Malawi, Initial Comments on the 2002/2003 Budget.

¹¹⁸ Tembo M, President, Society of Accountants in Malawi (SOCAM), personal interview, 2 July 2004.

schemes collapse. The governing legislation is outdated. “The insurance act currently in use is from 1957 and is in the process of being revised. But ...it has been in draft form for more than ten years now.”¹¹⁹

There is no separate act for life insurance and pensions, instead some aspects are contained within the insurance act and others are in the taxation act, resulting in misinterpretation and confusion. For example, the new legislation imposing a surtax on non-life insurance, which came into effect in July 2003, states that once a policy has been sold, the insurance company must collect and submit 17.5% of the cost of the policy to the receiver of revenue as surtax, within 30 days from the date of sale. “In essence what they are saying is that they want to make insurance a cash business which is not reasonable because some companies have big firms that buy policies totalling to say Mk20 million and it is unreasonable to ask them to pay the whole amount upfront”, said Eric Chapola. Former Vice-President of the Insurance Association of Malawi.¹²⁰

Fraud in the insurance sector is also a problem. “Some companies, especially parastatals, deduct life insurance premiums from their employees,” said Chapola, “Yet they either don’t submit the premiums to the insurance firms or in the instances that they submit, they submit them late. This is tantamount to theft.”¹²¹ The University of Malawi was cited as one example that has large insurance premium arrears. Fraudulent motor vehicle accident insurance claims have also come under the spotlight, with alleged perpetrators being shielded as a result of their political connections.

The insurance sector is also wary of government’s plans to establish a workers’ compensation fund, pointing out that the state does not have the capacity to efficiently manage such a fund and that it will be vulnerable to political manipulation and fraud, as has occurred in South Africa.

Funding Limits Inspection of Labour Laws: Sections 8 to 20 of the Employment Act of 2000 provide for the appointment of a labour commissioner and other public officers to oversee the effective administration and application of the Act. Labour officers are generally tasked with frequently and thoroughly inspecting places of work; accordingly advising employers, employees and other persons on labour matters; and making proposals for the periodic review of the Employment Act. But the cash-strapped Ministry of Labour and Vocational Training often fails to effectively carry out its mandate.

Weak and Marginalised Unions: All persons shall have the right to form and join trade unions or not form or join trade unions” says Malawi’s Constitution,¹²² and the Bill of Rights in Chapter III protects many rights related to workers. Yet trade unions have historically been very weak in Malawi, and have been subverted by political manipulation.

The Malawi Congress of Trade Unions (MCTU) has had its operations crippled due to internal wrangling. The union previously elected a president who had previously been convicted on corruption charges, yet the law prohibits such a person from holding public office for at least seven years.

The new union president conceded that Malawi’s trade unions are relatively weak, despite their protection under the law. Government has failed to consult with labour on key legislation, he says. “Two years ago, government gazetted the severance pay and pension act without consulting trade unions.”¹²³ Previously, people who lost their jobs received both severance and pension packages, but under the new act they received only the higher of the two, in many cases losing the pensions to which they had contributed. Action by the unions resulted in a recall of this legislation.

Under-Resourced Industrial Court: Interviewees agreed that in theory, enforcing a commercial contract in Malawi is simple, since the law facilitates this. In practice however, they say the situation is different. “Commercial contracts can be enforced, it is possible, but then the courts do not have the capacity which results in loss of money...due to delays”.¹²⁴ Malawi’s Industrial Court is failing to function efficiently and has a mounting backlog of cases. Lack of capacity, non-computerisation and general incompetence by the courts frequently results in the delay of resolutions, the cost of which is usually loss of resources that could have been invested elsewhere during the same period. According to the Malawi Congress of Trade Unions, each year the industrial courts handle an average of “over 1500 cases but there are only two judges.”¹²⁵

¹¹⁹ Chapola E, Former Vice-President of Insurance Association of Malawi, personal interview, 12 July 2004.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² The Constitution of the Republic of Malawi, revised January 2004, Chapter III, paragraph 31 (2).

¹²³ Kalimanjira A, Secretary General of the Malawi Congress of Trade Unions, personal interview, 9 July 2004.

¹²⁴ Chapola E, Former Vice-President of Insurance Association of Malawi, personal interview, 12 July 2004.

¹²⁵ Kalimanjira A, Secretary General of the Malawi Congress of Unions, personal interview, 9 July 2004.

Low Awareness and Enforcement Of Corporate Social Responsibility: Malawi's corporate social responsibility standards are rudimentary and largely based on "cheque book philanthropy"¹²⁶ – where executives donate money or products arbitrarily and often to secure some business advantage.

Procurement Procedures Permit Executive Tampering: Despite existing legislation, regulation is subject to executive intervention. The Directorate of Public Procurement has to report to the Office of the President and Cabinet and the President has the final say on procurement issues.

Key Financial Institutions Have Independence Compromised: Malawi's central bank lacks independence and is exposed to political interference. Contrary to international standards, the Reserve Bank governor can be fired at will by the president without the approval of parliament. The president has personally intervened with the governor, successfully pressing him to reverse Reserve Bank decisions to close foreign exchange bureaux that violated regulations to evade tax and foreign exchange regulations. "Banking supervision has had interference from the Ministry of Finance in some of its licensing and enforcement actions and in its rules promulgation."¹²⁷ See also Corruption section of Political Governance.

Shareholder Rights: The 1998 Code of Best Practice for Corporate Governance in Malawi lays out shareholders rights in listed and unlisted companies, and recognises the rights of stakeholders. But this code remains voluntary.

¹²⁶ Tembo M, President of Society of Accountant in Malawi (SOCAM), personal interview, 2 July 2004.

¹²⁷ International Monetary Fund, *Republic of Malawi: Steps For Improving Monetary Operations, Payments Systems, and Banking Supervision*, February 2004, p 7.

THE CONSENSUS POSITION: CORPORATE GOVERNANCE

Dr M Kutengele, Ministry of Economic Development and Planning: "Corporate governance is a new issue in Malawi. It has not come to the fore in public debate. It's not possible to hold private enterprise accountable, and there is always an aspect of secrecy."ⁱ

Morgan Tembo, Society of Accountants in Malawi (SOCAM): "Corporate Social Responsibility in Malawi is merely cheque book philanthropy which ignores the community's needs. "We still have a long way to go on corporate governance in Malawi and that is a fact."ⁱⁱ

Kevin Carpenter, PriceWaterhouse Coopers: "On the regulatory environment in Malawi – the laws as they are established are not really a problem. Some are poorly drafted – for example, the Tax Act lacks definitions. But the bigger problem is the application of these laws....How reliable is the law? Is someone going to change it on a political whim? And will the law be applied fairly and evenly to all?"ⁱⁱⁱ

Mavuto Bamusi, Malawi Economic Justice Network (MEJN): "Trade Literacy is crucial to economic governance ... Bilateral and multi-lateral trade agreements signed by the government must be made accessible to the public, since these have often been detrimental to Malawians"^v

Jason Agar, National Action Group: "The government needs to gear some basic incentives that encourage capital investment in small business. For example, the allowances for computer renewals are ungenerous and do not encourage regular upgrading."^v

Kevin Carpenter, PriceWaterhouse Coopers: "With access to credit, the issues are availability, and can anyone afford it? I would hate to be in microfinance – that's just giving money away, with no prospect of it being paid back."ⁱ

Gerard van Dijk, World Food Programme "Private enterprise in Malawi is in its infancy; it was suppressed by the Banda regime andis not well regulated now."ⁱⁱ

Morgan Tembo, SOCAM: We have made commendable gains in terms of listed companies because it is mandatory for them to comply with corporate governance codes and ethics, but then how many companies do we have that are listed? For the remainder, compliance with corporate governance codes and ethics remain voluntary."^{viii}

Eric Chapola, Insurance Association of Malawi: "In terms of enforcing corporate governance codes and ethics one needs to differentiate between the private and statutory sectors. The private sector largely complies to the codes and ethics of corporate governance but with the statutory corporations you really can't tell."^{ix}

Kevin Carpenter, PriceWaterhouse Coopers: "The Malawi Revenue Authority does not understand its tax law. This causes inefficiency, and staff lack training. The head of the MRA is a political appointment with no prior tax experience. The government is bankrupt, and is pressuring the MRA to squeeze businesses. There is a desperation to get cash into the coffers."^x

Matthews Chikaonda, Press Corporation: "There is a need to make [investing and operating a business] transparent and clear, so that the hoops that have to be jumped through are minimal."^{xi}

Kevin Carpenter, PriceWaterhouse Coopers: "Many don't know the cost effective legal procedures. To incorporate a company... All you need is two one-kwacha shares. In a recent privatisation deal, a lawyer suggested capitalisation at Mk2 billion, which meant a fee of about Mk 250 million for the lawyer!"^{xii}

Eric Chapola, Insurance Association of Malawi: "The insurance act currently in use is from 1957 and is in the process of being revised. But you see it has been in draft form for more than ten years now ..."^{xiii}

Morgan Tembo, SOCAM: "If NEPAD has any capacity building programme in terms of enforcing, broadening and deepening corporate governance then maybe the IOD (Institute of Directors) can benefit from this in the interim ... because the issue (corporate governance) affects every aspect of the economy, it's rule of law, its health, it's economics."^{xiv}

George Thindwa, ECAMA: "Corporate governance ... hmmm ... it's very difficult really. You can only talk of it if you have done something about it so as not to goof in your assessment. Koma a SOCAM nde the competent officials tisanamepo (but SOCAM officials are the only competent officials on this we don't want to start lying here.)"^{xv}

Eric Chapola, Insurance Association of Malawi: "Commercial contracts can be enforced,... but then the courts do not have the capacity which results in loss of money, investments and justice due to delays."^{xvi}

Brett Stewardson, Illovo Sugar: "The MRA's interpretation of tax law changes when the officers or administrators change. Companies are then slapped with penalties as though they are tax evaders."^{xvii}

Dr M Kutengele, Ministry of Economic Development and Planning: "Political will needs to compliment the system otherwise the system is useless."^{xviii}

Sources: See endnotes in Appendix E

SECTION 5: SOCIO-ECONOMIC DEVELOPMENT

Introduction

The APRM emphasises the need to address poverty by accelerating socio-economic development and highlights the dangers of ignoring the social sector when implementing economic reforms. The APRM Self-Assessment Questionnaire has the objectives listed in the box at right.

Among the principal APRM goals is the attainment of the UN Millennium Development Goals, a set of globally agreed targets to improve quality of life and reduce poverty by half by 2015. This review has not conducted a comprehensive examination of progress toward each MDG, but a variety of interviews and studies note that Malawi is broadly moving away from the MDGs rather than closing the gaps (see table page 56). On a wide variety of social-services, Malawi's performance is declining and poverty increasing. The most critical issue is the failure to stick to national budgets and the consequent failure to secure donor budget support. Unless there is a rapid turnaround, all majortrends point to potential calamity.

"Malawi is getting poorer and poorer," warned Gerard van Dijk of the World Food Programme. "This government might have the last chance to get it right before people revolt. Violence is not far away when people are desperate."¹²⁸

The following sections deal with the biggest issues presented to researchers through interviews and available documentation. The list is not exhaustive, but suggests priority areas where an actual peer review would likely expect remedial action and a schedule of performance improvements via the National Programme of Action.

Management Issues

Commendable Poverty-Fighting Goals, Faulty Planning and Implementation: Malawi's inability to accurately budget and control spending is directly harming its efforts to fight poverty. Lack of clear budgetary and performance information and problems associated with inaccurate revenue and expenditure forecasting under the cash budgeting system combine to seriously undermine effective management of poverty reduction programmes. Managers cannot plan ahead nor determine which approaches deliver best value for money.

Sources interviewed on the Malawi's Poverty Reduction Strategy Paper (MPRS) describe it as generally sound. However, it fails to deal with Malawi's severely constrained resources by distinguishing between nice-to-have programmes and those that will make a more immediate difference to economic growth. As a principal secretary in the government said, "In the MPRS, the question is: what useful things have you done with the little that you have? What is the quality of expenditure of limited resources? We spend 70% at headquarters, and this money is still wasted."¹²⁹

The MPRS has also been affected by the poor fiscal discipline that is prevalent within government. According to Paul Kwengwere of Action Aid, Malawi, "For the past ten years, many institutional structures have been put in place; Malawi's policies are excellent – better than most African countries, but when it

APRM Objectives: Socio-Economic Development

1. Promote self-reliance in development and build capacity for self-sustaining development.
2. Accelerate socio-economic development to achieve sustainable development and poverty eradication.
3. Strengthen policies, delivery mechanisms and outcomes in key social areas including education; combating of HIV/AIDS and other communicable diseases.
4. Ensure affordable access to water, sanitation, energy, finance (including microfinance); markets, ICT, shelter and land to all citizens, especially the rural poor.
5. Progress towards gender equality in all critical areas of concern, including equal access to education for girls at all levels.
6. Encourage broad-based participation in development by all stakeholders at all levels.

Source: APRM Country Self-Assessment

¹²⁸ van Dijk G, World Food Programme, personal interview, 9 July 2004.

¹²⁹ Kutengele M, Principal Secretary, Ministry of Economic Development and Planning, personal interview, 7 July 2004.

comes to implementation, it all just disappears. People who were positive that Malawi could achieve a lot went into government and their commitment and political will just evaporated.”¹³⁰

A key factor in the dysfunction is the combination of incentives within the bureaucracy. The cash budgeting system and fiscal indiscipline effectively render the budget meaningless with the “real” budget being the allocations of cash made behind the scenes through lobbying and pressurising the treasury. Ministries inevitably compete for resources. The widespread knowledge among officials that the budget is artificial leads officials to aggressively spend money on optional things in the knowledge that the Treasury will be more likely to grant additional funds late in the year for genuine social needs.

As former minister of finance Matthews Chikoanda recalled, “When ministers get money they go first to spend money in areas they may have to fight over, such as foreign travel and workshops. What they leave without funding are soft areas like medicines in hospitals where they know people can’t oppose the call for more funding. The incentives are the exact opposite of what they should be.”¹³¹

Overall, the PRSP is divorced from the national budgeting process and revenue forecasts. According to MEJN’s analysis, total pro-poor expenditure provisions increased marginally from Mk10,292,300,000 in 2002/03 to Mk10,729,186,540 in 2003/04.¹³² The Economics Association of Malawi (ECAMA) noted that “there was great concern that actual expenditure on the ground deemed to be pro-poor [as opposed to the budget allocation] has tended to be very low and unrealistic.... In some social sectors, expenditures in real terms were actually declining and its quality was low and in other cases, allocated amounts are not disbursed at all. ... [It is] doubtful as to whether the country would achieve the Millennium goals and ultimately reduce poverty to appreciable levels.”¹³³

The poverty strategy ought to be integral to the budget formulation process, and this is acknowledged by the government. When presenting the 2002/3 budget, government emphasised that “the MPRS is not an additional or separate poverty fund. Rather, it is a tool for ensuring that all Government expenditure is poverty focused, and that all expenditure by co-operating partners is in line with Government objectives. Ultimately, the objective is that the Government implements only the MPRS.”¹³⁴ In practice, the MPRS is a kind of addendum that is force-fit onto the budgets and only loosely related to the actual allocations made by the ministry of finance. (See discussion of HIPC funds in Economic Governance section above.)

Government produced two review reports – for the first six months and the first year of MPRS implementation respectively – both indicate that implementation has been slow since funds allocated for pro-poor activities have been substantially lower than planned.¹³⁵ Donors interviewed for this study noted that the quality of the reporting was poor and statements claiming progress were not backed by evidence. Both the six-monthly and full-year reviews of the MPRS fail to monitor the poverty reduction objectives

“The creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States. ...

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, ... access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”

– UN Declaration on the Right to Development, 1986

At the heart of Africa's development objectives must lie the ultimate and overriding goal of human-centered development that ensures the overall well-being of the people.

– African Charter For Popular Participation In Development And Transformation, 1990

Halve, by the year 2015, the proportion of the world's people whose income is less than 1 dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people without access to safe drinking water

– Objectives of Millennium Development Goals and WSSD Plan of Implementation, 2002

¹³⁰ Kwengwere P, Programme Development Manager, Action Aid, Malawi, personal interview, 12 July 2004.

¹³¹ Chikaonda, Matthews, former Minister of Finance and Chief Executive, Press Corp., personal interview 12 August 2004

¹³² Response to Malawi National Draft Budget 2003/2004, Malawi Economic Justice Network, 2003, p 13.

¹³³ *Pro-Poor Programmes In Malawi And Their Impact On Poverty Reduction*, report from September 2002 conference in Lilongwe, from ECAMA website, www.ecama.sdn.org.mw/propoor.htm

¹³⁴ National Assembly, Budget and Finance Committee of Parliament, *Report on the 2003/04 Budget*, 2003.,

¹³⁵ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*.

and to adequately assess the impact of MPRS on key poverty indicators. They also do not reflect the severity of the budget crisis and the extent to which interest payments are rapidly accelerating.

THE CONSENSUS POSITION: POVERTY REDUCTION

Paul Kwengwere, Action Aid: "Structures are in place, the percentage given to development ministries is good, but allocation within the ministries is the problem. In many, over 60% is spent on overheads. Ministries need to break down budgets and monitor how much trickles down to the field worker level. It is hard to follow the money and dig down to find whether it benefited the poor." i

Mavuto Bamusi, MEJN: "Government ministries have not bought into the MPRS sufficiently ... we continue to have lack of compliance with implementation and reporting ... The monitoring plan, developed in mid-2003 clarifies poverty indicators and has civil society participation; but has not yet been passed by cabinet since it would promote transparency and accountability too much." ii

National Assembly: "A preliminary analysis of allocations to PPEs gave the impression that the [2003/2004] budget may not be for pro-poor growth" iii

Paul Kwengwere, Action Aid: "The MPRS is not perfect... at the last minute areas like 'statehood expenditure', which is for presidential travel and houses, were imported. When civil society questioned this, it was explained as 'support mechanisms for poverty to be reduced'." iv

MEJN: "Many deserving activities will suffer the brunt of the Budget's elitist orientation. Who is this growth intended to benefit if not people in the villages?" v

Dr M Kutengele, Ministry of Economic Development and Planning: "In the MPRS, the question is: what useful things have you done with the little that you have? What is the quality of expenditure of limited resources? We spend 70% at headquarters, and this money is still wasted." vi

National Assembly: "HIPC Resources are supposed to be supplementary to Government funds and should not be considered as a substitute. The experience this year has shown that Government reduced expenditure on budget lines that had HIPC allocations. In other cases, Government stopped direct funding of poverty interventions and relied completely on HIPC resources." vii

International Monetary Fund: "implementation of the MPRS has been unsatisfactory as actual funds allocated for pro-poor activities have been substantially lower than envisaged in the strategy paper... diversion of funds from pro-poor activities to finance other recurrent transactions" viii

MEJN: "The government did not spend according to the MPRS priorities ... actual allocation to the PPEs [pro-poor expenditures] fell short Spending on non-priority areas and over-borrowing from the domestic market were perpetrated." ix

Enock Chibwana, ex-Ombudsman: "Go to the villages. Poverty is so conspicuous. All the indicators are going backwards. This was caused by the Muluzi administration. He gave people handouts, and they became lazy." x

Ben Botolo, Director of Monitoring and Evaluation, Ministry of Economic Development and Planning: "What we are saying is that out of the K60 billion [in the 2002/2003 budget] we only know of K37 billion that was used. We don't know what happened to the rest because of lack of data," xi

Aleke Banda, MP: Ministers and officials, instead of spending the PPE money as budgeted, will divert it into other areas like travel."

Malawi Poverty Profile

A brief survey of socio-economic indicators paints a bleak future. Unless Malawi dramatically reverses present trends, it faces state failure.

Malawi is among the world's poorest countries, rated 162nd out of 175 countries surveyed by the United Nations' Human Development Report 2003. Yet Malawi's poverty is not caused by war. Poverty is deep, severe and widespread throughout Malawi, with smallholder farmers; female- and child-headed households; estate workers and the disabled being badly affected. The myriad causes of poverty in Malawi include poor education; poor health status including HIV/AIDS infection; un- or under-employment; rapid population growth; poor access to credit; gender inequalities and widespread mismanagement of public revenues.

According to the MPRS, the poor are defined as people who by 1998 could only afford to spend up to Mk 10.47 on food and non-food needs per day. The 1998 Integrated Household Survey (IHS) noted that 65.3% of Malawians were poor. Of these, 75% were women and 40% survived on less than US\$0.30 per day. In addition, 28.7% of poor people live in extreme poverty. 66.5% of rural dwellers and 54.9% of urban dwellers live in poverty. Income distribution is very unequal and rising. The South has the highest levels of poverty compared with the northern and central regions.

In 2002, about 85% of Malawians aged 5 and above were unemployed. More men (21%) than women (9%) were in employment. In urban areas about 38% of people were employed, compared with only 13% in rural areas. About 2% of all children aged 5-14 years were employed. About 72% of the total working population were subsistence farmers.

- 2/3 of Malawians have no access to safe drinking water
- 40% of adult Malawians are illiterate
- 14% are infected with HIV/AIDS
- Only 1% of household heads have a post-secondary education

Sources: See Endnotes, Appendix E

Table: Malawi and the Millennium Development Goals

Year	1990	1995/6	2000/1	2002/3
1. Eradicate poverty & hunger: 2015 target = halve 1990 poverty & malnutrition rates				
Population below \$1 a day (%)	..	..	..	..
Prevalence of child malnutrition (% of children under 5)	27.6	29.9	25.4	..
Population below minimum level of dietary energy consumption (%)	49.0	39.0	33.0	..
2 Achieve universal primary education: 2015 target = net enrolment to 100				
Net primary enrolment ratio (% of relevant age group)	49.7	99.0	100	81
Percentage of cohort reaching grade 5 (%)	64.5	34.2	20	..
Youth literacy rate (% ages 15-24)	63.2	67.3	71.8	72.5
3 Promote gender equality: 2015 target = education ratio to 100				
Ratio of girls to boys in primary and secondary education (%)	81.1	88.4	..	..
Ratio of young literate females to males (% ages 15-24)	67.6	71.4	76.0	76.7
Share of women employed in the non-agricultural sector (%)	10.5	11.3	12.2	..
Proportion of seats held by women in national parliament (%)	..	6.0	9.3	14 (2004)
4 Reduce child mortality: 2015 target = reduce 1990 under 5 mortality by two-thirds				
Under 5 mortality rate (per 1,000)	241.0	216.0	188.0	182.0
Infant mortality rate (per 1,000 live births)	146.0	133.0	117.0	113.0
Immunisation, measles (% of children under 12 months)	81.0	90.0	82.0	69.0
5 Improve maternal health: 2015 target = reduce 1990 maternal mortality by three-fourths				
Maternal mortality ratio (modelled estimate, per 100,000 live births)	600	..	1,800.0	..
Births attended by skilled health staff (% of total)	54.8	..	55.6	..
6 Combat HIV/AIDS, malaria and other diseases: 2015 target = halt, and begin to reverse, AIDS, etc.				
Prevalence of HIV, female (% ages 15-24)	..	..	14.9	14.4
Contraceptive prevalence rate (% of women ages 15-49)	13.0	22.0	30.6	..
Number of children orphaned by HIV/AIDS (thousands)	..	..	470.0	>800.0
Incidence of tuberculosis (per 100,000 people)	..	..	432.0	431.3
Tuberculosis cases detected under DOTS (%)	..	39.0	40.0	36.3
7 Ensure environmental sustainability: 2015 target = halve the number of people without access to safe drinking water; reverse loss of environmental resources				
Forest area (% of total land area)	35.2	..	27.6	..
Nationally protected areas (% of total land area)	..	11.3	11.3	11.3
Access to an improved water source (% of population)	49.0	..	57.0	..
Access to improved sanitation (% of population)	73.0	..	76.0	..
8 Develop a Global Partnership for Development: 2015 target = various				
Youth unemployment rate (% of total labour force ages 15-24)	..	..	..	..
Fixed line and mobile telephones (per 1,000 people)	3.1	3.7	10.6	15.2
Personal computers (per 1,000 people)	..	..	1.3	1.3
General indicators				
Population (million)	8.5	9.2	10.5	10.7
Gross National Income (\$ billion)	1.7	1.6	1.6	1.7
GNI per capita (\$)	200	170	160	160
Adult literacy rate (% of people ages 15 and over)	51.8	55.9	61.0	61.8
Total fertility rate (births per woman)	7	6.6	6.3	6.1
Life expectancy at birth (years)	44.6	41.9	38.8	37.5
Aid (% of GNI)	27.4	31.5	24.4	20.2
External debt (% of GNI)	84.8	162.4	157.4	156.2
Investment (% of GDP)	23.0	17.0	1.0	12.4
Trade (% of GDP)	57.2	76.7	68.3	68.3

Sources: Amended from World Development Indicators, April 2004. Supplemented with data (shown in **bold**) from Malawi National Statistical Office, National AIDS Commission, WHO, Civil Society Coalition for Quality Basic Education, Malawi Poverty Reduction Strategy Paper, Malawi Social Action Fund, Parliament, Press Statements.

Overall, budget allocations do not adequately reflect government priorities as laid out in the MPRS and the Medium Term Expenditure Framework (MTEF). In the longer term, there is a need to broaden the discussion of poverty reducing expenditure beyond just pro-poor expenditures (PPEs,) with reference to the MTEF.

The six-month report and the supplementary review report for the full year differ substantially on key indicators, for example the MPRS target and actual GDP figures are cited as 3% and 0.1% in the initial report and as 4.5% and 4.4% in the supplementary report.¹³⁶ There were similar anomalies in the two reports with regard to inflation rates and exchange rates. It is imperative that the ministry presents a clear analysis of the economic growth levels and the macroeconomic indicators in its assessment of the MPRS. The omission of available qualitative data from some sectors has highlighted the need for improved communication and information flow between the planning ministry and line ministries as well as the ministry of finance. (See also Economic Governance section, on scarcity of accurate, clear budget information.)

Various analyses indicate that the majority of funds allocated for social service delivery are utilised at central level and do not reach the intended beneficiaries. "Most resources, due to their inadequacy, tend to end up at the Ministries' headquarters and are spent on areas that have nothing to do with poverty reduction."¹³⁷

Recommendations for Improving the MPRS Review

Sources note that to improve planning, the effectiveness of strategy and to provide a realistic picture of anti-poverty activities, Malawi needs significant changes in the way it monitors progress and presents data in annual MPRS reviews.

- The executive summary of the MPRS review reports should provide an overview of finances and resources, highlighting areas of success and weakness in MPRS implementation, with enough detail to provoke policy analysis and dialogue amongst civil society and development partners.
- The quality of data is poor. Ministries are free to categorise spending as pro-poor without meaningful scrutiny, which has enabled vehicles, travel and non-essential spending to be hidden.
- The review needs more detailed analysis of budget expenditure against the MPRS plan, especially in priority poverty reducing activities, with a clear indication of recurrent expenditures, and PPEs in relation to HIPC funds. Many sections of the review did not mention intended performance targets or national benchmarks, instead focussing on inputs without references to the PPEs.
- The reports offer little or no linkage between the MPRS budget and actual spending outturn. There is a related need to train line ministries in activity based budgeting.
- The review should analyse performance against the core MPRS monitoring indicators. At present it focuses only on activities, without collecting output indicators, measuring impacts or tracking progress.
- Available qualitative and performance-based data from some sectors such as health has been excluded, which could have strengthened the report. In addition, the data presented on cross-cutting themes such as HIV/AIDS is poor, despite comprehensive information being available from the National AIDS Commission. Information flow between line ministries and the MPRS monitoring team should be strengthened since this will improve the quantity and quality of data used for the review.
- A summary of MDG trends could improve the poverty focus of the review and assist in identifying issues for which better MPRS implementation. Where necessary targets and indicators should be updated in view of past experience, and further integrated with the MDGs.
- The MPRS committed Malawi to annual Public Expenditure Reviews but none has been done since 2001.
- The government must rigorously implement existing financial management and reporting rules.
- Future reviews should be more timely and organised around the budget cycle. Review could begin in November, cover the full fiscal year and be completed by February.
- Broad participation by civil society and donors in MPRS implementation and monitoring would enhance the process. The monitoring master plan, due to be implemented at the end of 2003, makes provision for this, but has not yet been approved by cabinet.

Sources: IMF, November 2003. *Joint Staff Assessment of the Poverty Reduction Strategy Paper Progress Report*; MEJN, 2004. *A Socio-Economic Framework: Civil Society Manifesto*; MEJN, 2004. *Service Delivery Satisfaction Survey*; Comments on the Government of Malawi's Draft 2002/2003 Annual MPRS Review by Donor Representatives, July 2004; Civil Society Coalition for Quality Basic Education, *Budget Monitoring Exercise 2003*; Mavuto Bamusi, Programmes Director, MEJN, personal interview, 14 July 2004

¹³⁶ Ministry of Economic Planning and Development, Malawi Government, *Malawi Poverty Reduction Strategy: 2002/2003 Annual Review Report (Supplementary to 2002/2003 Six Months Report)*, 2004, p 3.

¹³⁷ *Pro-Poor Programmes In Malawi And Their Impact On Poverty Reduction*, report from September 2002 conference in Lilongwe, from ECAMA website, www.ecama.sdn.org.mw/propoor.htm

Decentralising the disbursement of monies as well as the provision of services such as health, sanitation and education; and monitoring the expenditure of line items by district, may counteract the current financial mismanagement at central level. However, the current decentralisation programme has met with resistance and been poorly implemented with “conceptual but no operational linkage between the MPRS and the decentralisation process.”¹³⁸ This suggests the need to expand management review beyond financial accounting to conduct audits of programme management and value for money at various levels.

By contrast, the experience of the Malawi Social Action Fund (MASAF) in strengthening decentralisation between districts and communities, and providing assistance in response to community-defined priorities, has shown that decentralised poverty relief initiatives can work. Between 1995 and 2002, 5.8 million Malawians increased their access to social services through the MASAF program, directly contributing to the MDG targets in education, health and water provision.¹³⁹

Poor Governance as the Top Threat to Socio-Economic Progress:

With the present distribution of income, the economy will have to grow by 5.3% just to *maintain* the current poverty levels. Targeted pro-poor expenditure is needed, but “there is a vicious cycle linking poverty and bad governance. Bad governance of national resources leads to poverty, and poverty may lead to corruption, ineffective institutions and frail execution of policies.”¹⁴⁰

To date, such control has been lacking. Parliament’s analysis of the 2001/2002 budget, the first one after the MRSP was developed, concluded that government had reduced expenditure on budgetary items that had HIPC allocations, and in some cases had stopped direct funding of poverty interventions and relied totally on HIPC resources. Single-handed budget cuts were made by the finance ministry without due regard for the MRSP priorities, including an 8% cut in the health budget and a reduction of 30% in the allocation to women, youth and community services.¹⁴¹

Recent disclosures that the government is unable to account for Mk 23 billion out of Mk60 billion spent during the 2002/2003 financial year have prompted dismay among donors who say that they cannot justify budgetary support (even for PPEs) from their countries if there is no accountability on how the budget is spent.¹⁴² Representatives of civil society and donor organisations interviewed for this study repeated these concerns, emphasising a desire to assist in poverty reduction on condition that the government embraces transparency and accountability. “ActionAid would supplement government’s efforts where they have tried and failed for lack of resources...but government has not been open about their available resources and where these were spent.”¹⁴³ Malawi has introduced good public financial management legislation and civil service guidelines, but these have not been rigorously enforced nor has punitive action been taken against the various officials who have failed to adequately account for funds disbursed to their departments.

“African leaders have learned from their own experiences that peace, security, democracy, good governance, human rights and sound economic management are conditions for sustainable development. They are making a pledge to work, both individually and collectively, to promote these principles in their countries and subregions and on the continent.”

– Nepad Framework Document 2001

“Out of the K60 billion we only know of K37 billion that was used. We don’t know what happened to the rest because of lack of data.

You look at the fiscal numbers and they don’t add up. The inflows don’t match the outflowsThe Treasury created about 28 billion in domestic debt. It must account for how this money was spent and what activities were funded.”

– Ben Botolo, Ministry of Economic Planning and Development

¹³⁸ *Report on the Review of the National Decentralisation Programme of Malawi 2001-2004*, joint Malawi Government Donor Team, May 2004.

¹³⁹ Lenney MN, *Integrating MDGs into the Malawi Social Action Fund*, World Bank, December 2003.

¹⁴⁰ UNDP, 2003. *op cit*, p 55.

¹⁴¹ National Assembly, Budget and Finance Committee of Parliament, *Overall Analysis of the 2001/2002 Budget*, 2002 pp 3- 10.

¹⁴² Ntonya G, “K23 billion lost by government,” *Nation Media*, 2 July 2004

¹⁴³ Kwengwere P, Programme Development Manager, Action Aid, Malawi, personal interview, 12 July 2004.

THE CONSENSUS POSITION: FOOD SECURITY & HEALTH

Food Security

Susan Sikaneta, African Union: "Malawi is richly endowed with resources such as fertile land, good water supply and human resources, thus there is no reason that the region should have hunger and poverty on this scale."ⁱ

Gerard van Dijk, World Food Programme (WFP): "The food security situation today compared to 20 years ago has deteriorated because of a hybrid of various policies including the forced opening of markets. The population is rising and the soil quality gets poorer and poorer."ⁱⁱ

MEJN: "65.3% of the population couldn't afford two square meals per day all year long. ... The trading of maize lacked transparency and has cost taxpayers money... robbing Malawians of the right to be free from hunger."ⁱⁱⁱ

Principal Secretary, Malawi Government: "The results of stopping subsidised inputs like fertiliser to small farmers are disastrous. They should be reduced gradually over a period of five years via an assessment of who really needs them the most."^{iv}

Gerard van Dijk, WFP: "The government has an extremely bad reputation in managing food security themselves as they are involved in the buying and selling of maize."^v

Paul Kwengwere, Action Aid: "The food security issue now is well-controlled as a result of international organisations and donors, but is not necessarily a credit to the PRSP."^{vi}

MEJN: "The substantial reduction in the PPE allocation of the Targeted Inputs Programme (TIP) [by 89%] is ... unwelcome development from the view-point of pro-poor growth and poverty reduction."^{vii}

Gerard van Dijk, WFP: "Malawi is getting poorer and poorer. This government might have the last chance to get it right before people revolt. Violence is not far away when people are desperate."^{viii}

Health

William Aldis, World Health Organisation (WHO): "A huge problem facing the health system in Malawi is the horrible attrition levels of manpower. At the beginning of 2004, 64% of the 6,084 nurses posts were vacant; 85% of the 115 general surgery posts were vacant, 91% of the 126 gynaecologists posts were vacant and there was not a single pathologist in the public health system!"^{ix}

New York Times: "At Lilongwe Central, an 830-bed hospital, there are supposed to be 532 nurses. Only 183 are left. That is about half as many as there were just six years ago. And only 30 of those are registered nurses"^x

Paul Kwengwere, Action Aid: "At a health centre in Lilongwe which is also the area's maternity ward there was no electricity recently because government had not paid its bill. The average bill per month should be about K4.000, this gives an indication of where government priorities are."^{xi}

Matron, Likuni Mission Hospital: "We have a bed capacity of 235 and can see hundreds of outpatients each day. Out of 42 nurses, only two and myself are registered. The others are nurse-midwife technicians. ... We try to send them for upgrading ... but the course takes two years, so we are left with even fewer trained professionals."^{xii}

Annie Kabuluzi, nurse/midwife technician, Likuni Mission Hospital: "About 31% of the children under five that we see are underweight. Now, just after harvest, we admit about six to ten of these young children every week for chronic malnutrition. But between October and February, there is much more kwashiorkor and marasmus [serious protein energy malnutrition] and we admit 20-50 children per day, or even up to 100."^{xiii}

Budget and Finance Committee, Parliament: "The increase in funding to the Ministry of Health of K125.2 million is minimal... there have been reductions in allocations to Health Worker Training, Primary Health Care, and Preventive Health Care."^{xiv}

Paul Kwengwere, Action Aid: "Ten to 15 months ago, the concentration of expenditure was towards winning elections rather than on any governance issues or poverty reduction. Education and health priorities suffered as a result."^{xv}

William Aldis, (WHO): "Maternal mortality almost doubled between 1990 and 2000. Maternal mortality is a good proxy measure or lead indicator of a suffering health system, since to reduce it, you need a range of functioning health services, e.g. obstetric, blood transfusion and anaesthesia services."^{xvi}

Paul Kwengwere, Action Aid: "District hospitals have hardly any drugs available, equipment is not maintained and health workers get frustrated and leave. Every time I take a flight to the UK, there are at least 5 nurses going there to work."^{xvii}

Annie Kabuluzi, Likuni Mission Hospital: "Our hospital is one of only two in Malawi that has an incinerator for medical waste. Others dump theirs in rubbish pits. Yes, it is dangerous and unhealthy."^{xviii}

Lellis Braganza, European Union: "The government did not spend the full amount allocated for district hospitals; if they do not, we withhold disbursements. ... The paradox is the government pleads 'give us support' while spending money without justification."^{xix}

Cosby Nkwazi, National Aids Commission: "We'll get \$274m over five years from donors for HIV/AIDS – the Malawi government allocates \$2m annually. The biggest contribution we could make to Nepal is to contain HIV/AIDS."^{xx}

Sources: See Endnotes i in Appendix E

Food Security

Food Insecurity Remains: Five of the last eight years have seen food production deficits in Malawi, with net food gaps of 56,849 megatons (MT) and 546,962 MT being reported in 2001 and 2002. Malawi's "over-reliance on tobacco and maize as cash and food crops respectively means that adverse commodity prices or erratic weather patterns cause repercussions that are felt throughout the whole economy."¹⁴⁴

Since most Malawians are subsistence farmers dependent on rain-fed crops, the prevailing "extreme poverty levels combined with crop failure translate to disaster in terms of food security."¹⁴⁵ Yet various analyses and a series of interviews suggest that with its "fertile land, good water supply and human resources, ... there is no reason that the region should have hunger and poverty on this scale."¹⁴⁶

About 68% of the total income of the rural poor comes from agriculture; hence increasing income from agriculture will help alleviate poverty and improve food security. The MPRS encourages small-scale irrigation methods and provides for

productivity-enhancing safety nets by distribution of free inputs such as seed and fertiliser to farmers and by implementing public works programmes for the landless and urban poor in exchange for food or money.

	Yes (%)	No (%)	Don't Know / No Response (%)
Mulanje	63.9	34.4	1.7
Phalombe	65.6	33.9	0.6
Blantyre City	61.1	26.4	12.5
Mchinji	71.2	25.6	3.3
Salima	45.1	51.2	3.7
Nkhata Bay	56.9	39.6	3.5
Total (n=1078)	60.6	35.5	3.9

However, in the 2003/04 budget, according to MEJN key pro-growth PPEs received less funding: tourism services (-7.1%); the targeted inputs programme (-53.6%); small-scale irrigation (-60.2%) and small scale fishing (-91.2%). Other critical PPEs were reduced, such as boreholes and dams, rural feeder roads, and rural water supplies.¹⁴⁷ (see Table 6.2 above from Malawi Economic Justice Network Service Delivery Satisfaction Survey, 2004, chapter 6). The reduced PPE allocation of the Targeted Inputs Programme TIP (estimated at 89% by MEJN) is an "unwelcome development from the view-point of pro-poor growth and poverty reduction"¹⁴⁸ and reflects poorly on government's commitment to these areas.

According to both the MPRS and the MTEF, expenditure on food security should ultimately aim to decrease dependence on food aid and promote pro-growth agriculture and irrigation support, as well as the work for food programmes. However, the MPRS review provides little detail on such activities and their impact. For example, no reasons are given for the failure to achieve the targeted agriculture extension services. Although 70% of respondents in a service delivery survey received a TIP package in the previous year, 49% had never been visited by an extension worker and many received incomplete and/or late packages.¹⁴⁹ "Some agriculture field workers have not had government support for months. Their bicycles are broken down, etcetera. This is where we [ActionAid] try to help, but government must play their part and be transparent."¹⁵⁰

While donors have been active in managing the food insecurity, "the government has an extremely bad reputation in managing food security themselves as they are involved in the buying and selling of maize."¹⁵¹ The government's ill-considered sale of its strategic grain reserves with a severe drought approaching in recent years exacerbated the problem by influencing the maize price and has led to allegations of

¹⁴⁴ World Food Programme Malawi, *Annual Report 2003*, 2003, pp 3-4.

¹⁴⁵ van Dijk G, World Food Programme, personal interview, 9 July 2004.

¹⁴⁶ Sikaneta S, Executive Secretary, African Union - Southern African Region, personal interview, 14 July 2004.

¹⁴⁷ National Assembly, Budget and Finance Committee of Parliament, *Report on the 2003/04 Budget*, 2003, pp 7-9, tables pp 22-23.

¹⁴⁸ Malawi Economic Justice Network, 2003, Response to Malawi National Draft Budget 2003/2004, p 18.

¹⁴⁹ MEJN, Service Delivery Satisfaction Survey, 2004 Chapter 5.

¹⁵⁰ Kwengwere P, Programme Development Manager, Action Aid, Malawi, personal interview, 12 July 2004.

¹⁵¹ van Dijk G, World Food Programme, personal interview, 9 July 2004.

mismanagement and corruption. According to the Civil Society Manifesto, “The trading of maize lacked transparency and has cost taxpayers money... robbing Malawians of the right to be free from hunger.”¹⁵²

International organisations continuously monitor the food security situation, but there is little evidence that the Malawi government has any contingency plans to prevent the starvation of its people in the event of a drought similar to that of 2001/2002 when thousands starved to death.¹⁵³ During 2003, child-headed, female-headed and HIV/AIDS-affected households and the disabled suffered serious food shortages and were amongst the millions of Malawians who required food aid.

For 2004, it is estimated that between 56,000 and 83,000 MT of food will be required before the next harvest in March 2005 to ensure that households meet their minimum food requirements.¹⁵⁴ This has been borne out by media reports and interviews with relevant donor agencies. In stark contrast to donor efforts, the MPRS review indicates that the only progress towards ensuring food security has been to engage consultants to prepare a food security and nutrition policy by the end of 2004.¹⁵⁵

Education

More Quantity, Less Quality: When free primary education was introduced in 1994, the increased number of learners was not balanced by a commensurate increase in the number of qualified teachers nor by increased infrastructure and materials. “People with only two years of secondary school education and with no teacher training were employed as teachers, with the quality of primary education seriously compromised as a result”.¹⁵⁶

The head teacher at a school visited for this study concurred, “Enrolment for Standard 1 is more than 250, but for Standard 5 it’s about 40 maximum. Out of the 36 who sat for [primary] School Leaving Certificate in 2003, only nine were selected for secondary school. Although most of the others passed, literacy and numeracy skills are lacking, so where is the purpose of Full Primary Education?”¹⁵⁷ He also noted that many people started teaching because they couldn’t find job elsewhere, implying that the skill and commitment of such teachers is questionable. “The unqualified teachers go to college for a term, come back to teach, then write exams and they are ‘qualified’, but not in practice....Government needs to bring back the two-year teacher training programme.”¹⁵⁸

Since unmanageably high pupil to teacher ratios (as high as 120:1 for some groups)¹⁵⁹ and untrained teachers impact on educational quality and output, the MPRS prioritises teacher training and retention. The MPRS review for 2002/03 highlights the gap in expenditure on education between the MPRS targets and the budget allocation. While the available funds were spent in areas such as teacher salaries and housing; teacher training and the provision of educational materials, various MPRS recommendations

2002 Malawi Education indicators:

- 1 in 3 household heads had no formal schooling
- 1% of household heads had post secondary school education
- 60% and 18% of households could access a primary and a secondary school respectively (within 30 minutes travel)
- Access to schools is much more difficult in rural areas than in urban ones.
- 71% of children aged 6-13 regularly attended primary school
- 9% of children aged 14-17 attended secondary school.
- Only 8% of children from subsistence households attended secondary school, compared with 19% of children from households headed by public sector workers.

Source: National Statistical Office (2003).

¹⁵² MEJN, *A Socio-Economic Framework: Civil Society Manifesto*, 2004, pp 18-19.

¹⁵³ ActionAid, *Death By Starvation In Malawi*, ActionAid Policy Brief, 13 June 2002.

¹⁵⁴ Malawi Vulnerability Assessment Committee, 2004, pp 4-6, 31-32.

¹⁵⁵ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, p 9.

¹⁵⁶ Kwengwere P, Programme Development Manager, Action Aid, Malawi, personal interview, 12 July 2004.

¹⁵⁷ Interview with a head teacher, July 2004.

¹⁵⁸ Interview with a head teacher, July 2004.

¹⁵⁹ Interviews with several teachers indicated that average ratios are about 65:1, with Standards 1 and 2 often being highest at 120:1, July 2004.

could not be implemented due to inadequate funding.¹⁶⁰ A brief assessment of the annexes to the full year MPRS review reveals that the Ministry of Education has failed to provide information on the implementation for the 2002/03 year in a number of crucial strategic areas, including adequate textbooks and quality inputs to primary teacher education.¹⁶¹

Lack of Will, Funding Undercut Quality Improvement: Low education levels impede development (see box alongside). Malawi has policies to improve the quality, access and relevance of education at all levels, with specific emphasis on girls and special needs groups; as well as a national science and technology policy. However, policy implementation is slow due to lack of political will as well as funding and human resource constraints.

Quality human resources are critical in education, yet teachers are so badly paid (between US\$27 and US\$127 per month)¹⁶² that the profession attracts only those “who cannot find other work” and teachers often “go to school hungry.”¹⁶³ Teachers interviewed for this study indicated that, although the MPRS prioritises a 10% increase in teacher salaries, some have not had a salary increase for the last five years while others often get paid late. This contradicts the assertion in the MPRS review that teachers have been paid their increases and that they have been paid on time.¹⁶⁴

The Civil Society Coalition for Quality Basic Education (CSCQBE) monitored the PPEs under Education for the last two years, tracking whether the allocated monies reached the frontline service delivery institutions for which they were intended. The table alongside highlights some of the findings.

They contend that education was underfunded by over Mk1 billion, thus the MRSP targets will be missed. Even allowing for the funding gap, the MEPD’s review report provides no explanation for areas where targets stipulated as protected pro-poor expenditure in the budget have not been met.

Limbani Nsapato of the CSCQBE cites a pertinent example. The education ministry spent the Mk436 million allocated for textbooks last year, yet most schools have received only those textbooks provided by donor schemes and the ministry has provided no information on where these funds went.¹⁶⁵

Priority areas to be addressed include: more focus on retention of pupils, especially girls; greater equity in the way that all education services are administered; timeous delivery of education materials; training of teachers and most importantly, adherence to the PPEs by the ministries of Finance and Education when allocating and spending Education funds respectively.¹⁶⁶

Tertiary Education Goals: In the tertiary education sector, MPRS aims include increasing female intake from 30% to 50% by 2012; introducing scholarships for special groups and loan systems for all students; upgrading salaries; providing research and teaching grants; and outsourcing non-academic services. Of these, the review notes that salaries were increased by 30%, that scholarship awards have been implemented and a special ramp constructed for disabled students. However, the report annex reveals that, for 25 of the 40 priority areas identified under higher education, no information is provided or no implementation has occurred.¹⁶⁷

The MPRS also envisages the establishment of “village polytechnics” via technical entrepreneurial vocational training to provide skills according to local needs. This includes on-the-job training for youths and promoting maintenance of equipment.¹⁶⁸ Some of these activities were carried out with donor assistance,

¹⁶⁰ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, pp 22-24.

¹⁶¹ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, Volume 2: Annexes, pp 58-66.

¹⁶² Interviews with head teachers and teachers in Malawi, July 2004.

¹⁶³ Interview with a head teacher in Malawi, July 2004.

¹⁶⁴ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, Volume 2: Annexes, p 58.

¹⁶⁵ Civil Society Coalition for Quality Basic Education (CSCQBE), personal interview, July 2004.

¹⁶⁶ CSCQBE, *Budget Monitoring Exercises*, 2003 and 2001/2.

¹⁶⁷ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, Volume 2: Annexes, pp 72-76.

¹⁶⁸ MEJN (2004), *op cit*.

but the second review report notes that there was poor communication between participating institutions with resultant funding problems. Again, most activities prioritised here were not implemented.¹⁶⁹

Health Care

Brain Drain, Staff Shortages: Malawi's Essential Healthcare Package remains poorly implemented due to chronic staff shortages and poor maintenance of infrastructure. The MPRS review found that, despite accelerated training programmes and incentives to retain skilled staff, the doctor-patient and nurse-patient ratios, at 1:89,962 and 1:3,240 respectively, are amongst the highest in the world. The country increasingly suffers from flight of medical staff due to low salaries. More registered nurses have left the country in the last four years than remain; with many of the remainder planning their departure.¹⁷⁰

"A huge problem facing the public health and other social systems in Malawi is the horrible attrition levels of manpower," said William Aldis of the World Health Organisation. "At the beginning of 2004, 64% of the 6,084 nurses posts were vacant; 85% of the 115 general surgery posts were vacant, 91% of the 126 gynaecologists posts were vacant and there was not a single pathologist in the public health system."

On the positive side Aldis said that "the College of Medicine gears its training to be very focussed on public and community health and takes applicants from rural areas, with the result that doctors are well-adapted to working here and new ones tend to stay in the country." He recommends that development partners and government support the benefit packages of health-care professionals as part of a sector-wide approach to health funding.¹⁷¹

Poor Facilities: A 2003 inventory of health facilities indicated that only 59% of health centres had functioning communication equipment, 65% had functioning water supply and 58% had functioning medical waste disposal.¹⁷² Essential drugs and equipment are not available in many areas. Likuni Mission Hospital near Lilongwe has one of only two incinerators in the whole country. Other hospitals dump their often toxic medical waste into pits.

According to Paul Kwengwere of ActionAid, funds allocated for maintenance of infrastructure are being squandered at central level. "Theoretically, there is decentralisation in the health department, but practically, very little resources are getting into the rural areas. District hospitals have hardly any drugs available, equipment is not maintained and health workers get frustrated and leave."¹⁷³ In a survey of health service delivery, 43% of respondents attending a health centre and 22% attending a district hospital reported that they did not receive what they consider the correct drugs for the ailment they were suffering from. In addition 40% felt they had to wait too long for treatment and almost half felt that if they had a relative working at the facility they would have received quicker and better treatment.¹⁷⁴

Immunisation Successes: According to Aldis, in some areas Malawi's health system is functioning very well when compared to the resources it has. "Over 85% of children under age 1 are vaccinated, with the

Malawi Health-Care Indicators:

In 2000:

- Infant mortality = 104 per 1,000 births
- Under 5 Mortality = 189 per 1,000 births
- Maternal mortality = 1,120 per 100,000 births

In 2002:

- 19% of households could access a healthcare facility (within 30 minutes travel). 16% in rural areas & 50% in urban areas.
- Among children under 5, 45% were stunted and 22% were underweight.
- Rural areas have higher incidences of stunted and underweight children.
- Child nutrition is worse in the Central region than in the North or South.

Source: National Statistical Office (2003).

¹⁶⁹ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, p 31 and *Volume 2: Annexes* p 58.

¹⁷⁰ Dugger, Celia, *New York Times*, 12 July 2004.

¹⁷¹ Aldis W, telephone interview, 23 July 2004.

¹⁷² Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, pp 32-33.

¹⁷³ Kwengwere P, Programme Development Manager, Action Aid, Malawi, personal interview, July 2004.

¹⁷⁴ MEJN, *Service Delivery Satisfaction Survey, 2004*, Executive Summary.

result that there has been no polio in Malawi for 4 years and measles have been virtually eliminated. This is partly because community health workers are still functioning on the ground.”¹⁷⁵

Rising Deaths During Pregnancy: The rate at which women die in pregnancy almost doubled from 1992 to 2000. One in 89 births kills the mother. “It is the worst change in a health indicator – outside of wars and natural disasters – that I’ve seen in the 36 years I’ve been knocking around developing countries,”¹⁷⁶ said William Aldis. He explained that maternal mortality is “a good proxy measure of a suffering health system, since to reduce it, you need a range of functioning health services, such as gynaecological, surgical, blood transfusion and anaesthesia services.”¹⁷⁷

“There is a catastrophic failure of the health system of this country to meet the minimum needs of the population. The sheer lack of skilled people is the major contributing factor.”
–WHO Representative, Malawi

Health Budget Cuts: Despite the dire need for increased healthcare funding, the finance ministry cut the health budget by 8% during the 2001/2002 year. For the 2003/2004 budget, parliament noted that “the increase in funding to the Ministry of Health of Mk125.2 million is minimal. ...[and] there have been reductions in allocations to Health Worker Training, Primary Health Care, and Preventive Health Care.”¹⁷⁸ Allocations for primary and preventive health care were reduced, while the PPE allocation for secondary curative care was increased by almost 20% in the last year.¹⁷⁹

“One of the conditions of [donor] assistance is pro-poor expenditure. The government did not spend the full amount allocated for district hospitals; if they do not, we withhold disbursements.”
– EU Representative, Malawi

Such actions have led to the withdrawal of donor support. Lellis Braganza, a counsellor at the European Union offices in Malawi, said that “the EU wants to give budget support to the government, but the PRSP is not on track ... One of the conditions of [donor] assistance is pro-poor expenditure. The government did not spend the full amount allocated for district hospitals; if they do not, we withhold disbursements.”¹⁸⁰ He also cites the shortage of health-care workers in district hospitals.

HIV/AIDS Rates Stabilised But Remain High: The level of HIV infection has stabilised over the last seven years, following the establishment of the National AIDS Commission and widespread AIDS education programmes. However at least 80,000 people die from AIDS each year and as many as 110,000 new infections occur annually. Malawi’s HIV/AIDS pandemic has seen life expectancy decrease to 39 years, with the death rate for adults tripling since 1990. In the 15-49 age group, more than 14% of Malawians are affected by AIDS, with one third of infected people living in urban areas and two thirds in rural areas.¹⁸¹ “The HIV/AIDS problem has destroyed families and support systems,”¹⁸² with many families now being headed by children, often older siblings who drop out of school and are exploited as child labour. In urban and peri-urban areas, many turn to prostitution, exacerbating the transmission rates of the disease.

HIV/AIDS threatens development and poverty alleviation frameworks by decimating human capital. “Malawi is losing more teachers each year than are being trained. 70% of major hospital capacity is taken up by HIV+ patients, and orphans now amount to 8% of the population...In an HIV affected environment, development organisations will necessarily do less and do it more expensively.”¹⁸³ Leaders who are employed bear the brunt of treatment and death costs, as well as the costs of maintaining extended families, straining their finances, time and energy.

“Treatment for HIV/AIDS is critical - the best people are being lost”¹⁸⁴ in sectors that are crucial for development. For example, the Civil Society Manifesto estimates “the attrition rate for teachers ... at 11%. The rate is high due to the HIV/AIDS scourge. However, the anti-AIDS campaign has not penetrated very

¹⁷⁵ Aldis W, telephone interview, 23 July 2004.

¹⁷⁶ Dugger C, *New York Times*, 12 July 2004.

¹⁷⁷ Aldis W, telephone interview, 23 July 2004.

¹⁷⁸ National Assembly, Budget and Finance Committee of Parliament, *Report on the 2003/04 Budget*, 23 July 2003, p 9.

¹⁷⁹ MEJN, *Response to Malawi National Draft Budget 2003/2004*, 2003 p 18.

¹⁸⁰ Braganza L, Counsellor European Union, personal interview, 5 July 2004.

¹⁸¹ National AIDS Commission, *Malawi National HIV/AIDS Estimates 2003, 2004*, p 5.

¹⁸² van Dijk G, World Food Programme, personal interview, 9 July 2004.

¹⁸³ James R, *Dodging The Fists?: The Crushing Blows of HIV/AIDS on Leaders in Malawi*, INTRAC, 2004.

¹⁸⁴ Braganza L, Counsellor European Union, personal interview, 5 July 2004.

well in Malawian schools.”¹⁸⁵ The commission should thus widen and intensify its education efforts to reach the staff and pupils at schools, as well as the providers and consumers of other key social services.

The pandemic is straining the already overburdened healthcare systems. According to the National AIDS Commission, 170,000 Malawians need anti-retrovirals; 950,000 AIDS orphans and vulnerable children need support; half a million pregnant women need antenatal care including HIV testing and counselling; and about 80,000 pregnant women need therapy to prevent mother-to-child infections.¹⁸⁶

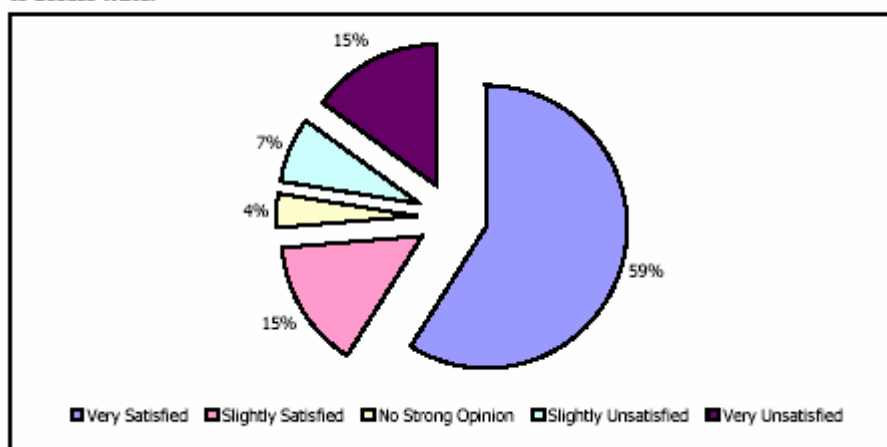
Assuming that HIV prevalence does not decrease, the commission estimates that, by 2010, annual AIDS deaths will be close to 100,000 and that almost 200,000 people will require anti-retroviral treatment.¹⁸⁷ The need for healthcare and other social service systems would increase concomitantly.

The MPRS Review cites the establishment of a clinical care unit for the biomedical aspects of HIV/AIDS, as well as the training of 150 extension workers and 120 peer educators; indicating that AIDS has received some priority attention.¹⁸⁸

Water and Sanitation: In 2002, only 4% of Malawian households had water piped into their homes, while 60% used communal piped water or borehole water for drinking purposes, 24% used unprotected wells and a further 9% used spring, lake, rivers or ponds. About 14% of rural households used no toilet facility and 76% used pit latrines, while in urban areas about 1% had no toilet facility, 12% used flush toilets and 87% used pit latrines.¹⁸⁹

The provision of boreholes and improved access to water is a major component of the MPRS, which has targeted 100% functionality for existing boreholes, of which only about 60% were functional in 2000. A further 7,500 new boreholes were to be constructed in the same period. According to a survey of borehole users, about 16% are currently non-functional, representing an improvement on the 2000 figure, thus the target set for 2005 appears to be attainable. The survey showed that, in most cases it takes users less than 30 minutes to reach the borehole, except in situations where the community's borehole is not working. In addition, almost 59% of those who could access a borehole, are satisfied with their access to water.¹⁹⁰

Figure 6.5: General Satisfaction of Respondents who had access to boreholes, with ability to access water



Source: Malawi Economic Justice Network, Service Delivery Satisfaction Survey, 2004

¹⁸⁵ MEJN, *A Socio-Economic Framework: Civil Society Manifesto*, 2004, p 49.

¹⁸⁶ National AIDS Commission, *op cit*, pp 6, 14-15.

¹⁸⁷ National AIDS Commission, *op cit*, p 15.

¹⁸⁸ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03*, 2004, p 34.

¹⁸⁹ National Statistical Office (2003). *Op cit*, pp 72-73.

¹⁹⁰ MEJN, *Service Delivery Satisfaction Survey*, Chapter 6: Infrastructure, 2004.

THE CONSENSUS POSITION: EDUCATION

Budget and Finance Committee, Parliament: "Funding for salaries has gone up by K785.0 million, representing 57.7% of the increased funding for the whole ministry of education." ⁱ

Limbani Nsapato, Civil Society Coalition for Quality Basic Education (CSCQBE): "The Budget allocated for a 10% annual increase for teachers but ... most have had no increase for the last five years. Where has the money for salary increases gone?" ⁱⁱ

Head teacher: "Since teacher salaries are very low; they work under difficult situations - often going to work hungry - [thus] they cannot teach effectively. For the last five years only some got an increase of about Mk50 (US\$ 0.45). Teachers earn between Mk 3,000 (US\$ 27) and Mk 14,000 (US\$ 127) per month, but most are at the lower ends of the scale, and this includes housing allocations, which may be removed at any time." ⁱⁱⁱ

Collins Chipendo, Centre for Youth and Children Affairs: "In many schools, you have more than 100 pupils taught by one teacher ... In some rural schools, one teacher has to teach several grades in the same class." ^{iv}

MEJN: "In 2001 only 16% of all students who sat for the Malawi Secondary Education examinations passed ... lack of adequate numbers of qualified teachers, poor classroom conditions, lack of incentives for teachers and unsystematic change in syllabi are surely the underlying factors for the poor performance." ^v

Esme Kadzamira et al: "Malawi is still very far from achieving a primary schooling for all of acceptable quality." ^{vi}

Head teacher: "Many start teaching because they can't find a job elsewhere. The unqualified teachers go to college for a term, come back to teach, then write exams and they are 'qualified', but not in practice Government needs to bring back the two-year teacher training programme." ^{vii}

Budget and Finance Committee, Parliament: "A number of the PPEs were in the field in which donors were very active and singled out teaching and learning materials The Minister lamented that donors did not come up in time to enable the Ministry of Finance build the contributions into the budget figures." ^{viii}

Limbani Nsapato, CSCQBE: "The Ministry of Education was allocated and spent K436,3 Million for textbooks in the 2003 year but these textbooks have not appeared in any schools. CIDA provided 11,4 Million textbooks and almost 500,000 teacher guides, but this is not part of the Ministry's textbook allocation. What did the Ministry use the textbook allocation for?" ^{ix}

CSCQBE: "Given the current rate of training new teachers, the target to reduce the number of untrained teachers to 10% by 2015 will not actually be achieved until 2040." ^x

Limbani Nsapato, CSCQBE: "The review of the Education Act of 1962 should have been finalised, with a new curriculum, by March 2004. But the Law Commission are not getting the information they need from the education ministry. So Malawi is currently using a 40-year old act which has no provision for issues like gender mainstreaming." ^{xi}

The Chronicle newspaper: "Between 1998 and 1999 the Ministry of Education was allegedly swindled out of the sum of Mk187 million after contractors were paid, in advance and contrary to procedure, for uncompleted, substandard and ghost buildings." ^{xii}

Mavuto Bamus, MEJN: "[Malawi has] ghost teachers and ghost schools that do not exist." ^{xiii}

Collins Chipendo, Centre for Youth and Cultural Affairs: "There is no incentive to continue school. Pupils would rather drop out and try some small business - growing and selling vegetables - because they cannot afford secondary education even if they pass. There are no role models here." ^{xiv}

Malawi Education Snapshot

General:

- There are, on average, 2023 pupils per urban school and 745 pupils in rural ones.
- In rural areas, enrolment drops from 183 in Std 1, to 74 in Std 5 and only 39 by Std 8.
- 50.4% in Std 1 are girls, but only 42.5 % in Std 8 are girls.
- Only 10% of the 315 secondary schools targeted have been built.
- In 2001, 16% of students who sat the secondary school examination passed.

Teachers and teacher incentives:

- Trained teacher: pupil ratios are 1:106 in rural areas and 1:53 in urban areas.
- Government trained only 42.6% and recruited only 33.4% of the targets stipulated in the budget.
- 10% annual salary increase has not been implemented.
- Less than 50% of stipulated teacher housing has been built.

Teaching and Learning Resources:

- Over half the schools surveyed received no textbooks in the first 6 months of the year
- 14% received no exercise books. 90% of rural schools and 75% of urban schools received exercise books.
- 87% of all textbooks are provided by donors.
- 92% of schools did not receive desks.
- 60% of schools did not receive chalkboards.

Inspectorate:

- Mk 89.1 million was allocated for 3 visits per school, but 47% of schools were visited fewer than 3 times.
- 23% of schools did not receive any written report or feedback.

Sources: CSCQBE, Budget Monitoring Exercises, 2003 and 2001/2.

Sources: See Endnotes i in Appendix E

Women and Children

Mainstreaming Gender Equality: As indicated in the box alongside, Malawi falls far short of the SADC targets of 30% female representation in politics. Poverty has a gender dimension that limits women's and girls' access to benefits; control over resources and general power within society.

Government must create an environment that ensures women's participation in leadership and decision making; strengthens institutional capacity for implementing national gender policy; eradicates gender-based violence; promotes a gender sensitive legal environment by reviewing legislation that impacts negatively on women and discouraging traditional practices oppressive to women.¹⁹¹

The MPRS report cites positive developments such as the review of the Wills and Inheritance act and the drafting of a Bill on Domestic Violence. In addition, key personnel in various ministries were trained in gender budgeting, victim support units were established and police officers were trained in handling gender-based violence cases. However, the report notes that there is a need to re-align MPRS with the National Gender Programme and recommends that the Ministry of Gender be streamlined so that the implementation of activities is done by NGOs and local assemblies.

In Malawi women are disadvantaged in terms of access to health, education, and agriculture services, but recent cost benefit analyses show that there are significant incremental net economic benefits of increasing men's and women's literacy and access to agriculture services as planned in the MPRS while closing the gender disparities in access to these services."

It is also shown to be economically worthwhile to implement activities of the National Strategic Plan to end Gender Based Violence. With these benefits, GDP can grow at a rate that is at least twice the average annual growth rate of the past five years."¹⁹²

Gender Representation in Decision-Making

- 91% of all management positions are occupied by men.
- Before May 2004, only 8.8% of parliamentarians were women. In 2004 this increased to 14%
- Only 9% (75 out of 821) councillors are women
- Only 13 of over 200 traditional authorities are women.
- In Lilongwe, 1 in 4 city councillors are women, only 1 chairs a service committee
- 7% of the 1826 employees at Lilongwe City Assembly are women. Only 1 of the 31 managers in the assembly is female.

"To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.

To develop and implement strategies that give young people everywhere a real chance to find decent and productive work."

– Objectives, UN Millennium Declaration 2000

¹⁹¹ Ministry of Economic Planning and Development, Malawi Government, *The Annual Review of the Malawi Poverty Reduction Strategy: 2002/03, 2004*, p 61.

¹⁹² Ngwira N and E Mkandawire, *Cost of Gender Disparities to Socio-Economic Services in Malawi*. Blantyre: Institute for Policy Research and Analysis for Dialogue. 2003.

RECOMMENDATIONS AND ACTION PLAN

In the short-term, the nation's most extreme problem is the present government deficit and domestic debt crisis. Government has failed to cut spending in response to the withdrawal of donor funding. Although there is potential to restore that funding, it is not guaranteed and will not happen quickly, contrary to government statements that donor aid will resume within weeks.

A new lending arrangement with the International Monetary Fund is, according to the Fund, highly unlikely in less than six months and may, if Malawi's delivery is inconsistent, take a year or more. Other donor budget support is partly dependent on striking a deal with the IMF. Malawi must bear in mind that the donors have expressed grave doubts about the realism of Malawi's financial statements and the government's willingness to follow through.

If current spending trends continue, interest expenses will consume 50% or more of government revenues by year end. As a result, Malawi must cut expenditure drastically and quickly, to prevent the further the accumulation of debt and interest expenses. If government fails in this task, it will have only three unappealing choices: borrow still more, print money, which will generate hyper-inflation, and/or stop paying salaries and creditors.

Although Malawi has many long-term needs, it needs decisive action in the short-term to avert deeper crisis. The following measures offer the basis for a decisive short-term action plan to manage the fiscal crisis and restore confidence. Below are suggestions presented to the authors during the research phase and ideas put forward during a 16 August workshop of government and civil society representatives. They are grouped into eight broad recommendations with supporting ideas below.

1. Address the Deficit: This point requires little elaboration but needs substantial political will and follow-through. Action must be undertaken in a matter of weeks, rather than months. Malawi must demonstrate that it can use funds prudently, transparently and responsibly. Government must set a realistic, credible budget and then spend accordingly. Workshop participants and sources interviewed for this report put forward a variety of ideas for reducing government spending:

- **Freeze Government Spending:** Restrict all departmental spending to 2002/03 levels or below. Immediately cut all non-essential spending such as that to NIB
- **End Arrears Accumulations:** To stop ministries from spending all available resources and leaving utility arrears to accumulate, transfer all provisions for utility payments to an escrow account at the start of the year, leaving ministries with access to only the non-utility portions of the budget.
- **Rationalise Vehicle Use and Purchase:** The government spends significant sums on vehicles. Participants noted that government could save substantially by re-instituting requirements that permission be obtained for use of vehicles. They also noted that tighter regulations on purchase/replacement of cars would save large amounts of money, as would a one-time two-year freeze on buying new vehicles. Approve more expensive four-wheel drive vehicles only where essential for off-road travel.
- **End/Limit Premature Sale of Vehicles:** Government vehicles are depreciated over five years, but in practice should be utilised for at least ten years. Participants noted that vehicles are sold off after five years at costs far below the market price for similar used vehicles. Others noted that many of the vehicles considered to be junk in the yards of government buildings could be easily repaired and restored to service.
- **Reform Road Transport:** Restrictive trucking cartels keep transport prices unnaturally high. Remove restrictive practices to allow greater competition and at the same time appoint a committee to plan in two months toll-fees on major transport routes.
- **Remit Car Licence Fees to Treasury:** The Motor Vehicle Licensing Authority should surrender a far higher percentage of its fees to the Treasury.
- **End Use of State and Parastatal Company Assets for Party Functions:** Significant sums have been spent by the state and subvented organisations in support of party meetings and campaign events. Such unauthorised acts should be treated as misappropriation of funds and forwarded to the ACB for action.
- **Reduce Parastatal Subsidy; Inject Competition:** While full privatisation may take time, state subsidies can be cut significantly in the short-term, and parastatals made to operate at a profit. Where possible, permit competition to improve services and lower prices.
- **Build Permanent Accommodation for MPs:** Members of parliament receive approximately \$60 per night for accommodation for 70 nights of parliamentary sessions per year. This amounts to

\$810,600 per year. The net present value of half of that cash flow over 20 years is \$2,488,000 at a 10 percent interest rate. The government could construct apartment blocks for that amount to accommodate MPs, using a low-interest World Bank loan. The remaining \$405,000 per year could be saved.

- **Reduce Government Communication Costs:** Workshop participants noted a variety of methods that could cut government spending on communications. These include expanding use of prepaid telephone cards to all departments, establishing an internal telephone network that connects all ministries on Capital Hill, and licensing use of internet telephone and callback services to reduce government spending on international telephone calls.
- **Extend Collection of User Fees:** Public institutions should identify free services/documents provided to public individuals and companies, which could be converted to a fee-for-service basis.
- **Increase Education Fees:** Appoint a panel to investigate and report back on cost-recovery fees at university, secondary and, if needed, primary education levels.
- **Ban International Travel:** Impose a one-year ban on international travel for civil servants and ministers, unless fully sponsored by a non-government funder.
- **Use Embassies Instead of International Travel:** Instead of sending costly government delegations to conferences and meetings, make better use of existing diplomatic staff in foreign countries to represent national interests.
- **Rationalise Allowances:** The variety of allowances (many of which are tax-free), particularly surrounding workshops and overnight stays, creates incentives for government staff to earn income through allowances. For example, employees technically based at Zomba collect routine fees for working at Sanjika. The spectrum of allowances should be revisited and restricted. Appoint a panel of non-government auditors and business to examine allowance practices and identify cost-cutting measures. Report back in two months.
- **Cut Security Spending:** Malawi faces no foreseeable external military threats and has minimal need for military forces internally.
- **Cut the NIB:** Eliminate or greatly reduce the National Intelligence Bureau.
- **Review Departmental Functions:** Participants said a variety of government departments are engaged in activities other than what they were set up to do. Review departments and functions to identify areas no longer needed or that could be consolidated with other functions/departments.
- **Reinstate and Rationalise Fishing License Fees:** Post-1994 there has been no enforcement of limits on fishing catches and no charging of realistic license fees. The amounts of license fees and penalties should be revised to capture some government revenue and impose order on the over-fished Lake Malawi.

2. Restore Credibility with Donors: The country must devote concerted effort to restoring its dented credibility. This report has demonstrated that Malawi remains heavily dependent on financial assistance, and that there is growing dissatisfaction with financial mismanagement in Malawi by the donor community. Budgets and planning documents are the core representations made by the government to the public and donors. The extent of inaccuracy in these documents suggests that Malawi is intentionally misrepresenting the truth. Funds that previously went to Malawi are going to states in the region considered more committed to reform, such as Mozambique and Tanzania. A genuine reform effort, if well-managed, has the potential to reverse the outward flow of donor funds. But it is critical that this is prioritised – aid once lost is difficult to regain as better performing states will have more compelling claims to donor money. The solution, beyond cutting the deficit, involves preparing and abiding by accurate budgets, enforcing the laws and regulations and carefully sticking to all promises and representations made to donors.

3. Compel Government Compliance With Budget Laws. Lack of discipline and failure to obey elementary fiscal rules has permeated Malawi's fiscal management system. Although capacity issues and inadequacies of the accounting systems need correction, Malawi must regain control of the machinery of State so that it coherently follows budgets and fiscal laws. To do this the government must take a strong stance against corruption and restore effective macroeconomic management. President Mutharika's "zero tolerance" policy against corruption must be borne out in practice as well as in theory. He has already sent some important signals in this regard, such as the firing of high-level officials implicated in corruption scandals. This momentum must be sustained and the example must be emulated by other senior members of government. The following steps are suggested:

- **Enforce Accountability Laws:** Enforce reporting requirements and penalties for failure to adhere to them, as listed in the Public Financial Management Act. A good starting point would be to immediately discipline the 28 Controlling Officers who failed to respond to the Auditor-General's written requests

for information in his most recently published report to parliament (for fiscal year 2000/01, published 2003). If the Controlling Officers are unable to provide a satisfactory explanation to both the AG and Parliament, they should be dismissed. This would be a highly effective signal to the entire civil service that the new administration intends to enforce the law and would help restore donor confidence.

- **Promulgate Financial Management Act Regulations:** Write and promulgate regulations specifying who has the power to investigate and seek disciplinary or criminal prosecution of officials who fail to adhere to provisions of the Public Financial Management Act and Audit Act. Although the act specifies penalties, it does not say who should invoke them. There should be responsibility for supervisors throughout the civil service to hold people under them accountable, but also the ACB, minister of finance, accountant general and auditor general should be empowered to initiate proceedings against individuals in contravention of reporting and accounting requirements. Regulations clarifying roles and responsibilities should be drafted immediately and put to parliament for approval in the current session.
- **Promulgate Asset Declaration Regulations:** Although asset declarations are part of the constitution, there are no regulations specifying what happens when officials fail to obey. Malawi must write and promulgate regulations setting out exactly who has enforcement authority and what penalties apply for failure of politicians and civil servants to disclose their assets. Disclosure of assets is a commitment under the APRM guidelines, but few civil servants or elected officials have complied. Realistic and enforceable time limits must be part of the regulations so that MPs comply. Details on holdings should be accessible to the public and be lodged with the ACB, which should be empowered to act on failures to disclose during the current seating of parliament.
- **Promulgate Asset Trust Legislation:** According to the constitution, the business interests of the president and cabinet should be held in trust. But no regulations have been passed to specify how this process should work and who would enforce it. Such regulations should be drafted and put to parliament during the current session with the ACB empowered to investigate breaches of the code.
- **Promulgate Regulations to Permit Swift Asset Seizures:** During the current seating of parliament, the ACB should be empowered to seize property and cash acquired through corrupt means.
- **Set and Manage Toward Clear Performance Goals:** From ministers down to departments, each senior political appointee and civil servant should have clearly defined personal annual objectives for financial management and service delivery in writing. Ministers and department heads should have their personal performance appraisals and remuneration determined by the extent to which they spend according to the budget and meet the goals of their performance plans.
- **Rationalise Cash Budget Systems:** The cash budgeting system allows the Ministry of Finance, through non-transparent processes, to change the allocations to different ministries without proper oversight. Set cash ceilings based on a rolling three-month average of cash receipts and if these are less than the approved budget, inform all department heads and officers empowered to spend that their allocation has been reduced by a common percentage. To ensure transparency per the Financial Transparency Standards, publish on a quarterly basis government revenues and expenditures and the rolling average percentages by which budget allocations are reduced.
- **Break down Budgets by Function and Location:** Although parliament passes an overall budget for each ministry, most middle and lower level managers have no idea what allocation belongs to their department. The lack of information and thus accountability grows worse after lower ceilings are imposed under the cash budget system. Thus the budget should be broken down into separate budgets for each physical location and department/function. All such location managers and department heads should be notified of their individual budgets and any changes to them during the year. They should be held accountable for spending at or below those budget ceilings both under their personal performance review and as a matter of law under the Public Financial Management and Audit Acts.
- **Build Legal Protections for Civil Servants:** Civil servants who uphold the law and proper procedure have no protection from political pressure or firing. Participants called for clearly demarcating the powers of ministers and principal secretaries over spending matters and ensure that secretaries and lesser officials are protected from political pressure through measures such as a civil servants bill of rights. Presently officials can be fired without recourse to labour rights or contract protections.
- **Expand Independent Media Coverage:** Transparency and media coverage are indispensable tools to keep government spending rational and fight corruption. Workshop participants suggested licensing more electronic media, expanding media training, and removing the existing ban on news programming by non-state radio.
- **Freedom of Information Act:** Pass a Freedom of Information Act as recommended by the Financial Accountability Task Force.
- **Post Financial and Performance Reports on the Internet:** Presently budget and accountability documents are in extremely short supply with few copies available even within the ministry of finance.

Budget information, actual spending, performance plans, civil service codes and court judgements should all be posted on the internet where they are available to all interested parties.

4. Restore Respect for the Law: Enforcing budget rules is only part of a deeper problem. This report has shown that Malawi is developing a culture of impunity in which laws and the constitution itself are regularly disregarded when inconvenient. The letter of the law has been manipulated thus damaging the spirit of the law. Political pressure is applied which subverts objective decision making. Thus, respect for the Constitution and the rule of law must be fostered. To do this, the government must:

- **Strengthen Checks and Balances:** Bolster restrictions on executive power by increasing and fully protecting funding for parliamentary oversight committees, the Auditor General, the ACB and Ombudsman regardless of other government cash-flow problems.
- **Expand Independent Media:** License more independent electronic media and remove news reporting restrictions from currently licensed independent electronic media to enable greater flow of information to the electorate.
- **Lead by Example:** Demonstrate through action greater respect for human rights, political rights, gender equity and press freedoms.
- **Prosecute High-Profile Cases:** Prosecute officials involved in corruption and abuse of power from the past (and present) administration, including, if warranted, the former president.
- **Signal Government Intent Through the Media:** Ministers should launch a highly visible campaign to inspect and enforce civil service rules and find neglected problems. They should publicly conduct unannounced visits to service delivery points – such as schools, hospitals and government buildings – on a regular basis (at least once per fortnight), to ensure that line ministries are achieving their goals. They should publicly suspend non-performers, pending dismissal if no acceptable reasons are forthcoming. Participants also suggested launching investigative journalism and public debate programmes on radio and television.

5. Hold Parastatals Accountable: Government-owned businesses dominate the Malawian economy. These institutions should be used to better the lives of Malawians and not for patronage and personal enrichment. While some strides have been made in holding listed companies to good corporate governance practices, the parastatal sector lags behind.

- **Apply Corporate Governance Guidelines to Parastatal Companies:** Government owned/subsidised entities do not follow significant aspects of the *Code of Best Practise for Corporate Governance in Malawi*, drafted by the Malawi Corporate Governance Task Force.
- **Independently Select Qualified Board Members:** Selection of members of the board of subvented organisations should be conducted transparently by a board sub-committee and be approved by parliament. In particular, subvented organisations should end the practice of appointing ministers and government officials to their boards.
- **Ensure Proper Use of Assets:** Vehicles, fuel and staff of subvented organisations should be only used for company business.

6. Restore The Credibility Of The Electoral Process: The criticism levelled at the Malawi Electoral Commission for their poor handling of the 2004 elections must be acted upon.

- **Depoliticise the Election Commission:** The MEC should be replaced with an independent electoral commission that is not composed of party representatives, but of respected Malawians independent of the influences of party politics. The public should be given the opportunity to nominate members and the selection process should be transparent, with parliament confirming the appointments.
- **Return to a Majority Rule System:** The current electoral system – in which the president can be chosen by a minority of voters – will predictably take Malawi in the direction followed by Kenya and Zambia. Both nations have had minority presidential systems, which led to increased regionalism and divisive ethnic politics. Under minority-rule systems, presidents have strong incentives to divide the country on ethnic lines, to manipulate electoral rules and devote resources to the minority of supporters required to win office. In an atmosphere of rising poverty and competition for resources, the existing presidential election system is a detriment to Malawi's long-term peace, security and development.
- **Implement a National ID:** The issue of voter registration (and verifying other personal information) would be much less politicised if Malawi instituted a national identity document.

7. Encourage Public Participation in Nepad and Peer Review: Achieving the benefits of both peer review and Nepad require public confidence and credibility, entailing broad public participation. Government should ensure that a broad selection of civil society organisations receive regular information

on peer review and Nepad developments. The APRM requires government to establish a broadly representative panel to oversee the national APRM process. The procedures for establishing this panel should be discussed in parliament and with civil society. Selection processes for members should be transparent and open. Once selected and convened, the panel should seek broad civil society input, provide advance notice to the media of its meetings and broadly distribute the APRM Self-Assessment Questionnaire to all interested parties and make their submissions available to the visiting APRM evaluation team.

8. Follow Through On Declared Intentions. Malawi is not short of good ideas and solid policies, but implementation is a consistent problem. Political will and strong leadership are required to make the tough policy choices to reduce poverty, engender growth and improve the quality of life for Malawians.

RECOMMENDATION TIMETABLE

SHORT TERM Immediately – 1-3 months	MEDIUM TERM In next 3-6 months	LONG TERM In next 6-12 months
Freeze government spending at 2002/3 levels	Plan and institute toll fees for major roads	Address the deficit: demonstrate government can spend prudently and transparently
Rationalise vehicle use and purchase	Transfer higher percent of motor vehicle licence fees collected to Treasury	Restore credibility with donors
Institute 2-year freeze on new vehicle purchases	Reduce parastatal subsidies and compel parastatals to operate at a profit	Compel government compliance with budget laws
Restrict non-essential 4X4 purchases	Reduce communication costs: connect all ministries on Capital Hill.	Restore respect for the law
End/limit premature sale of vehicles	Appoint panel to review cost recovery fees in educational institutions	Lead by example
Allow more road transport competition	Appoint panel to review and recommend ways to rationalise civil service and ministerial allowances	Hold parastatals accountable to corporate governance rules, proper use of assets
Assess toll-road feasibility.	Reduce security spending	Restore credibility of the electoral process
End use of state and parastatal assets for party functions.	Scale down the NIB to a minimum	Return to a majority rule system
Use prepaid phone cards in all government departments	Review departmental functions to remove unneeded staff and activities	Encourage public participation in Nepal and Peer Review
License internet telephone and callback services	Reinstate and rationalise fishing license fees	Build permanent accommodation for MPs
Charge fees on non-essential public services and for certain documents	Promulgate financial management act regulations, clarifying who has power to investigate and discipline.	Pass a Freedom of Information Act
Ban international travel unless sponsored by non-government funding. Use embassy staff instead.	Promulgate and enforce asset declaration regulations. Publish these asset registers.	Introduce a national identity document
Enforce accountability laws; Notify all accounting officers they will be held to account for adherence to Public Finance and Audit Acts	Promulgate asset trust legislation and put to current parliamentary session.	
Launch disciplinary action against all 28 Controlling Officers who failed to comply with AG requests	Promulgate asset seizure regulations	
Set written financial and management goals for all ministers and civil servants; Link pay & sanction to financial and management goals	Rationalise cash budget spending ceilings and communicate changes in spending authority to all departments on monthly basis	
License more independent radio and television.	Give budget figures to all department and location heads	
Remove restrictions on news reporting	Build legal protections for civil servants	
Post financial and performance reports on the internet	Expand independent media coverage	
Signal government intent through media	Apply corporate governance guidelines to parastatals	
Stop appointing ministers and government officials to parastatal boards	Strengthen checks and balances, by increasing and protecting funding for oversight bodies.	
	Prosecute high profile corruption cases	
	Depoliticise the electoral commission – replace party representatives with independent commissioners.	

APPENDIX A: APRM STANDARDS AND CODES

DEMOCRACY AND GOOD POLITICAL GOVERNANCE

- African Charter on Human and Peoples Rights (1990)
- African Charter on the Rights and Welfare of the Child (1990)
- African Platform on the right to education (1999)
- AU convention on Preventing and Combating Corruption
- AU Declaration on Democracy, Political, Economic and Corporate Governance
- AU Peace and Security Protocol
- Cairo Declaration on the establishment, within the OAU, of the Mechanism for Conflict Prevention, Management and Resolution (1993)
- Charter of the United Nations
- Constitutive Act of the African Union (2000)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Convention on Protection of Rights of Migrant Workers (entered into force on 1 July 2003)
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Political Rights of Women
- Convention on the Rights of the Child
- Convention relating to the Status of Refugees
- Declaration and Plan of Action on Control of Illicit Drug Trafficking and Abuse in Africa (2002)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Declaration on Framework for an OAU Response to Unconstitutional changes of Governments (2000)
- Declaration on Fundamental Principles concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War
- Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief
- Declaration on the Elimination of Violence against Women)
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms: A/RES/53/144
- Declaration on the Rights of Disabled Persons
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
- Durban declaration on Principles Governing democratic elections in Africa (2002)
- Geneva Convention relative to the Protection of Civilian Persons in Time of War
- Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999)
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- International Covenant on Civil and Political rights (1966)
- International Covenant on Economic, Social and Cultural Rights
- Memorandum of Understanding (MOU) of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) Solemn Declaration (2000)
- NEPAD Framework Documents
- OAU Refugee Convention of 1969
- OECD Convention on combating bribery of public officials
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Optional Protocol to the International Covenant on Civil and Political Rights
- Protocol on the rights of women in Africa (2003)
- Protocol relating to the Status of Refugees
- Regional Instruments and Standards
- UN GA Resolution 1325 on Women in conflict
- Universal Declaration of Human Rights

ECONOMIC GOVERNANCE AND MANAGEMENT

- Abuja Treaty establishing the African Economic Community (1991)
- African Union Conventions on Preventing and Combating Corruption
- Best Practices for Budget Transparency
- Code of Good Practices on Fiscal Transparency
- Code of Good Practices on Transparency in Monetary and Financial Affairs
- Constitutive Act of the African Union (2000)
- Core Principles for Effective Banking Supervision
- Core Principles for Security and Insurance Supervision and Regulations
- Guidelines for Public Debt Management
- International Accounting Standards
- International Standards in Auditing
- NEPAD Framework Document (2001)
- Principles for Payment Systems
- Principles of Corporate Governance (international and national)
- Relevant Treaties, Conventions and Protocols of Regional Economic Communities

CORPORATE GOVERNANCE

- African Charter on Human and Peoples' Rights
- Codes on industrial and environmental safety and hygiene of the World Health Organisation
- Core principles for Securities and Insurance Supervision and Regulations
- Core principles of Effective Banking Supervision
- International accounting standards
- International standards on auditing
- Labour Codes of the International Labour Organisation (ILO)
- NEPAD Framework Document (2001)
- Principles of corporate governance (OECD and Commonwealth)

SOCIO-ECONOMIC GOVERNANCE

- African Charter for Popular Participation in Development (1990)
- Constitutive Act of the African Union (2000)
- Convention of the Elimination of all forms of Discrimination against Women (Beijing Platform for Action)
- Millennium Declaration (2000)
- NEPAD Framework Document (2001)
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- The African Charter on the Rights and Welfare of the Child (1990)
- United Nations Declaration on the Right to Development
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- World Summit on Social Development Plan of Action (1995)

APPENDIX B: APRM OBJECTIVES AND QUESTIONS

DEMOCRACY AND GOOD POLITICAL GOVERNANCE

OBJECTIVE 1: Prevent and reduce intra- and inter-country conflicts

1. Are there key sources of conflict in your country or with neighbouring countries?
2. What are the results of steps taken to reduce and prevent conflicts in the country?
3. What regional organisations are involved in intra and inter conflict resolution?

OBJECTIVE 2: Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and supremacy of the Constitution

1. Can you identify specific actions or events that demonstrate that pluralism in your country allows for free and fair competition in order to promote good political governance?
2. Are there Constitutional provisions establishing the rule of law and the supremacy of the Constitution?
3. What are the types of decentralisation in your country (devolution, delegation, deconcentration or mix)?
4. How has decentralisation contributed to the quality of governance?

OBJECTIVE 3: Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments

1. What measures have been put in place to promote economic, social, cultural, civil and political rights?
2. Are there any provisions or mechanisms available for citizens to seek redress against violations of rights and liberties by the government?
3. What steps have been taken to facilitate access to justice to all?

OBJECTIVE 4: Uphold the separation of powers, including the protection of the independence of the judiciary and of an effective parliament

1. What are the constitutional and legislative provisions establishing the separation and balance of powers among the Executive, the Legislature and the Judiciary?
2. Is the judiciary independent from the Executive and does it have adequate resources and autonomous management?
3. How would you rate the legislative functions and the oversight role of the parliament in your country?
4. Are security forces subject to legislative oversight?

OBJECTIVE 5: Ensure accountable, efficient and effective public office holders and civil servants

1. What measures have been taken in the country to strengthen institutions for efficient and effective public service?
2. Is there a system of civil service delivery evaluation that enables citizens to express their opinion on the quality of the service delivered by the administration?
3. To what extent does the country have a legal and transparent system of recruitment, promotion, management and evaluation of civil servants?

OBJECTIVE 6: Fighting corruption in the political sphere

1. What is your assessment of the state of corruption in the country?
2. What measures and actions have been taken to combat corruption in the political sphere?
3. What are the results of the steps taken to fight corruption?

OBJECTIVE 7: Promotion and protection of the rights of women

1. What legislative provisions and mechanisms have been put in place to improve the status of women in the country?
2. What measures exist to support women's participation in the political terrain?
3. In which area has your country encountered the greatest challenge in promoting women's rights and gender equality?

OBJECTIVE 8: Promotion and protection of the rights of children and young persons

1. What concrete measures have been taken to protect young persons?

OBJECTIVE 9: Promotion and protection of the rights of vulnerable groups including internally displaced persons and refugees

1. What measures has the country taken to improve the status of refugees and vulnerable groups including disabled persons?
2. What is your assessment of the impact of measures taken to promote and protect vulnerable groups, internally displaced persons and refugees?

ECONOMIC GOVERNANCE AND MANAGEMENT

OBJECTIVE 1: Promote macroeconomic policies that support sustainable development

1. What has your country done to make its macroeconomic policy framework sound and supportive of sustainable development?
2. What sector or microeconomic policies has your country developed and implemented to promote economic growth and sustainable development?
3. What has your country done to increase domestic resource mobilisation including public and private savings and capital formation?
4. What have been the major sources of internal and external shocks to your economy?
5. On what basis does the Government formulate macroeconomic projects?

OBJECTIVE 2: Implement sound, transparent and predictable government economic policies

1. What has your country done to make the public administration, parliamentary system and fiscal authorities work effectively and in a transparent manner?
2. What measures has your country taken to make economic policies predictable?
3. What are the main challenges that the country faces with respect to coordinating the efforts of various departments in implementing sound, transparent and predictable economic policies?

OBJECTIVE 3: Promote sound public finance management

1. What has your country done to promote sound public finance management?
2. What measures have your country taken to develop an effective system of fiscal decentralisation?

OBJECTIVE 4: Fight corruption and money laundering

1. What is the prevalence of corruption in the public administration in your country?
2. What measures have your country taken to combat corruption?
3. What is the prevalence of money laundering in your country?

OBJECTIVE 5: Accelerate regional integration by participating in the harmonisation of monetary, trade and investment policies

1. Is your country a member of any regional economic integration arrangement? (If not, please go to question 2 of objective 5)
2. What measures has your country taken to ensure that national policies, including in respect of intra-African trade and investment promotion, are consistent with and supportive of regional economic integration objectives?
3. What measures have your country taken to ensure effective implementation of decisions and agreements made within regional economic integration arrangements?
4. Has your country adopted measures to promote regional monetary harmonisation, cooperation and coordination?

CORPORATE GOVERNANCE

OBJECTIVE 1: Promote an enabling environment and effective regulatory framework for economic activities

1. How does the regulatory framework facilitate commercial enterprise in the country?
2. What are the external and internal factors that impact on business activity?
3. What is the structure of the economy?

OBJECTIVE 2: Ensure that corporations act as good corporate citizens with regards to human rights, social responsibility and environmental sustainability

1. Are there measures in place to ensure that corporations recognise and observe human and labour laws?
2. What standard of corporate social responsibility is obtainable in the country?
3. To what extent are corporations responsive to the concerns of the communities in which they operate?
4. What measures have been put in place to ensure sustainable environmental management on the part of corporations?

OBJECTIVE 3: Promote adoption of codes of good business ethics in achieving the objectives of the corporation

1. What is the state of corporate governance in the country?
2. What is your assessment of professional training and standards?
3. What other areas of legislation or regulation influence or enforce ethical business conduct in the country?

OBJECTIVE 4: Ensure that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair and just manner

1. To what extent does the corporate governance framework protect shareholder's rights?
2. Does the corporate governance framework recognise the rights of stakeholders (other than shareholders)?

OBJECTIVE 5: Provide for accountability of corporations, directors and officers

1. Does the corporate governance framework ensure that timely and accurate disclosure is made on all material matters regarding the corporation?
2. To what extent are the accounting and auditing standards and practices in line with international standards?
3. Does the corporate governance framework ensure the strategic guidance of the corporation, effective monitoring of management by the board (governing or supervisory body) and the board's accountability to the corporation and the shareholders?

SOCIO-ECONOMIC DEVELOPMENT**OBJECTIVE 1: Promote self-reliance in development and build capacity for self-sustaining development**

1. To what extent does the country have effective ownership of the development programmes, orientation and design?
2. How is the national development programme funded?

OBJECTIVE 2: Accelerate socio-economic development to achieve sustainable development and poverty eradication

1. What is the country doing to accelerate socio-economic development and achieve sustainable development and poverty eradication?
2. What are the outcomes of the policies and mechanisms to achieve sustainable development and poverty eradication?

OBJECTIVE 3: Strengthen policies, delivery mechanisms and outcomes in key social areas including education and combating of HIV/AIDS and other communicable diseases

1. What measures has government taken to strengthen policy, delivery mechanisms and monitor outcomes in order to make progress towards the social development targets?
2. What are the outcomes of the policies and mechanisms on social indicators?

OBJECTIVE 4: Ensuring affordable access to water, sanitation, energy, finance (including micro-finance), markets, ICT, shelter and land to all citizens, especially the rural poor

1. What policies and strategies including resource mobilisation, budgetary allocation, support processes and delivery mechanisms has the government put in place to ensure that all citizens, in particular the rural and urban poor, have affordable access to basic needs?
2. What progress has the country made towards affordable access to basic needs for all citizens?

OBJECTIVE 5: Progress towards gender equality in all critical areas of concern, including equal access to education for girls at all levels

1. What measures have the country taken to mainstream gender equality?
2. What progress has the country made towards promoting gender equality?

OBJECTIVE 6: Encourage broad-based participation in development by all stakeholders at all levels

1. What mechanisms have been put in place to promote and encourage effective participation in development processes by key stakeholders including civil society, private sector, media, rural communities, women groups, minorities and marginalised groups?

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APPENDIX D: PERSONAL INTERVIEWS

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