



National Integrity Systems

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Country Study Report

Malawi 2004

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Abbreviations

ACB	Anti-Corruption Bureau
ADC	Area Development Committee
ADMARC	Agricultural Development and Marketing Corporation
AEC	Area Executive Committee
AFORD	Alliance for Democracy
CAMA	Consumer Association of Malawi
CID	Criminal Investigations Department
CILIC	Civil Liberties Committee
CPA	Corrupt Practices Act
CTB	Central Tender Board
DFID	Department for International Development
DPP	Director of Public Prosecutions
EC	Electoral Commission
EU	European Union
FDC	Forum for the Defense of the Constitution
FINCA	Finance Company of Malawi
GDP	Gross Domestic Product
GT	German Technical Support and Cooperation Zone
IMF	International Monetary Fund
MACRA	Malawi Communication Regulatory Authority
MAFUNDE	Malawi Forum for National Development
MANEB	Malawi National Examinations Board
MBC	Malawi Broadcasting Corporation
MCP	Malawi Congress Party
MDP	Malawi Democratic Party
MEJN	Malawi Economic Justice Network
MIJ	Malawi Institute of Journalism
MK	Malawi Kwacha
MRA	Malawi Revenue Authority
NDA	National Democratic Alliance
NECOF	National Electoral Consultative Forum
NFRA	National Food Reserve Agency
NGO	Non-Governmental Organization
NIB	National Intelligence Bureau
NICE	National Initiative for Civic Education
NIP	National Independence Party
NIS	National Integrity System
NORAD	Norwegian Development Agency

OPC	Office of the President and Cabinet
PAC	Public Affairs Committee
PCC	Petroleum Control Commission
PPE	Protected Pro-poor Expenditure
PPEA	Parliamentary and Presidential Elections Act
PS	Principal Secretary
SADC	Southern Africa Development Community
SUCOMA	Malawi Sugar Corporation
TI	Transparency International
TVM	Malawi Television
UDF	United Democratic Front
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Program
UNICEF	United Nations Children Education Fund
US\$	United States Dollar
USA	United States of America
USAID	United States Agency for International Development
VDC	Village Development Committee
WB	World Bank

Major Currency and Exchange Rate

109 Malawi Kwachas (MK) = 1 US dollar (USD)¹

Malawi

Executive Summary

Corruption in Malawi exists both formally and informally. There are three major types of corruption in the country namely political corruption, petty corruption and grand corruption. The formal existence and official recognition of corruption in the country are easy to observe. The establishment of the Anti-Corruption Bureau (ACB), the Director of Public Prosecutions (DPP) and the pursuance of anti-corruption policies by government is an acknowledgement that corruption exists in Malawi. However, in a country where some forms of corruption have almost become accepted as a normal way of life, corruption is difficult to identify and combat since some of its modes are not legally recognized.

Moral shortfalls in the standards of leadership and lack of integrity among many leaders in both the private and the public sector, lack of ethical codes, low salaries, misunderstanding social and political change, tribalism and regionalism, weak legal regimes, weak financial controls, weak institutions of governance, the weak state, monopoly power, patronage and poverty have been the main causes of corruption in Malawi. The effects of corruption in the country include investor and capital flight, economic inequalities, poverty, inefficiency, unemployment, donor fatigue, social decay, poverty, social violence, bad governance and private sector decline. This National Integrity Systems study in Malawi, therefore, has come up with the following findings:

- First, anti-corruption legal instruments and policies have not been formulated following rigorous and comprehensive research conducted on corruption in the country. Most of the legal instruments on corruption are products of deskwork or they are based on other instruments from elsewhere. As a result, a culture of corruption is not properly understood and effectively combated although it is condoned.
- Secondly, there is a weak anti-corruption legal regime in the country. The current legal instruments, the Corrupt Practices Act, for example, leave some significant gaps in the scope and definition of corruption and, therefore, create a haven for the flourishing of certain “unpunishable” corrupt practices that are not recognized policy and punishable by law.
- Thirdly, while government, on its part, has largely been preoccupied with institutional and policy issues against corruption, civil society, the non-governmental organizations, the church and the international agencies have spread their focus in the fight against corruption to cover major themes of financing different projects against corruption, strategy build-ups, strategy consolidation and implementation, raising awareness for the prevention of corruption, lobbying for prosecutions of cases of corruption and outright media condemnation of corrupt tendencies both by public and private sector practitioners. However, these efforts are not well coordinated and are marked by a culture of fear and silence drawn from the country’s authoritarian political past.
- Fourthly, the anti-corruption institutions in the country lack resources, autonomy, strong will power, good strategy and mutual support to achieve their laid down objectives. These institutions are largely politicized and monopolized. Thus, the formal anti-corruption institutions, policies and strategies that have since been put in place have achieved very modest results up to now. Observing reality, one concludes that corruption is ever infesting the Malawi society, economy and polity with new velocity. More perceptions about corruption derive from the informal observations where corruption

appears to have even become accepted in some circles as a normal way of life in the country.

- Fifthly, an institutional analysis² revealed that the public and private sectors are, to a significant extent, regarded as corrupt. The rising trends of corruption in the country, it is said, are a reflection of bad political and corporate governance ubiquitous in these sectors. Much as it is difficult to pinpoint captains of either the private sector or the public sector who have been effectively prosecuted for corruption, the informal record, nonetheless, indicates that corruption is widespread in Malawi. Even the Anti-Corruption Bureau (ACB) argues that corruption exists in Malawi and is a difficult phenomenon to uproot. The ACB operatives have argued, on one hand, that their performance should not be judged by the number of people arrested and prosecuted for corruption but by how many of the corrupt practices they have managed to prevent. To judge them by the number of arrests and prosecutions made is wrong because, they argue, "when we reach that point (arrests and prosecutions) it's a sign of failure and weakness in the systems" (ACB technical advisor, Paul Russell cited in: *The Nation* 4 December 2002). But in Malawi, prevention of corruption cannot be measured easily in quantitative terms and, therefore, to measure the ACB against such benchmarks may be tantamount to measuring them against nothing. In practice, on the other hand, the ACB institutions have been ineffective in both prevention and prosecution of corruption in the country.
- Sixthly, while the leadership of the country appears supportive of anti-corruption measures, in reality there is no strong political will to fight against corruption. It would seem that the measures supported are merely face-savers on the part of the leadership of the country often leaving major cases and investigations of corruption logically and selectively uncompleted.
- Seventhly, anti-corruption actors in the country lack a well-coordinated and collective strategy to fight corruption. In fact, some of them do not have a clear strategy and effective capacity to fight against corruption. The coalition-building strategy by the ACB and other actors remain rather at a formative stage.

Following these findings, several measures and strategies are thus recommended that need to be undertaken in any effort to combat corruption in Malawi. These include the following:

- First, problems of corruption have been highlighted by the present research findings. Although there is no comprehensive national research on corruption to date in Malawi, it is important that solutions to issues of corruption be based on findings with some empirical basis.
- Secondly, the Anti-Corruption Bureau (ACB) needs to be reformed and reinforced. The ACB's core legal instrument, the Corrupt Practices Act (CPA), needs to be reviewed to include new modes and scope of corruption. Legal impediments, such as the Director of Public Prosecution's (DPP's) consent requirement needed for prosecution or discontinuance of corruption cases, need to be removed. Staff at the ACB need autonomy and training on the dynamics of corruption. Resources of the ACB need reinforcements.
- Thirdly, the ACB strategy should be revitalized so that it embraces an all-inclusive coalition strategy cutting across government, non-governmental, civil society, parastatal, private sector, church and traditional entities. This requires sensitization, mobilization, negotiation, cooption and nurturing new anti-corruption actors.
- Fourthly, the appointment of top brass at all anti-corruption institutions be depoliticised and independent, and that the ACB resource allocation be broadened, diversified and sustained on a long term. Anti-corruption institutions need to be headed by people of high integrity and right

qualifications but not necessarily ruling party loyalists. For example, Gilton Chiwaula, ACB Director, was unceremoniously removed from the Bureau without any clear explanations as to why he was removed. The Government also removed Deputy Director, Alex Nampota, under similar circumstances at the time when the maize scam was at its peak. The former Director of Public Prosecutions (DPP), Fahad Assani, who has since been fired by the new administration allowed corruption cases involving top level politicians such as the Land Rover case to remain in his office for too long by denying the ACB consent to prosecute. Therefore, this situation raised speculations that the Directors of these institutions were "mere political appointees" who were protecting their political interests. These institutions need not be held ransom to political interests³.

- Fifthly, comprehensive national empirical research should be conducted on corruption periodically. Perceptions of corruption need to be harmonized with realities about corruption. Empirical research findings obtained by a well-planned and executed national comprehensive survey should be the core of all anti-corruption activities in order for them to be in tandem with practice.
- Sixthly, good governance, democracy and participatory development need to be encouraged to create an enabling environment for the rule of law, accountability and transparency in public and corporate affairs. These are conduits for inculcating strong political will on the leadership of these sectors.

Country Overview

History

Malawi became a multiparty unitary state in 1993 when the country held its national referendum to decide whether the country would remain a single party state or revert to the multiparty system, which had collapsed soon after independence in 1964. Over 64 percent of the 10 million population voted for the multiparty system of government thereby dismantling the authoritarian one party state which the ruling Malawi Congress Party (MCP) had consolidated for more than 30 years. While the MCP was the only legal political party in the country, Dr. Kamuzu H. Banda was the life President of the country from 1966 until his downfall in 1994.

The emergence of multiparty politics in 1993 changed the political landscape of Malawi greatly. This change also affected political parties as the main institutions of governance in the country. Emerging from authoritarianism, political parties had the challenge of shrugging off an authoritarian culture and facing the challenges presented by the new political system. It was this background that gave rise to the emergence of many political parties in the country estimated to have multiplied to as many as 22 political parties in 1994, although only 11 parties had survived by 1999. Among them were the United Democratic Front (UDF) and the Alliance for Democracy (AFORD), which both started as pressure groups and became political parties after the national referendum. The UDF proceeded to become the ruling party when it won the 1994 presidential and parliamentary elections defeating and removing the MCP from power. However, when the MCP and AFORD formed a coalition a few months after the general elections, the UDF failed to realize a majority in the national assembly and faced a tough challenge to pass its agenda. This situation meant that the UDF had no choice but to use its resources and privileged position to entice AFORD into a coalition government.

Present Situation

The creation of an AFORD/UDF coalition government has had two implications. First it heralded the disbandment of the MCP/AFORD coalition. Secondly, it created the new AFORD/UDF coalition government and gave it the parliamentary majority it needed to pass its agenda in the national assembly. This coalition government only lasted for 20 months until March 1995 when AFORD pulled out of this marriage of convenience accusing its partner, UDF, of gross corruption and mismanagement.⁴ Not everybody who took positions in the ruined coalition government pulled out. Six "rebel ministers" and top civil servants especially diplomats from AFORD did not heed their President's call to leave government. Most of these were later fired from their party and some simply joined the UDF to become its bona fide members. AFORD then returned to its political roots to align with the MCP and challenged the UDF rule as an alliance with one presidential candidate in 1999. When they lost the presidential race narrowly, the alliance soon hit a snag because of perpetual power struggles in both MCP and AFORD. This formed the basis upon which the major political parties in the country are functioning now. MCP and AFORD are inherently split. One faction of AFORD led by its president, Chakufwa Chihana, has gone back into another de facto marriage of convenience with the UDF. The other faction led by Green Lulilo Mwamondwe, is flirting with the MCP and other small opposition parties. Generally, in the process of this shifting of power and alliances between the MCP and UDF using the third biggest party in the country, AFORD, as a kingmaker has attracted different reactions from political pundits. The reactions include observations that the ruling UDF has persistently abused public resources for advancing its party agenda. The resources have been used for splitting and weakening the opposition and attracting some of its members with financial emoluments to support and join the ruling party⁵.

It is important to note that since the re-introduction of multiparty politics in the country more than 22 political parties have practised politics. However, less than 10 political parties and one pressure group, the National Democratic Alliance (NDA), remain on the

scene. The UDF, MCP and AFORD, in that order, remain the largest and most functional political parties in the country.

Political System

The Malawi political system based on its Constitution is a mixture of the presidential and parliamentary system of government. The Presidency and Parliament are elected directly by the people and remain accountable in principle to the electorate. The officers in the administrative and judicial system assume their responsibilities on appointment based on professional qualifications and competence. Thus professionalism, at least in principle, is part of their career progression. In these sectors, nonetheless, top brass personnel are predominantly political appointees whose security of tenure and career advancement are constantly at the mercy of the political leadership. For example, the director of the ACB, Gilton Chiwaula, has just been fired from the ACB by the parliamentary Public Appointments Committee on the initiative of the State President. The reasons for his dismissal have been little explained but hotly contested by the press and other stakeholders. His firing coincided with the probe by the ACB into the maize scam in which senior ruling UDF party officials and politicians were implicated although the government has moved to send him to the Embassy in Germany. Similarly, three High Court Judges were recently "impeached" by Parliament for supporting the opposition in their rulings on official misconduct and incompetence, only to be restored by the State President's order⁶. These are acts that politicize anti-corruption institutions as they are subjected to the rigours of monopoly power.

When a multiparty system of government was introduced in the country, many groundbreaking developments followed. Since 1995, for example, the country adopted a liberal republican Constitution after the one party state was dismantled. The Constitution provides for the creation of the three organs of government – the Executive, the Legislature and the Judiciary – and allocates powers among them. The political system girded by this Constitution is a mixture of the presidential and parliamentary systems of government. The allocation of powers among the organs of government follows the principle of separation of powers on the footsteps of a presidential system of government. However, separation of powers is not absolute since there are overlaps among the organs of government similar to those in a typical parliamentary system of government. The Judiciary intervenes in the legislative functions of the Executive and Legislature mainly through judicial reviews of their acts to enforce checks and balances. Overlaps, checks and balances also exist between the Executive and the Legislature. For example, some members of the Executive are also members of the Legislature following a parliamentary system of government. The Executive President is elected directly by the electorate together with Parliament for a period of five years and exercises powers of both the Head of State and Government and those of Commander-In- Chief of the Defense Forces. Since independence, Malawi has had two State Presidents namely Dr. H. Kamuzu Banda (1964-1994) and Dr. Bakili Muluzi (1994-2004). Currently, the Constitution under section 83 limits the presidential tenure to two five-year terms of office although efforts are underway by the ruling UDF party to amend the Constitution and extend the presidential tenure of office in favour of the incumbent State President.

The Constitution and other laws and parent Acts of Parliament give powers to the State President to perform several crucial functions of the State and Government. Among the powers vested in him by the Constitution under section 89 (1) are:

- To assent to Bills and promulgate Bills duly passed by Parliament;
- To convene and preside over meetings of the Cabinet;
- To confer honours;
- To make such appointments as may be necessary in accordance with powers conferred upon him or her by this Constitution or an Act of Parliament;
- Subject to this Constitution, to appoint, accredit, receive and recognize ambassadors, high commissioners, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls, and consular officers;

- To negotiate, sign, enter into and accede to international agreements or to delegate such power to Ministers, ambassadors and high commissioners;
- To appoint commissions of inquiry;
- To refer disputes of constitutional nature to the High Court; and
- To proclaim referenda and plebiscites in accordance with this Constitution or an Act of Parliament.

The Executive

The Executive in Malawi operates at two levels; firstly, the central government based in the capital city, Lilongwe, and each of the 28 districts. Secondly, there are local authorities (local government) run by appointed officials and elected councillors since November 2000. The Executive consists of the President, the Vice President, the Attorney General, Cabinet Ministers and Deputy Ministers. There are 26 Ministers (four of whom are Ministers of State) and 12 Deputy Ministers. The Attorney General is also the Minister of Justice and the Vice President is also the Minister of Privatization and this brings the number of those who sit in the Cabinet to 39.

The President appoints Cabinet Ministers, Deputy Cabinet Ministers and the Civil Service Commission appoints civil servants. The President also appoints members of the Civil Service Commission. Furthermore, the higher echelons of the civil service such as the principal secretaries are all appointed directly by the President. Ministers are directly accountable to Parliament but indirectly to the people through an elected President. The President in Malawi is elected directly by the people for five years.

The President under article 189 of the Constitution also has powers to appoint the Attorney General; the Director of Public Prosecutions; the Secretary to the President and Cabinet; Ambassadors, High Commissioners and other principal Diplomatic Staff; the High Command of the Defense Forces; the Inspector General of Police and the Chief Commissioner of Prisons.

The Executive is a policy making body while the civil service implements government policy. On top of the civil service is the secretary to the President and Cabinet appointed by the President.

Political power in the country rests with the executive branch of government. Political scientists have argued that the Executive in Malawi "has become so powerful that it influences legislative decisions".⁷ Executive power is exercised by both the President and his members of Cabinet. Similarly, the ruling UDF party also enjoys significant political power and influence that includes having access to and monopoly use of state resources. This is the case in Malawi because there is no clear dividing line between state and party functions.

However, according to a report by the UN Economic commission for Africa, people perceive the new political system in the country in general with mixed views. While its legitimacy and stability are acceptable to some, others simply remain less inclined towards multiparty democracy in the country. Perhaps the core of suspicion about the political system comes from the fact that one party dominance in public affairs still continues even at the level of local government.

Table 1 The Legitimacy of the Political Framework

The Political System	Public Opinion Percentages
Consists of a stable multiparty democracy with two or more strong political parties each with an independent nationwide program	22.2. %

The Political System	Public Opinion Percentages
Consists of a multiparty democracy with two or more independent political parties where the ruling party is dominant	43.2%
Consists of a multiparty democracy whereby the ruling party allows other parties to register but it does not allow them to compete freely for power	33.3%

Source: Report on Indicators for Monitoring Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 54

The political system allows Cabinet Ministers to attend legislative business. Cabinet Ministers who are also elected members of the Legislature double their roles by attending and voting on the legislative business. However, Cabinet Ministers who are not elected members of the Legislature attend legislative business and answer questions levelled against their ministries but are not allowed to vote.

Police Force

There is a centrally administered Police Structure in Malawi – the Malawi Police Force. This force is a state structure – which others have preferred calling the ruling party menace because of its alleged biased conduct. The bias in the Malawi Police Force towards the ruling UDF party is not difficult to substantiate. For example, a few months ago an opposition MCP MP, Hon. Kizito Ngwembe, was beaten by UDF Young Democrats right inside a police station in Kasungu district and nobody has been arrested. MCP president, Gwanda Chakuamba and his Treasurer General, Hitherwick Ntaba, were both narrowly missed by alleged gun-brandishing Young Democrats in Kasungu district and no arrests have since been recorded⁸. When the Forum for the Defense of the Constitution (FDC) launched its peaceful demonstrations last month after obtaining police permission, the same police came with the UDF Young Democrats and tear-gassed the demonstrators who were marching against constitutional amendments to allow the current State President to run again for a third term of office. In the fracas that took place in the commercial city, Blantyre, the UDF Young Democrats had a free hand in harassing and beating up FDC supporters in full view of the police officers, allegedly from political orders issued by the UDF regional governor for the South, Davis Kapito. Such are abuses of public resources and state infrastructures which have forced commentators to observe that the Malawi Police Force has lost its integrity because it has been hijacked by the ruling UDF party to serve its interest and not the legitimate security aspirations of all Malawians. Here the Inspector General of Police is a political appointee. It is the President who appoints him/her into office.

The Malawi Police Forces are highly centralized. The Inspector General of Police appointed by the President heads the Police Forces. However, the Constitution under section 153 (1) states that “the Malawi Police Forces shall be an independent organ of the Executive which shall be there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of this Constitution and any other law”. Currently, there are 7,250 police officers in the country. With a population of about 10 million people, it is estimated that there are 1,366 citizens for each police officer. Since the advent of the multiparty system crime in the country has escalated. For example, according to Police sources between January and July 2001 there were 230 cases of reported murder in Malawi. Generally, public confidence in the police has plummeted.

The Police in Malawi do not have powers to prosecute corruption cases. The Police Forces in the country only effect arrests of suspects following orders from the Anti-Corruption Bureau (ACB) or the Director of Public Prosecutions (DPP). As a result, the Police Forces in the country do not have a fraud squad.

Anti-Corruption Bureau

There is the Anti-Corruption Bureau (ACB) in Malawi with powers to investigate, prosecute and prevent corruption cases. The ACB derives its powers from the Constitution (1995) and the Corrupt Practices Act (CPA 1995). However, the ACB has no powers to prosecute cases of corruption without obtaining consent from the office of the DPP. This is perhaps the biggest problem that stalls progress of the ACB in pursuing corruption cases in court. The ACB works in cooperation with the police, the courts, the DPP, donors and other agencies.

There is also the office of the Ombudsman in the country. The office of the Ombudsman is a constitutional body. It derives its powers from both the Constitution and the Ombudsman Act. Its duties and functions include the protection of human rights, ensuring that administrative justice prevails in the public and private service and makes recommendations to the Legislature and the DPP on its findings. The Ombudsman does not have powers to prosecute cases of corruption. It only refers such cases to the DPP and reports them to the Parliamentary Committee on the Ombudsman of the Legislature. The Ombudsman works closely with the courts, the Police, the DPP, the ACB and the Legislature.

Legislature

The Legislature in Malawi is a powerful house that does its crucial work almost unilaterally. If the essence of democracy, good governance and development is consultation of the people on matters that affect them, then in Malawi such values are at a low ebb. For example, the national assembly changed the constitutional nature of the Legislature from being a bicameral house with two chambers to a unicameral house with one chamber unilaterally by abolishing the senate. It has of late debated the constitutional extensions for the terms of office the President in Malawi should serve, with little if any open consultation of the people. They removed in the same manner the recall provision of the Constitution, which gave people the power to recall and replace their Member of Parliament (MP) when necessary. The quorum bill was also an exclusive matter to the house that sought to reduce the requirement from two thirds to a simple majority. The defections bill was just rushed through among themselves when they wanted to declare vacant the seats of MPs deemed to "associate with other organizations whose objectives are political in nature". This bill has seen elected MPs being removed from the national assembly even on the most dubious pretexts. Like the situation appears to be at the executive level where coalitions and counter coalitions have preoccupied those who rule the country, at the legislative level it has also mattered where an MP belongs in the numerous de facto miniature coalitions in the assembly. Being in opposition has endangered many MPs' careers, although the courts have frequently intervened to reinstate the victims.

The Legislature is unicameral and has 193 elected members, the Speaker and two Deputy Speakers. Before the senate provision in the Constitution was repealed in 2001/2, the Legislature was designed to be bicameral with two chambers (the elected national assembly and the senate). The senate was repealed because, it was argued, it would be expensive for the country to run a two-chamber Legislature. It was also argued that the senate would seek to represent the same constituencies already under the representation of the elected Legislature thereby causing unnecessary overlaps and costly duplications.

The Legislature is elected for a five-year term of office. In 1999, out of the 193 contested seats the ruling United Democratic Front (UDF) won 94 seats, the opposition Malawi Congress Party (MCP) got 66 seats and Alliance for Democracy (AFORD) went away with 29 seats respectively. Independents captured 4 seats. However, currently the UDF holds 95 seats, MCP 60 seats, AFORD 30 seats and independents 6 seats in the Legislature. These changes have been a result of bi-elections and defections by elected members of the Legislature.

The duties and functions of the Legislature in Malawi include law making, approving the national budget, holding the Executive accountable, communicating messages between the

government and the people, linking the people and their government and representing the people among others.

Judiciary

There is a Judiciary whose High Court and Supreme Court of Appeal Judges are appointed by the President on recommendations of the Judicial Service Commission. The Chief Justice, appointed by the President, heads the Judiciary. The Courts and persons presiding over them exercise their powers, duties and functions on all issues of judicial nature. Their main function is to interpret the law. It has powers to hold both the Legislature and the Executive accountable by means of reviewing their actions. The independence of their actions depends on the nature of issues at hand and perceptions of interested parties involved.

The institutional structure of the Judiciary runs from the Supreme Court, the High Court to the Magistrate Court.

Media

The main mass media institutions are also engaged in curbing corruption. These include radio stations, the newspapers and the only national Malawi Television. Major radio stations are state controlled monopolies namely the Malawi Broadcasting Corporation (MBC) radios 1 and 2. There are small independent radio stations also in the country namely Capito FM, Power 101, Radio MIJ, Radio Maria and Islamic Radio. Newspapers that hit national frontiers are the *Daily Times*, the *Daily Nation*, *Malawi News* and the *Weekend Nation*. The only Television in the country is the state run Malawi Television.

The media in Malawi is a monopolized institution. The flow of information in the country is not yet free. Major mass media public infrastructures remain the monopoly of the state. The Malawi Broadcasting Corporation (MBC) and the Malawi Television (MTV) – the only comprehensive national mass media outlets – are the preserve of the state. Opposing views are strictly controlled in these media outlets. The opposition, however, expresses its views through the print media – *The Nation*, *Daily Times* and *Malawi News*. This is limited because Malawi has more than 60 percent of its people illiterate. After 1994, there were more than 15 newspapers in the country. But, similar to political parties, they mostly disbanded after the campaign period due to lack of resources and markets. Now there are about 2 daily newspapers, 2 weekend major tabloids and 5 minor ones – usually campaign mouthpieces owned by politicians and political parties. But even these print media houses sometimes suffer state repression. For example, the Editor-In-Chief of the *Daily Times* and *Malawi News*, Jika Nkolokosa, is currently serving a suspension from work for carrying a comment in the *Malawi News* which criticized the State President for spending more than K200 million in 4 months for inspecting development projects and visiting the people while the country is experiencing hunger and poverty.

Corruption Profile

The Perception of Corruption

Research in Malawi reveals the existence of both petty and grand corruption. In other words, there is small-scale corruption in the country usually committed by ordinary people at the grassroots and top-level corruption, which has led to accusations being levelled against the top leadership of the private and public sectors. While most cases involving grand corruption have not been logically concluded to the satisfaction of many, petty corruption has sometimes been exposed and combated more effectively.

Transparency International gave in 2002 Malawi a score of 2,9 out of 10 in its Corruption Perceptions Index, ranking the country in position 5 out of the 9 Southern African Development Community (SADC) countries, after Angola, Zambia, Zimbabwe and Tanzania. The CPI covered more than 30 countries in Africa and 102 worldwide from which Malawi was ranked position 11 and 35 respectively on the corruption ladder.⁹ Following the publication of the index, the Malawi government admitted that "corruption is still high" in the country. This, the government said, is the case because "cases are not followed to their logical conclusion" by the Anti-Corruption Bureau (ACB). On the other hand, the ACB placed the blame on legal weaknesses arguing that the current Corrupt Practices Act is not strong and broad enough to deal effectively with some forms of corruption such as "fraud."

The World Bank has released in March 2003 a report in which it says corruption levels in Malawi are now higher than they were in 1999.¹⁰ The Bank acknowledges that Malawi has a "reasonable institutional and legal infrastructure for addressing corruption through public education, prevention and enforcement". "These institutions, however, suffer from lack of political support, low budgetary resources and a weak court system for effective prosecution of high profile cases". The Bank points out that recent high profile cases suggest high levels of corruption in the areas of public procurement, management of parastatals, education spending and land as well as provision of public services like police and immigration.¹¹

Political Corruption

Political corruption is a major problem in Malawi. Political corruption usually manifests itself through the use of public resources to serve the political objectives of certain privileged groups in society. During election campaigns, the ruling UDF party openly uses public resources such as the national radio, Malawi Broadcasting Corporation, the national Television, government vehicles, the police and local authorities facilities for its campaign. Government officials and the State President use public resources meant for development as a campaign tool for his party. For example, recently the *Malawi News* reported that the State President had spent K200 Million in four months inspecting "development projects" when in actuality he is campaigning for his party towards the 2004 general elections in the country. Just when the defeated "open terms" bill for the President was about to go to Parliament in 2002, money was given and material promises made to those parliamentarians who promised to support the bill when it came up for voting. In one scenario, AFORD President, Chakufwa Chihana, gave K100,000 to each of those parliamentarians in his party who promised to support the bill. This development came to the attention of the public after one AFORD parliamentarian, Hon. Mponda Mkandawire, blew the whistle and rejected the "fat brown envelope". The State President himself openly admitted "funding the Tembo faction of the opposition MCP" which also supported the defeated bill in Parliament by buying its party uniforms and financing the faction's illegal convention. This was later nullified by the court and had its leaders, Vice President Hon. J. Tembo and the Secretary General Hon. Kate Kainja, effectively convicted of contempt of court by holding the convention and thus disregarding a court injunction restraining them

from doing so. The two have since lost their parliamentary seats because of their convictions, which are said to border on "moral turpitude and dishonesty" – crimes, which the Constitution spells out as grounds for barring any leader from standing for public office at least for seven years.

It is common in Malawi to hear of cases where Members of Parliament elected on the ticket of their party either support another party, actually defect and join it, or declare themselves "independent" after receiving financial and material inducements from the ruling party or other political circles to serve certain expediency.

The National Intelligence Bureau (NIB), an obscure intelligence organ of the ruling party and a political instrument currently used to terrorize the opposition, is better funded than the Malawi Police Forces because it clearly serves the political agenda of the ruling party (the NIB mostly works on secretive and intelligence issues for the ruling party. Its reporting channels and lines of command are a secret and so is the head of the bureau.). Its inclusion in the National Electoral Consultative Forum (NECOF) to oversee the unfolding electoral process in the country recently sparked debate and anger among civil society groups, the church, the media and the opposition parties demanding that it be withdrawn because it will constitute a "rigging mechanism" for the ruling party in the forum.

It is difficult to exonerate the Malawi Police Forces from similar charges. The Police Forces often carry accusations of being politically corrupt when they deliberately fail to arrest ruling party hooligans who purge ruling party critics and opponents right inside the police station in broad daylight. However, when opposition figures are alleged to be on the wrong side, arrests by the Police are carried out swiftly. Sometimes the Police defy court orders in such circumstances in which the opposition sought protection of the law.

The traditional Chiefs, who are touted and promoted by the ruling party at its public rallies, have also joined the litany of those politically abused and corrupted in the country. The formative Chiefs' Council, led by Chiefs Kaomba and Inkosi Ya Makosi M' mbelwa, has been a crusading focal point for the defeated "open terms" bill for the ruling party and Presidency. As the terminology of the bill mutated and it is now back in Parliament under the banner of the "third term" bill for the Presidency, the Chiefs' Council is back on its heels getting bribed and palm-oiled to do the campaigns for the cause. Similarly, the inclusion of the Council into the National Electoral Consultative Forum (NECOF) raised eyebrows as stakeholders see it as a "discredited and dubious" institution. The NIB and the Council are viewed by certain actors in the electoral process as symbols of political corruption because although these institutions are funded by public resources they actually serve the hidden and partisan agenda of the ruling party. Civil society and the opposition have since demanded its withdrawal from the forum. Quite interestingly, on 28 December 2002, Chief Kaomba was carried in the *Weekend Nation* in which the Chief was caught off guard. He claimed that his office is funded by government through the Ministry of Local Government and that it is responsible to the office of President and Cabinet but the Principal Secretary for Local Government, Mr. Samute, said that it is not true that his Ministry funds the Chiefs' Council leaving the paper's commentary wondering as to why there is no "accountability" in the business of the Council.

It is difficult to perceive of any electoral and political process free of corruption in Malawi. All political parties use financial and material inducements to attract voters during elections. While the ruling party uses state resources and national development projects for its campaigns, the opposition too resorts to distributing their meagre resources among their faithful ones and, in a bid to gain more votes, gives T/shirts, tracksuits, footballs and promises more patronage once they are voted into government.

The public media is not only monopolized by the ruling party during elections but also remains inaccessible to the opposition. The opposition has suffered castigation and public insults through the national radio, the Malawi Broadcasting Corporation and the national Television without being given a chance to defend itself or respond to spiteful allegations¹². It is evident that while the public media is maintained by public resources, it does not serve the public interest in an impartial manner. Worse still, media institutions seen to promote dissenting views risk political harassment or attempts to "buy off" their crop of critical writers to join the ruling party crusaders.

Grand Corruption

Apart from the legal weaknesses on corruption in the country, the ACB also conceded that there is no consensual coalition building among concerned institutions against corruption arguing instead that it is wrong to blame it (the ACB) for high levels of corruption in the country because the courts and the Director of Public Prosecution (DPP) are also key players in prosecuting corruption. Director of the Bureau, G. Chiwaula argued that “the bureau does not conclude cases on its own. It works with courts. Some of the cases are right now with the DPP, some are in the courts like the PCC and the (K187 million) education scam cases. In some cases, government has had to cancel contracts [as a result of the bureau’s investigation]”.¹³ This was in reference to the contact for making national Identity Cards with a Swiss Firm, SECUCOM, which government cancelled later amid intense corruption allegations in early 2000. Chiwaula pointed at changes in the structures of governance following the political transition, which has been taking place since 1992 from a one-party to a multiparty state in the country as some of the causes of the current status of corruption in the country. He noted that corruption in Malawi is perceived to be on the increase because it was never talked about in the one party regime and that “the transition has helped to put corruption in the spotlight, making one think corruption is on the rise because people have been sensitized and are able to discuss it”.¹⁴

The social stigma put on the UDF-led government and the entire country is not new in Malawi. This stigma is a result of the widespread incidences of grand or large-scale corruption in the country. Kaunda regards the UDF government’s expansion of ministerial positions to accommodate the AFORD ministers in December 1994 as the first major example of official patronage, whereby the choice of the initial 23 was meant to reward the loyalists of the UDF.¹⁵ Secondly, when the UDF led government gave K50,000 to UDF and AFORD MPs for “development purposes” in total exclusion of the MCP and independent MPs parliamentary patronage was further deepened¹⁶. To date this public money has never been accounted for. Following that, in less than a year of its establishment between March 1997 and January 1998, the Anti-Corruption Bureau (ACB) received a total of 3, 100 written reports and complaints of corruption. The Malawi government was estimated to lose over K22 million each year through corruption (payments made to ghost teachers, rentals for ghost houses and funding ghost projects). As corruption grew in the country, the Daily Times (19 November 2001) reported that responsible institutions to lack the power to act.¹⁷ This led the EU, UK, USA and the Danish Government to suspend aid worth K1.5 billion pledged for budgetary support.¹⁸ In all this, politicians and government officials (including their relatives) appear to be the major beneficiaries of fraudulent acts, corruption, and economic inequalities¹⁹ in the country. For example, over 70 percent of the sugar business in Malawi is in the hands of politicians and recently a report sponsored by USAID and published in April 1998 by The Consumers Association of Malawi (CAMA) revealed similar trends. In fact, the Sugar Corporation of Malawi (SUCOMA) also admitted the existence of such a scheme, with President Muluzi owning 60 percent of the quota at one stage.²⁰

Those MPs that were interviewed in the present study expressed alarm about the level of corruption in the country. Many held the view that political corruption, which seemed to have ushered the ruling UDF regime into power, is the root cause of all other types of corruption in the country. Since the controversial 1999 general elections’ results were challenged by the opposition MCP/AFORD Alliance up to the Supreme Court of appeal, the spread of corruption has escalated in the country mainly due to lack of political will to tackle “top level graft, fraud, abuse of office and misappropriation” of public resources. The Parliamentary Public Accounts Committee (PAC) has investigated cases of top-level corruption in the past – the K187 million case at the Ministry of education, Science and Technology in 2000 lost through improper accounting procedures, award contracts to ghost construction companies, overpayments etc – but up to date the case remains inconclusive. Because of “political interference” the then opposition MCP Chairman of the Committee was dismissed from the Committee because his Committee was “treading on sensitive” ground.

Similarly, a Petroleum Control Commission (PCC) scam involving ruling party politicians and "parastatal moguls" unveiled in 1998 saw a financial seepage totalling to over US\$ 14 million through inappropriate awards of fuel contracts and receipts of gratification. These totalled US\$ 215,507 and US\$ 216,000 respectively from EuroPetrol and "corruptly awarding a consultancy contract to Humble Energy Limited and receiving US\$ 27,500 on each count as a reward"²¹ was persistently debated as an issue still "dubiously pending in court". The case in which the European Union (EU) is demanding a refund from government amounting to K650 million²² which was diverted and "mismanaged" also took centre stage. This and several other corruption and mismanagement cases have led to the IMF, World Bank, UK and EU withholding budgetary support to Malawi since mid this year. On 31st December 2002 the government announced through Finance Minister, Friday Jumbe, that it was ready to "apologize" to the Danish Government – the current EU chair – for unexplained crimes in order for them to reconsider a resumption of aid to the country.

The parliamentarians noted with dismay how political corruption penetrated the House on the peak of the defeated open terms bill aimed at extending President Muluzi's term of office indefinitely. Several MPs argued that although there is evidence²³ that some MPs were corruptly influenced to support the bill, the ACB is taking too long to bring the accused to book. Investigations at the ACB was deemed endless due to political interference." Ironically, while evidence may not have been easy to gather, the State President decided to come out in the open and publicly "confessed"²⁴ at a public rally held in Dowa district that he funded an opposition MCP faction led by Hon. John Tembo to buy party uniforms and conduct its convention in contempt of a court order in Lilongwe in the run up to the "open terms bill" parliamentary debate. In the President's view, this was done to "strengthen the opposition in the country". However, what brought incriminating layers on the matter was that charges of political corruption, though hard to prosecute, were being widely discussed in relation to similar cases. Moreover, the President said his dealings with Mr. Tembo were done "secretly" and that Mr. Tembo was "dishonest" because he did not come out in the open to tell his followers about the matter.

Participants in this study generally observed that "corruption is high"²⁵ in Malawi. Cited examples and arguments about the state of corruption in the country struck several similarities among the participants and observations made by other sources. However, it was noted that corruption is a two way process and that it is difficult to investigate and prosecute it effectively where the parties involved are happy because they "cleverly" hide evidence. That is why, in Malawi, when "big fish" (influential people) are involved investigations into alleged corruption takes too long or even stalls. It was pointed out that "big money is obtained with big authority, which also protects the culprit if there is no political will". For example, participants observed that one Indian "defrauded the treasury" of money worthy K350 million and his case "has never moved an inch from the DPP's office". And, "meanwhile he has become more rich than before while many Malawians are starving". Recently, opposition MPs were "bribed" by the ruling party to vote for the defeated "open term bill" aimed at extending the tenure of office for the incumbent President indefinitely. The investigations concerning these MPs are "foot dragging" despite their names being mentioned by colleagues and the media. Some AFORD MPs openly received K100, 000 "soft money" each for the same purpose from their party president who had declared his support of the bill and was mobilizing his party loyalists to do the same. This clique finally voted for the bill in Parliament in breach of party convention resolutions not to support the bill and, in the process, splitting their party. The Petrol Control Commission (PCC) case in which more than K500 million was lost is still pending in court after more than three years since it was reported. Another scam in the Ministry of Education, Science and Technology, which drained about K187 million two years ago was a centre of debate. Similarly, a case in which Apex – a Land Rover Dealing Company is facing charges of corruption through a contract with the government of Malawi in which it was agreed that the company sells 110 Rand Rovers to government was often mentioned. It is alleged that the procedure that led to the contract was not proper and that Apex was selling second hand cars and that because of that, "there would be an unnecessary expenditure of K152 million through the contract".²⁶

At present, the country is grappling with the worst starvation in its recent history because of "criminal negligence, corruption and mismanagement" of the country's National Food

Reserve Agency (NFRA) by ruling party politicians and top government offices. The probe by the Parliamentary Committee on Agriculture and Natural Resources on the "plundering" of the grain reserves by ruling party politicians and top government officials was suddenly halted by a presidential order and the Committee chairman withdrawn in September 2002. A month later, the Office of the President and Cabinet (OPC) ordered an urgent inquiry into Finance and Economic Planning Minister, Friday Jumbe's role in the plunder.²⁷ In fact, some members of the Committee indicated that they rejected any report and the issue closed". The previous Committee report found that, among other things, 30,000 metric tones of maize donated by the European Union in 1999 were sold without proper authorization. According to a report by an Audit firm, Mwenelupembe, Mhango and Company and the ACB, there were discrepancies in the process and that "by 31st December 1999, Admarc had purchased 153,739.507 metric tones of maize...when physical stocks weighed 153,338.581 while Admarc showed a book balance of 154,237.608 metric tones" leading to a situation where some suppliers were overpaid by K9,592,895.00.²⁸ Over 167,000 metric tones of maize (the country's staple food) worth K2.9 billion were dubiously sold from NFRA to top ruling party politicians and government officials. The former deputy minister of Agriculture, Leonard Mangulama and NFRA General Manager, Henry Gaga, were fired because of the scam. The chairperson of the NFRA board that dismissed Henry Gaga, Mrs. Agrina Mussa, is wife to Member of Parliament, Henry Mussa, who has been named in the scam. Some suppliers have relations and spouses who are senior officials at the Treasury and the NFRA. In fact, the former chairman of the disbanded Parliamentary Committee, Joe Manduwa, told the press that the Minister to be probed had "applauded the discontinuation of the probe at a recent United Democratic Party (UDF) caucus" where "even the President himself commended Education Minister and UDF chief whip, George Mtafu, for doing away with me. But there is something fishy about my inclusion into the new Commission. This is a cover up". He also noted that "it was constitutionally wrong for the President to have intervened into the investigations because Parliament was separate from the Executive branch of government", a move which has only managed "to scare off future committee members".²⁹

The maize scam has also led to the unceremonious dismissal of the UDF Chairman of the Parliamentary Committee on Agriculture and Natural Resources, Joe Manduwa, from the Committee on presidential orders³⁰ because he is perceived as an internal threat by the UDF turned out to be the most severe, and latest case of alleged official corruption. Because of the desire to protect certain interests, there is no "separation of powers" when it comes to cases of corruption because the Executive branch of government has so much to protect, it often interferes politically with corruption investigations involving some of its top leaders.

Other cases involving Asian business have come under investigations by the ACB and PAC but they have not been concluded because of their financial liaisons with politicians, judges, parliamentarians and bureaucrats³¹ For example, while it is difficult for the police to arrest the politicians and officials involved in the K2.9 billion maize scam, the police have swiftly arrested the Malawi Congress of Trade Unions General Secretary, Francis Antonio, for failing to account for donor money totalling K130,000 meant for a seminar on child labour.³² By the close of the interviews, the maize sale scam appeared to have grown other ramifications as well. The National Food Reserve Agency (NFRA) was alleged to have awarded a K98 million tender for the repair of its grain silos in the capital Lilongwe to a briefcase company, which had failed to source spare parts and demonstrated no capacity whatsoever to carry out such work. The company, GWC, "won" the tender despite the fact that it has never done this kind of work before beating other 10 bidders including Equity Trading Company (ETC), which also bid K98 million and has been maintaining the silos since 1993. Commentators wondered: "we don't know how GWC, which has no record on silos, beat a company like Equity Trading Company Limited" without even signing the supply agreement as is the normal procedure. The 48 maize silos, which can hold about 200 metric tones of maize to feed the whole country, have been losing stability and need urgent maintenance to keep them on course. However, GWC had since supplied incorrect parts which might mean changing the whole plant and costing government an estimated K300 million. Asked to comment on these developments later, NFRA General Manager, Paul Chimanya, Board Chair, Agrina Mussa and Operations Manager, Sam Thunde, kept

shifting responsibilities.³³ Meanwhile, it has transpired through the media that the Parliamentary Committee on Agriculture says some Cabinet Ministers, senior ADMARC and government officials at the level of principal secretary are implicated³⁴ in the grain scam.

The MPs noted that it would be unrealistic to expect that the ACB and its cooperating partners can do a good job when politicians who appear to be the main players in the game are left on the sidelines. Rather, it would be important that politicians be involved both inside and outside Parliament in the struggle against corruption. In fact, six days later in the chamber, Kasungu South MP, Sitsi Nkhoma, demanded the release of the report on the investigations of some MPs allegedly bribed to support the defeated open terms bill.

The above scenarios illustrate some of the extent of corruption in Malawi. Still, vocal groups of citizens concerned about rampant corruption in the country continue to press for their case. For example, 14 people from Zomba have recently petitioned the United Nations Secretary General, Kofi Annan, asking the UN to intervene in Malawi's deteriorating human rights, democracy and "high level corruption and mismanagement of resources by the people in power". The petitioners pointed out that "corruption and mismanagement of resources by those in power have reached an explosive level in Malawi. Corruption is clearly a way of life in the country with no action ever being taken against those indulging in the malpractice".³⁵ As noted by the Auditor General, the problem starts with the law makers in parliament whom a recent study by the Economic Commission for Africa has described as corrupt and unaccountable to the people. Given this background, grand corruption in Malawi seems to have mutated rather than declined.

Petty Corruption

Petty or small-scale corruption in Malawi is common and has almost been accepted as a normal way of life. This corruption affects the police, immigration department, private sector entities, Malawi Revenue Authority, the lower courts, media and other institutions where graft, bribes and palm oiling take place to influence some officers to perform their duties in disregard of rules and regulations and award undue favours to certain people. This has resulted in skewing the distribution of social goods and services among the people leaving those who cannot afford bribes perpetually deprived of these entitlements and those who have the means to afford bribes with unduly guaranteed entitlements. Since bribes determine delivery of social goods and services, quality of these services and goods have plummeted. Having lost confidence in such public institutions, especially the department of immigration and the police, the people are now crying out and calling for reforms. The State is losing revenue in the process. For example, the auditor general estimates that the state is losing K5 million annually for not taxing hefty allowances of Members of Parliament.

The department of immigration has a corrupt record. For example, taking the pointer outside parliament, Rumphu East MP, Dindi Gowa Nyasulu, asked Minister of Home Affairs, Hon. Maluza, to investigate immigration officers for deliberately creating complexities in the system. There are not many Malawians who can afford a K4,000 passport fee and still spare another amount to bribe someone just to do his job.³⁶ In fact, added Mzimba West MP, Loveness Gondwe, "immigration officers demand bribes ranging between K1,000 and K2,000" to process her constituents' passports and she called for prompt investigations. At the immigration department it is difficult to prove and curb corruption because it is done clandestinely. Those involved in the malpractice do it surreptitiously and they cannot easily be caught. Corruption is perceived to be rampant in institutions like the Immigration Department, Malawi Revenue Authority, Ministry of Lands and Valuation, Malawi Housing Corporation and those that advertise for tenders either for consultancy service or goods.³⁷ At the department of immigration, those with extra resources spend them to bribe the officers to speed up the process and that foreigners, particularly Indians and Asians, are alleged to be the major beneficiaries of graft and corruption because they bribe immigration officers³⁸ and get things done behind closed doors.

Persistent corruption charges during the last sitting of Parliament against the state finally led the Justice Minister and Attorney General, Henry Phoya, to lodge a complaint in the

chamber saying many of the corruption utterances in the House were irresponsible. The Minister pointed out that "it is irresponsible utterances like these which dent the image of government. Papers pick such things and when donors read, they believe it"³⁹. Unfortunately, "in the end, it is not only this side (government side) of the House which stands to be disadvantaged but both sides of the House". However, the Minister was soon stabbed in the back when one of his ruling UDF party MPs, Elwin Maluwa, stood up immediately after the Justice Minister's statement and told the House that he was concerned that public funds were finding their way into the pockets of a few people in the country.

Causes of Corruption

There are many causes of corruption in Malawi, some stemming from personal socio-economic conditions, others have a legal-structural basis. The main ones are:

Poverty: some public officials assume their positions with the aim of alleviating their own personal poverty first thereby indulging in corrupt practices to maximum wealth accumulation within the time they are in office. In Malawi, there is a syndrome that summarizes this phenomenon – "it is our turn to cut a share from the national cake once we get into power". This is common among the major political parties and their social networks – the UDF, MCP and AFORD.

Low salaries particularly in the public sector: in a country where more than 80% of the people live below US\$ 1 a day against the high cost of living, people simply resort to corruption as a survival mechanism. A University graduate working in the civil service in Malawi earns less than US\$ 60 a month.

Lack of ethical leadership in both the private and public sector: leaders have failed to set high moral standards to be emulated by the citizens. Instead, top leaders of both the public and private sector have been seen practicing the politics of patronage, nepotism, indulging in corruption and other such malpractices, which have been copied by or influenced the behaviour of those below them. At one point, the Malawi Posts and Telecommunications Company had a high proportion of employees who came from the same district (Mulanje) as the then Minister of Posts and Telecommunications, Brown Mpinganjira.

Misunderstanding political and economic change: corruption has arisen in the country since the change from an authoritarian one party rule to a multiparty system of government partly because some people think that political and economic liberalization has afforded them an opportunity not available hitherto for self-enrichment through corrupt means. Whereas graft was centralized in the one party state, multiparty politics has opened it up to sections of society hitherto marginalized.

Regionalism and tribalism: the politics of the country are basically regionalist. Once a certain group of leaders assumes power, priority for patronage becomes their "home region". The "homeboy syndrome" is part of this politics and it is not new in the country. In the past, the MCP favoured its central region base for 30 years and now the ruling UDF party focuses on its southern region power base when distributing public resources. It is argued that the Malawi Social Action Funds (MASAF) cut a huge chunk for the Southern region.

Weak legal infrastructure against corruption: the anti-corruption legal regime in the country leaves out certain forms of corruption both in definition and scope of jurisdiction. The case in point is the Corrupt Practices Act (CPA 1995). These "uncaptured areas" become havens of corruption. Even courts have often failed to prosecute successfully people accused of corruption because of the weaknesses in the legal framework.

Weak financial controls: the accounting system and personnel do not seem to exercise tight controls on public finances partly because their efforts are undermined by the political expediency of powerful figures in the system. Donors (UK, Sweden, EU, Norway, USA) have repeatedly expressed worry about the lack of sound fiscal controls in the country and have since placed this requirement as a condition for releasing their aid.

Weak institutions of governance: values of accountability and transparency are not yet a reality in the public and private sector. Democracy is still emerging in the country and the participation of people is rarely encouraged for fear that this may put leaders in the spotlight. Research has shown that institutions of governance in the country are weak⁴⁰. Political parties, the civil service, courts, non-governmental institutions and the police are facing difficulties making adjustments to ensure good governance. For example, the police are largely accused of performing biased acts against citizens.

The weak state: failing to deliver on promises made during election campaigns has meant that the State can only survive by corruptly co-opting or annihilating its critics and opponents. The buying of opposition politicians, rampant political beatings and patronage in the country are seen as tools for bolstering the weak State and its regime in power. The economic base of the state is weak and donors have since predicted that if they do nothing, the economy in Malawi may collapse in 6 months time from February 2003.

Monopoly power: political leaders do not seem ready to relinquish power when it is time to do so. Continued craving for power is a mark of monopoly. As a result, they resort to corrupting other people to support their cause to remain in power. The former one party MCP regime survived in power for 30 years because of political corruption where there was no clear line between the party, the government and the State. Reminiscences of the one party State and its life Presidency are seen in the current UDF regime and its leadership. The UDF and its leadership in Malawi are failing to accept realities of relinquishing power in 2004 as the Constitution demands and instead they fight firstly for the "open terms" bill for the President and secondly for the "third term" bill currently in Parliament. This endless pursuit of power has precipitated incidents of political corruption in the country, especially in Parliament, and the monopoly of public resources, including the media.

Patronage: the distribution of patronage is seen as a sure way of rewarding those who supported the political leadership and its party when they canvassed for power. Soft loans, easy scholarships, lucrative grand jobs and promotions are awarded to people who are politically loyal to the ruling party and its leadership but not necessarily on merit. This is typified by the "performance based" contracts given to top civil servants most of whom are also ruling UDF loyalists. It is a way of consolidating political support and also fulfilling promises made during election campaigns.

Effects of Corruption

Some of the effects of corruption in Malawi include:

Poverty: in Malawi, poverty has deepened because of corruption⁴¹. Public resources are not used and distributed efficiently to address public problems and needs since the criteria for the disbursement of such resources are partisan and sectoral. Therefore, people with legitimate claims to public resources are simply left out and these are usually the poorest of the poor who remain disorganized and powerless in rural and urban areas. The UNDP in 2002 noted that Malawi is poorer than it was 10 years ago. Poverty does not only threaten democracy and good governance but that it facilitates corruption as people draw incentives from their state of being poor to alleviate poverty by different means though sometimes corruptly because moral issues become but secondary.

Inefficiency in the delivery of social services: because of lack of merit, ethics and professionalism in public sector appointments and promotions, there is a lot of wastefulness and inefficiency in the delivery of social goods and services in the country. This is because political loyalty has displaced the need for capacity and competence to produce and deliver public goods and services. Even after the introduction of performance-based contracts in the civil service, productivity is still very low.

Economic inequalities: as the poor have become poorer, the rich have become richer since these have numerous opportunities and influence resulting from corruptly begotten wealth and social networks. Thus, as corruption rises up, the gap between the poor and the rich also widens. Malawi is one of the countries with alarming levels of economic inequalities with a gini coefficient of about 0.62%⁴².

Declining investments and private sector: over the past 8 years, more than 20 private sector companies have closed down their businesses in Malawi. The main cause is a corruption driven bad business environment, which creates uncertainties, business risks and wastefulness. Reports indicate that foreign investments fell by 31% in 2000 attracting only US\$ 6.6 million instead of US\$ 200 million in five years.⁴³ These are signs of a collapsing economy.

Unemployment: because of company closures and the on-going privatization program unemployment and underemployment have soared in the country. Figures show that unemployment is well above 75% of the total employable labour force.

Donor fatigue: foreign donors have often expressed alarm on the level of corruption in Malawi involving donor and government funds. They have pressed for the logical conclusion of some top-level corruption cases still pending in courts. Some donors are withholding aid to Malawi – the EU, Britain, Sweden, Norway, IMF and the USA for example – while others have actually pulled out of the country when the government failed to account for their aid – such as the Danish Government. When government failed to account for K10 million given by the Danish Government for the inter-party conflict resolution program, the Danish Government withdrew their funds. The EU, on its part, is actually demanding a refund of K650 million from the Malawi government, which was mismanaged. This is the first time for 40 years that a donor has demanded a refund from the Malawi government. It is evident that donors are beginning to invoke donor fatigue - donors are withholding about K6.8 billion in aid for budgetary support because of graft and bad governance in Malawi.

Social, economic and political violence: the consequences of having a system that provides benefits for a privileged few powerful people have been the massive violations and deprivations of the poor people's social, economic and political rights. Those marginalized sometimes erupt into violence and protests against the repressive regime, only to be suppressed by the State. Such state-sponsored violence is widespread in Malawi. It reached its peak because of the bills tabled in Parliament seeking an extension of presidential terms for the incumbent.

Poor governance: in order for the UDF regime to continue in power not by the people's will but by the use of force, poor political habits have become the modus operandi. Bad governance has become the weapon of sustaining an illegitimate regime in power through political repression, intimidation, harassment and alienation of the population. This has prompted major Churches in the country to start praying for change of leadership while the donor community decided to protect its aid by freezing it.

Formal Legal Position on Corruption

A formal legal position on corruption in Malawi is clearly spelt out in the country's legal regimes since the 1990s. Main legal documents that gird the formal status of corruption in Malawi include the Republican Constitution (1995), the Corrupt Practices Act (1995), the Draft Assets Bill (2002) and other related reports on corruption in Malawi.

The Malawi Republican Constitution (1995)

The Republican Constitution of Malawi (1995) is a "supreme" legal tool under which corruption is fought in the country. Under the Constitution, government has established several institutions to fight corruption namely the Ombudsman, the Law Commission, the Human Rights Commission, the Executive, the Judiciary, the Legislature and Local Government. These institutions are constitutionally mandated to undertake various measures aimed at promoting accountability, transparency and integrity in public affairs in the country.

The Corrupt Practices Act (1995)

The Corrupt Practices Act (CPA) is a central legal instrument for combating corruption in the country. The Act, however, has been widely blamed, in certain respects, as an obstacle preventing the Anti-Corruption Bureau (ACB) and its cooperating partners from effectively doing their job. The CPA, inter alia, defines “corrupt” conduct in relation to the soliciting, accepting, or to the giving, promising or offering, of gratification, means the doing of any of the aforementioned things by way of a bribe or other personal temptation, enticement or inducement”..... “Gratification means any payment, whether in cash or in kind, and includes any rebate, bonus, deduction or percentage, discount, commission, service, forbearance, assistance, protection or any other material gain, benefit, amenity, facility, concession or favour of any description, and any fee, reward, advantage or gift, other than a causal gift” transacted in either a public or private domain. The CPA defines a public body as “the government, a statutory body, or any other body appointed by the government”. A private body is taken to be “any person or organization not being a public body, and includes a voluntary organization, charitable institution, company, partnership and a club”.⁴⁴

The functions and powers of the Bureau include taking “necessary measures for the prevention of corruption in public bodies and private bodies” by “examining the practices and procedures of public bodies and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Bureau may be prone or conducive to corrupt practices; advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Bureau considers necessary to reduce the likelihood of the occurrence of corrupt practices; disseminate information on the evil and dangerous effects of corrupt practices on society; enlisting and fostering public support against corrupt practices; receive and investigate complaints of alleged or suspected corrupt practices and, subject to the direction of the Director of Public Prosecutions, prosecute for offences under this Act; and investigate any conduct of any public officer which, in the opinion of the Bureau, may be connected with or conducive to corrupt practices, and to report thereon to the Minister etc.

The CPA was perceived as being inherently weak and narrow in its definition of corruption, jurisdiction and corrupt practices, and so the ACB asked the Law Commission and other interested parties for a review of the Corrupt Practices Act by the relevant experts. Thus, a special Law Commission body was appointed to review the CPA, which has since submitted its recommendations to the Minister of Justice and Attorney General so that he, in turn, can forward the reviewed Act to Parliament during its next sitting. The Minister has already issued notice in writing for its publication in a Government Gazette.⁴⁵

The Commission was chaired by the High Court Judge, Justice Chimasula Phiri, assisted by Agness Katsonga Phiri from Malawi Revenue Authority (MRA), Justice Elton Singini from the Law Commission, Anthony Kamanga, Chief Parliamentary Draftsman, Alexius Nampota from the ACB, Fahad Assani, the DPP, Phyles Kachingwe from Transparency International, Bishop Robert Mwaungulu from Episcopal Conference of Malawi, Perks Ligoya from ECAMA, and Khwima Nthara, an economics lecturer from the University of Malawi. In its recommendations, the special Law Commission has said:

- The Director of Public Prosecutions (DPP) should not be required to give his consent on whether or not the ACB should prosecute because the DPP already has constitutional powers to intervene, discontinue or take over cases from the ACB and prosecute. His powers to grant consent to the ACB, therefore, “duplicated” his constitutional function and “served no purpose”.
- There must be an enactment of a provision to allow the ACB to investigate public officials on how they acquire their wealth and that, if passed, the Act will allow the ACB to prosecute those public officials who fail to account for their wealth.

- That new offices must be set up to address common practices of corruption in public bodies, which are not “properly or adequately covered under the existing Act”. These, the Commission said, include “abuse or misuse of public office, use of undue influence on public officials, peddling and unexplained property public officials possess”.
- That there should also be appropriate provision “for tracing and confiscation of proceeds of crime derived from corruption offences, including the return of any money to Malawi that may be held in Bank Accounts abroad”.
- That some “serious offences similar to corruption be shifted to the CPA to avoid the risk of such offences being declared invalid by the courts”.
- That the ACB be empowered to arrest, without a court warrant where necessary. This, the Commission said, “would secure evidence or attendance of suspects before court”.
- That the five-year mandatory sentence imposed on core corruption offences be abolished because of its severity and that this mandatory sentence causes unwarranted acquittals as it makes the courts “reluctant to convict suspects where they have no judicial discretion on sentencing”.

The Draft Assets Bill (2002)

A related bill is meanwhile being drafted by the Parliamentary Draftsman, which, among other things, proposes “impeachment of the President if he does not declare his assets” and “loss of seats by MPs, dismissal of top civil servants, parastatal organizations chairs and executives who fail to indicate how much they are worth after being reminded twice”.⁴⁶ Chair of the Public Appointments and Declaration of Assets Committee of Parliament, Henry Mussa, says the draft bill is being prepared in consultations with the general public, the ACB and the DPP for tabling during the next sitting of parliament. The Assets Bill was passed by parliament into an Act of Parliament, 2003 and currently more than 75% of MPs including the President have so far declared their assets.

The National Integrity System

Corruption practices in Malawi are extrapolated in this report through the findings of a series of interviews and focus group discussions conducted by the country lead researcher on some of the (NIS) pillars in the country. These interviews and focus group discussions took place both in urban and rural areas and involved different stakeholders in government, civil society, media, church and traditional leaders.

As the oral interviews may have revealed, the work of the NIS pillars in Malawi is constrained by several daunting factors. The same constraints appear to be inherent in the legal and policy documents reviewed in relation to the NIS.

Executive

The Executive is the policy making body of government. The Constitution provides for the Executive headed by the President as Head of State and Government and the Commander-in-Chief of the Defense Forces in Malawi. The Constitution also provides for the offices of the first Vice President and the Second Vice President whose duties are to assist the President. The President, alongside the first Vice President, is elected every five years by the electorate through a "direct, universal and equal suffrage". The Second Vice President is appointed and/or removed from office by the President but this constitutional obligation has not been undertaken since the collapse of the UDF/AFORD coalition government in 1995.

Operating as a two-tier system, the Executive has both a central government and a local government structure. Firstly, the central government is headed by the State President followed by the Vice President, the Attorney General and Minister of Justice, Cabinet Ministers and their Deputies, heads of departments and sections. The Cabinet alone has 39 members. Central government has institutional linkages in all the 28 districts of the country. Secondly, local government is based at district levels with linkages to the central government through relevant ministries such as the ministries of local government, justice, finance etc. At the district level, the infrastructures of local government are the District Assemblies. The District Assemblies are headed by elected councillors and appointed government officers. The system of local government was suspended in 1994 until the year 2000 when local government elections were held in November. The results of that election awarded a 70.7% win to the UDF, 9.0% to the MCP, 14.1% to AFORD and 3.4% to independents. This meant that the ruling UDF attained overwhelming control of local government in the country. The main problem with parliament and the other institutions is lack of coordination and capacity. Reports from the Auditor General get to Parliament late, there is inefficiency and lack of capacity in these institutions (see Nation Reporter, "MP Demands Report on Bribes" in *The Nation*, 19th November, 2002 p.1; Langa, J. "Church says institutions are inefficient" in *The Nation*, 20th August 2002 and Langa, J. "Ministers named in grain sale scam" *The Nation*, 19th November 2002). The maize scam is still not brought to court.

The Principal Secretaries advise the Cabinet on matters of policy. The Cabinet in turn advises the President on similar matters. However, the President at present remains free to consult other organs such as relevant Commissions on serious issues that affect government. There are 27 Ministers including the first Vice President and 12 Deputy Ministers appointed by the President from within and outside Parliament whose main function is to receive delegated authority from the concerned Ministers and act on their behalf. They also assist the Ministers in various ways. However, the Cabinet ultimately retains the powers to make government policy, which the Legislature is usually asked to give legal authority.

Implementation of government policy in Malawi is done by the Civil Service headed by the Principal Secretaries (PS) appointed directly by the President mostly from his party membership. Currently, the PSs are appointed to work on lucrative "performance based

Contracts" aimed at uplifting civil service productivity. No specific qualifications are spelt out for the appointment to such jobs raising public suspicion and speculation that they are mere political rewards for ruling party loyalists.

Under the Executive fall also the Malawi Police Forces, the Auditor General, Director of Public Prosecutions and Office of the President and Cabinet (OPC).

Cabinet Accountability

The Constitution under section 97 states that "all Ministers shall be accountable to the President for the administration of their own departments". This means that, through a directly elected President, the Ministers will be accountable to the people. However, it has proved difficult for the President to hold Ministers accountable for the administration of their departments. Indeed, there are economic and social incentives for corruption such as rising poverty, unemployment, low pay and poor funding that make institutions of restraint weak. Because of weak mechanisms for accountability corruption cases have been on the increase in virtually all Ministries and government departments including the Office of the President and Cabinet (OPC) for the past 8 years.

Finance and Economic Planning Minister, Friday Jumbe, has defied public pressure that he resigns to pave way for investigations into his involvement in the scandal that led to the plunder of the national grain reserves. He has since refused to resign his position as Cabinet Minister⁴⁷ to account properly for his alleged actions while Managing a parastatal - Agricultural Development and Marketing Corporation (ADMARC).

Ministers who are also elected members of the Legislature appear in the Legislature and vote on its businesses. However, those Ministers who are not elected members of the Legislature only appear in the Legislature to present government bills and answer questions from the floor but they are not entitled to vote. All the Ministers appear also before the ACB when summoned to do so. Nonetheless, no Minister has been summoned to appear before PAC for the past 10 years. If no Minister appears before PAC to answer for the audit reports of their Ministers it means that parliamentary oversight for accountability may not be effective.

Appointment and Removal

The Constitution gives power to the President to appoint Cabinet Ministers and Deputy Cabinet Ministers into, and remove them from, office. This is a presidential prerogative under section 94 (1) of the Constitution. Under section 98-102 of the constitution, the President also appoints the Attorney General, the Auditor General, the Director of the ABC, and the Director of Public Prosecutions.

The Office of the President and Cabinet (OPC)

The OPC, who oversees the implementation of government policy, is an important office is part of the Executive branch of government located in the civil service. The strength of the OPC, as given through oral interviews, is that they are "government" and as such they have the political mandate, state legal and administrative infrastructure and reasonable resources to combat corruption. Asking them about their weaknesses, the answer was "not applicable". Asking for reasons was also "not applicable". Support institutions mentioned were donors, the bureau and other government departments. Comparing media reports and reality for them is to dwell on hearsay. The Anti-Corruption Bureau, the Ombudsman and the Auditor General act on anonymous reports. What is needed is the provision of support to government bodies. These other forums are allowed to be there and combat corruption but they are virtually ineffective because of lack of resources. Corruption needs to be prioritized by carrying out sensitization programs, strengthening anti-corruption institutions and match that with strong political will to fight corruption.

Government is committed to fight corruption in this country as shown by the laws, Acts of Parliament and institutions that it has erected for purposes of combating corruption. It (government) has even gone out to dismiss some top-level officials on allegations of corruption. Right now, the president, through the OPC, has commissioned an inquiry into

the maize scam focusing on the Minister of Finance and Economic Planning and others. However, the officials under probe have not yet indicated that they will resign from their posts or that they are fired paving way for fair investigations and prosecution of their alleged corruption cases ranging from “criminal negligence, fraud to outright corruption.”

However, media reports indicate that millions of kwachas have also been lost at the OPC through misappropriation, wrong accounting procedures, fraud and other malpractices in the 2002 financial year.

The Executive and the Budget

Malawi’s national annual budget is estimated to be totalling about K4.5 billion. Out of this annual budget, the 46-member Cabinet is allocated K1.7 billion while the OPC gets K600 million annually. Malawi’s per capita income stands at U\$ 157.⁴⁸ However, critical and/or pressure points of the budget known as protected pro-poor expenditures (PPEs) remain the same. These include agriculture, water, education, health, gender, youth and community services, police, rural feeder roads and others. As a percentage of the total budget, these expenditures constitute 60.3%.⁴⁹

The national budget is formulated annually by the Executive branch of government through the Ministry of Finance and Economic Planning. After the Executive has formulated the budget, it is presented to the Legislature for approval. It is at this stage that the opposition and other stakeholders including civil society and NGOs comment on the budget before it is passed by the Legislature. The budget has never been rejected by the Legislature in Malawi. Once it is passed, it is sent to the civil service for implementation, monitoring and evaluation. During the implementation stage stakeholders, especially civil society organizations led by the Malawi Economic Justice Network (MEJN), also participate by monitoring the budget implementation. However, the role of civil society and other such stakeholders is not effective as shown by the many budget derailments committed by the government at implementation. It is also true that budgetary slippages at implementation level are an issue that even worries donors to an extent of demanding refunds as this is linked to corruption (see Phiri, F. “K650 million EU Refund: Muluzi should punish culprits” in *Daily Times* 1st August 2002).

Broadly, the budget is formulated within the policy framework laid down in the Malawi Poverty Reduction Strategy Paper (PRSP). The PRSP also serves as donor conditionality for aid. Forty percent of the budget in Malawi depends on foreign donor funding through balance of payment support, some of which is currently not forthcoming⁵⁰ because of corruption, governance and public expenditure problems that arose between the government and the donors. Donor aid goes into many different sectors of the economy and departments for poverty alleviation and development programs. For example, DFID currently still supports free primary education through the Ministry of Education, Science and Technology; USAID supports democracy and governance programs through the Church and Society Program of the Livingstonia Synod of the CCAP Church and the Interministerial Committee; GTZ supports decentralization and local government reforms through the Ministry of Local Government; the British Government supports police reforms through the Ministry of Home Affairs; and the EU supports judicial services through the Ministry of Justice etc.

However, through misappropriation of resources the public expenditure of resources in Malawi is chronically high. This appears to be coupled with a poor sense of priorities. For example, it is reported that the National Intelligence Bureau (NIB), a largely discredited ruling UDF paramilitary wing, receives larger budgetary support than the national Police Forces. Similarly, while the economic arguments that the government used to scrap the senate are not resolved government is now ready to institutionalize and fund another largely discredited institution outside Parliament – the Chiefs Council. In fact, in the year 2002 the office of the Auditor General estimated that 1/3 of the country’s national revenues are lost through mismanagement every year. This has partly contributed to donor fatigue and the general economic problems the government is facing. As a result of donor fatigue, government has intensified its internal revenue collection mechanisms by imposing multiple and regressive taxes such as surtax on poor people to increase domestic

revenues by K800 million. Nonetheless, this increase in revenue collection has not impressed the donors because there were indications that government diverted the money to non-priority areas like statehood expenditures, and this deprived areas such as education and health sectors that require funding throughout the year.⁵¹

Statehood expenditure is mainly that expenditure incurred by political activities, which are thought to prop up a faltering UDF regime. It includes resources used to finance ruling party activities in the guise of being state functions. Thus, it is expenditure with little if any economic returns for the poor masses in the country. Since this expenditure uses public resources to propel the ruling party agenda, political corruption creeps in at different levels of the state structure.

The budget process in Malawi is an elitist process because the people at the grassroots and civil society organizations lack requisite skills to participate in what is quite a technical endeavour. Lack of civil participation and control leaves the budget vulnerable to abuse and corruption. It is in this sense that the budget has often been derailed and beset with high public expenditure that remains difficult to explain and justify not only to the donors but also to interested Malawians.

The civil society/watchdog organizations including PAC do not effectively monitor and evaluate the national budget, and especially how it is ultimately spent. More often than not, the budget in Malawi has been derailed because of lack of a participatory approach at the formulation level and lack of fiscal discipline during implementation. Civil society controls on the budget are so far underdeveloped. This is because, as MEJN noted, civil society in Malawi lacks technical skills, information and expertise in public finance and budget issues. In order to strengthen civil society in this regard, MEJN has embarked on a project on economic literacy targeting civil society and NGO leaders for training on economic governance.

Legislature

The Legislature is one of the three main organs of government in Malawi. It has 193 elected members representing a population of 10 million people. Representatives in the Legislature are elected to serve for five years the people at the national polls. Currently, 95 elected members of the Legislature belong to the UDF, 60 to the MCP and 30 to AFORD respectively. The Constitution of the country does not stipulate the maximum number of constituencies/representatives needed in the Legislature.

The powers and functions of the Legislature include the sovereign role of making legislation, checking and balancing the Executive and the Judiciary, communicating with the people and government, linking the people and their government, representing the people's will in the Legislature, conflict mediation and adjudication and the enhancement of accountability and transparency in public affairs. The Legislature, however, is marked by weak and divided MCP and AFORD opposition parties and a few independent members who are against the ruling UDF party. The opposition parties are torn apart by internal disputes and rivalries, weakened by chronic lack of resources, regionalism and tribalism and lack of truly national policies and programs.

Table 2 Strength and Influence of the Opposition in Parliament

The Opposition in Parliament has:	Public Opinion's Percentages
A strong influence on government policy, programs and/or legislation	5.0 %
A moderate influence on government policy, programs and/or legislation	8.6 %
A fair influence on government policy, program and/or legislation	16.0 %

The Opposition in Parliament has:	Public Opinion's Percentages
Weak influence on government policy, programs and/or legislation	59.3 %
No influence on government policy, programs and/or legislation	9.9 %

Source: Report on Indicators for Monitoring Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 57

Five percent of respondents in the UN Economic Commission for Africa study study concluded that the Legislature is "always effective in holding the Executive accountable"; 17.3% believed that it is "usually effective in holding the Executive accountable"; 25.9% felt that it is "occasionally effective in holding the Executive accountable"; 24.7% said that it is "rarely effective in holding the Executive accountable" and 24.7% argued that it is "never effective in holding the Executive accountable". The business effectiveness of the Legislature itself was rated as follows: 7.4% "it is always an effective institution for legislating and debating on issues of national importance"; 18.5% "it is usually an effective institution for legislating and debating on issues of national importance"; 38.3% it is "sometimes an effective institution for legislating and debating on issues of national importance"; 27.2 % it is "rarely an effective institution for legislating and debating on issues of national importance" and 8.6% pointed out that it is "never an effective institution for legislating and debating on issues of national importance".

The public in Malawi perceives the Legislature as not being entirely above corruption. Following their responses to a recent survey on this topic, it begs a question: is the Legislature in Malawi really "somewhat corrupt"?

Table 3 Perceptions of Corruption in the Legislature

The Legislature is:	Public Opinion Percentages
Above corruption	1. 2%
Largely free from corruption	28. 4%
Somewhat corrupt	48. 1 %
Largely corrupt	14. 8%
Completely corrupt	6. 2%

Source: Report on Indicators for Monitoring Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 115.

Independence and Accountability of the Legislature

The Legislature is expected to be accountable to the people. However, since the repeal of the Recall Provision (repealed by Act No. 6 of 1995) from the Constitution, which empowered the people to hold their representatives accountable to them at any time for their performance and public acts committed, there are no clear rules in the Constitution by which the people will hold the parliamentarians accountable except during parliamentary elections after every five years or before that through by-elections. The Legislature repealed the senate from the Constitution by Act No. 4 of 2001. The repeals of law are now done through parliament. It was argued that the senate is expensive to run and that it (senate) would seek to represent the same constituencies that the elected members of the Legislature represent thereby creating unnecessary overlaps. The elected members of the Legislature did not carry out free and open consultations on the issue of the senate. The same trend has been manifest when the open presidential term and later third term bills were tabled in the Legislature. The Legislature in Malawi is thus rarely perceived as accountable to the people.

Independence of the Legislature from other branches of government is overshadowed by the way parliamentarians operate in respect of their party interests. Usually, party politics influences the behaviour of the elected members of the Legislature to such an extent that party rivalries have found their way into the Legislature with some members suffering political casualties through parliamentary suspensions and dismissals. Because members of the Executive can also be elected members of the Legislature and vice versa, it is easy to observe that the two arms of government overlap and influence each other significantly when conducting their duties and functions. Thus, the independence of the Legislature will often rely upon the social and political dynamics of the day.

Removal of National Assembly

The elected national assembly of the Legislature is removed every five years through national elections held with equal and universal suffrage. However, individual members of the assembly may be removed if they are found guilty of a crime involving moral turpitude and dishonesty. They may not, therefore, be allowed to assume public office for the next seven years. They may also lose their seats under section 65 of the Constitution if they "cross the floor" leaving the party under which they were elected and joining another one or any other organization "whose objectives are political in nature".

Ultimately, under section 67, the Legislature/national assembly "shall stand dissolved on 20th March in the fifth year after its election, and the polling day for the general elections for the next National Assembly shall be the Tuesday in the third week of May that year". The Electoral Commission however reserves the power to appoint other appropriate days of polling as recommended by law.

Electoral Commission

Powers, Duties and Functions

The Electoral Commission (EC) is a constitutional body. Its creation, powers, duties and functions came into effect under section 75 of the Constitution. The Constitution mandates the Judicial Service Commission to nominate the chairperson of the EC who should be a Judge to be appointed as such by the President. Other members of the EC, not less than six, come from different political parties in the country represented in parliament. However, no person qualifies to be member of the EC if that person is a Minister, Deputy Minister, Member of Parliament or person holding any public office. Commissioners serve a term of four years but may be re-appointed for another four-year term of office.

A member of the EC may be removed by the President with recommendations by the Public Appointments Committee on the grounds of incapacity or incompetence in the performance of the duties of that office. The Constitution gives the State President the right to appoint and dissolve the Electoral Commission.

The functions and duties of the EC include:

- To determine constituency boundaries impartially on the basis of ensuring that constituencies contain approximately equal numbers of voters eligible to register, subject only to considerations of:
 - o Population density;
 - o Ease of communication;
 - o Geographical features and existing administrative areas;
- To review existing constituency boundaries at intervals of not more than five years and alter them in accordance with the principles laid down in subsection 2 (a);
- To determine electoral petitions and complaints related to the conduct of any elections;

- To ensure compliance with the provision of the Constitution and any other Act of Parliament.

However, complainants to the EC reserve the right to appeal to the High Court against determinations made under subsection 2 (c) and 2 (d).

The Independence and Neutrality of the Electoral Commission

The Constitution under section 76 (4) provides for the independence and neutrality of the EC. It states that "the Electoral Commission shall exercise its powers, functions and duties...independent of any direction or interference by other authority or any person". Should there be suspicions of a lack of impartiality, (5) "without prejudice to subsection (3) - (a) the High Court shall have jurisdiction to entertain applications for judicial review of the exercise by the Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with this Constitution or any other Act of Parliament; and (b) the National Assembly shall confirm all determinations by the Electoral Commission with regard to the drawing up of constituency boundaries but may not alter the boundaries of any constituency, except upon the recommendation of the Electoral Commission.

The Electoral Commission, however, has its share of accusations. Since 1999, the Electoral Commission (EC) in Malawi has been a controversial organization. The first source of this controversy was the manner in which the President "prematurely" sacked the previous Commission and appointed a new one in 1998. The President dismissed the former Commission headed by Justice Anastanzia Msosa which was appointed by the outgoing President, late Dr. Kamuzu Banda, and appointed a new one twelve months before the General Elections. However, the dissolved Commission did not agree with the basis of its dissolution arguing that having been appointed in December 1993 by the MCP regime, they were re-appointed immediately after the 1994 General Elections by the UDF government and, therefore, their term of office was supposed to expire in December 1998 and not in December 1997. The Minister of Justice and Attorney General, Hon. Peter Fatch, responded by saying that the letters of reappointment were sent to some Commissioners mistakenly.⁵² The former Commissioners unsuccessfully argued their case, which flopped in 1998 when the new Commission was appointed in July 1998.

The second issue that plunged the Commission's independence and neutrality into doubt was the shifting of polling dates. Voters' registration came to a close on 14th May 1999 after being extended more than once, leaving only eleven days before the 1999 elections scheduled polling date. This violated the Parliamentary and Presidential Elections Act (PPEA), which stipulates that "there should be a 21 day interval between the last day of registration and the polling day".⁵³ This contravention of the PPEA was challenged by the opposition in court and the court granted an injunction restraining the Commission from conducting the polls on 25th May 1999.

The third source of controversy has been the way in which the Electoral Commission has been handling electoral matters. For example, the EC was one of the defendants together with the ruling UDF party in a lawsuit in which the MCP/AFORD Alliance unsuccessfully challenged the electoral results of the 1999 general elections. The EC was also accused of bias by the opposition in 1999 because of its decision to stop the alliance from fielding one presidential candidate and a running mate from two different political parties. This decision by the EC, based on the Parliamentary and Presidential Elections Act (PPEA), was successfully contested by the alliance in court and the High Court overturned it. Before that, four of the Commission - all representing the opposition MCP and AFORD had disassociated themselves from the Commission's decision on the case claiming that the EC chairman, Justice William Hanjahanja, was making unilateral decisions, while he in turn accused the Commission of representing party interests. However, what provoked the opposition and the public was the announced decision by the State President at a public rally before an official announcement had been made by the Commission.⁵⁴ Thus, it appeared that the Commission has operated without unity, transparency and cohesion. whereby it is unrealistic to expect the Commission to be transparent with other government bodies and the public in this context was almost impossible.⁵⁵

In addition, the EC has, on several occasions, been accused of abetting political violence in the country in the interest of the ruling UDF party. Recently, the EC has been on the forefront during the formation of an electoral civil society grouping, the National Elections Consultative Forum (NECOF). In its listing of the membership to the NECOF, the EC removed the grassroots based Public Affairs Committee (PAC), the Media and the Law Society of Malawi from the list of NECOF members.⁵⁶ These organizations are generally perceived to be critical of government. Instead, the NECOF included the formative and “questionable Chiefs Council”, the Inspector General of Police and the National Intelligence Bureau (NIB) whose legitimacy and independence is widely contested in the country. This move attracted condemnation to the extent that the EC has been forced to review the list of NECOF members⁵⁷ and promised to come up with a new list soon. This, says one media commentator, is a must if the IEC is to preserve its credibility.⁵⁸ Church organizations, rights groups and civil society organizations were among the most trenchant critics of the EC on this issue.⁵⁹

Currently, the Forum for the Defense of the Constitution (FDC) says it is drafting a petition to the State President, Dr. Bakili Muluzi, to have the EC chairperson, Justice James Kalaile, removed from the EC for trying “to brainwash the Judiciary to use the Doctrine of State Necessity to keep Muluzi in power”. The FDC argues that Kalaile circulated a doctrine of State necessity document among the Judges in October 2002, which he obtained from the Pakistan Judiciary. In Pakistan, the doctrine gave the President powers overriding other laws or constitutional provisions; to make further constitutional changes as he sees fit; and to dismiss an elected National Assembly including the Prime Minister under the Legal Framework Order in 2002. The EC chairperson in Malawi is accused of cooperating with the ruling party to use this doctrine in the event that the proposed third term constitutional amendment to allow President Muluzi run for another term of office contrary to the current two term constitutional limits fails to pass through Parliament.⁶⁰ Pressure from civil society organizations based on charges of lack of neutrality and independence by the Commission forced the resignation of the former chair of the Electoral Commission, Justice William Hanjhanja, in 1999.

Table 4 The Independence of the Electoral System

Political Parties and Candidates	Public Opinion Percentages
Accept the legitimacy of the electoral authority as manager of the electoral process	12.3%
Regard the electoral authority to be legitimate, but powerless and helpless with regard to conflict resolution/prevention	28.4%
Regard the electoral authority to be under the influence of the incumbent government/ruling party	43.2%
Regard the electoral authority to be openly biased toward the ruling party	11.1%
Don't regard the electoral authority as legitimate as it is created, controlled and managed by the ruling party	4.9%

Adapted from: Report on Indicators for Monitoring Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 61.

In a country where political corruption is not widely recognized, corruption accusations against the electoral authority are mainly focused on being influenced by the Executive and the ruling party. However, 42.0% of the respondents in the study by the United Nations Economic Commission for Africa (2002) indicated that the electoral authority conducts a “fairly credible and transparent voter registration process” as opposed to 4.9% of those

that felt that the electoral authority does not conduct “a credible and transparent voter registration process”. 37.0% believed that the electoral authority “ensures fairly credible and transparent voting, results reporting and effective mechanisms to challenge election results” while 11.1% felt that the electoral authority “ensures no credible and transparent voting, results reporting and effective mechanisms to challenge election results”.

Funding of the Electoral Process

The electoral process in Malawi is donor dependent in terms of financial resources required to run the process. It is foreign donors and government that usually fund the voter registration exercise, civic education, the printing of ballot papers and the buying of ballot boxes, security and logistics and other such processes. Donor support to electoral administration 2004 was 42% of the budget. It was around the same level in 1999.

Table 5 Donor Funding of the Elections 1999

Item	EC/Govt. of Malawi	Donors	Total in MK
Elec. Management	14,707,183		14,707,183
Registration	564,360,000	175,748,000	740,108,000
Polling	220,176,757	197,402,579	417,579,336
Totals	799,243,757	373,150,579	1,172,394,519

Source: Patel N. in: Ott M. et al (eds) Malawi’s Second Democratic Elections – Process, Problems and Prospects 2000

Table 6 Specific Donor Funding

Item	Donor	Quantity
Ballot boxes	Royal Danish Embassy	22,000
Ballot papers	British Government	12,000,000
Motor Vehicles	Republic of China	5
Long distance office radios	Republic of China	20
Lease of Cameras	European Union	500
Cameras and batteries	European Union	500 & 1,000

Source: Patel N. in: Ott M. et al (eds) Malawi’s Second Democratic Elections – Process, Problems and Prospects 2000

Table 7 Funding for Other Electoral Services

Donor	Service
IFES	Paid for printing of forms & manuals & provided technical support
GTZ	Funded workshops on civic & voter education for political leaders
CIDA	Donated registration and polling kits
Republic of China	Paid for hiring helicopters
Government of Japan	Funded part of transport costs for the polling exercise

Donor	Service
Commonwealth Secretariat	Provided technical assistance
European Union	Paid for part of registration forms
UNDP trust fund	Contributed through various donors

Source: Malawi Electoral Commission, 1999 Parliamentary and Presidential Elections Report, November, 1999 pp. 6-8

Note: Money for civic education generally was estimated at K90,000,000 from the donors and this has not been included in the tables above because the money was given directly to the NGOs.

Currently, the Electoral Commission is asking donors to fund the Constituency Demarcation Exercise apart from the above-mentioned processes and items.

Voter Registration

Political parties in Malawi play a voter-structuring role; that is, the political parties align their supporters and voters along their interests and values and urge them to go to the polls and vote for them and their leaders. Thus, the UDF focuses on its southern region power base, the MCP takes the centre while AFORD concentrates on the North for voter mobilization and alignment. In this process, the EC plays an administrative and quasi-judicial role - facilitating and arbitrating voter registration, the actual voting and settling down subsequent conflicts. It is relevant to underline that NGOs, NICE, the Church, international agencies such as UN, EU, SADC etc monitor elections. However, in performing these roles the EC has often come under sharp criticism because of the way it performs its functions. For example, in the 1999 presidential and parliamentary elections, the EC was taken to court twice because of its rulings seen by the opposition parties as biased towards the ruling UDF party. Furthermore, complaints have been levelled against the EC to the extent that in 1999 opposition party strongholds in the centre and the north did not have enough materials to complete the voting and registration procedures. In this way, its capacity to successfully organize and oversee elections, has been called into question.⁶¹

Commentators and opposition politicians have since repeatedly accused the EC of working in cahoots with the ruling UDF party to disenfranchise opposition supporters as one way of enhancing the chances for the ruling party to remain in power.⁶² It is argued that, in the north, for example, photo cameras, voter cards, ink and paper were not supplied in good time and where they were they were inadequate. On the contrary, such problems were not experienced in the southern region, the stronghold for the ruling party, with the same magnitude. With no ballots to go by in some constituencies and many polling centres running understaffed, in the final analysis people were simply denied the opportunity to vote.⁶³ Further, since Malawi neither has a comprehensive system for registering deaths and births nor a formal identification system, it has been alleged that people under the age of 18 did indeed register and vote in the 1999 parliamentary and presidential elections. This was unconstitutional and was a result of the system being chaotic and not transparent.⁶⁴

Political Parties

Since the advent of multiparty politics in Malawi the Constitution guarantees freedom of association under the Bill of Rights. Thus, people are free to form or join any political party. On record, it is said that so far more than 22 political parties have been registered in Malawi. But in reality, the parties that remain in operation are the UDF, MCP, AFORD, Malawi Democratic Party (MDP), MAFUNDE, National Democratic Alliance (NDA) and the National Independence Party (NIP). The UDF, MCP and AFORD are the most dominant

while NDA – a newly launched party follows on the heels of these three together with the MDP.

However, in 2002 Parliament amended section 65 of the Constitution requiring that if a member who was elected on a certain party ticket to Parliament joins any other organization whose objectives are political in nature such a member shall lose his/her parliamentary seat. Several Members of Parliament have had their seats declared vacant on the strength of that amendment and are fighting for their political life in the courts. Legal experts have often pointed out that the amendment of section 65 is unconstitutional because it violates some section of the Constitution including the Bill of Rights and, they predict, judicial reviews may lead to the amendment being declared invalid, null and void.

The amendment of section 65 appears to be one attempt by a Parliament that has grown too powerful to abuse the Constitution for political victimization of those members who are not conforming to their wishes and views. This is political intolerance of different views and a desire by Parliament to accumulate too much power including the power to dismiss elected leaders at the nearest opportunity.

Funding and Accountability of Political Parties

The state is constitutionally mandated to fund political parties represented in Parliament as a way of sustaining representative democracy. This funding is based on the numerical strength of each party in the House. Parliamentary funding of political parties is given on a quarterly basis. The UDF with 95 members get the largest share, the MCP with 60 members get the second largest share and AFORD with 30 members get the third largest share of funding. However, this funding is not adequate and is only enough for operational costs for each of the recipient parties. It is even surprising to hear workers of parties represented in Parliament going on months without being paid because their parties have no money and having their office water and electricity supplies cut off because of unpaid bills. None of the political parties have stable staffing situation because of funding problems. The ruling UDF party however is relatively better off among them as it sometimes uses State resources for party operations.

Accountability in the way party funds are used is a big problem for all the parties. Political parties represented in Parliament in Malawi are funded by the State and no constitutional provision except for public officers and parties have internal rules for auditing finances. In 2001, the office of the Auditor General, which is mandated to scrutinize state funds given to political parties, demanded audited accounts from the parties represented in Parliament because the funds they get are tax payers' money. Between 1995 and 1998, for example, UDF received K19,702,950.42; MCP received K11,060,100.56; and AFORD received K7,976,948.99. The criteria for parliamentary funding of political parties are based on their strength of representation in Parliament. Thus, UDF with 95 representatives received the largest sum, followed by MCP with 60 representatives and AFORD with 30 representatives respectively. Most of these representatives come from each party's power base: the UDF from the South; the MCP from the centre; and AFORD from the North.

Election campaign funding is perhaps the most difficult area for political parties to account for. There are no clear rules for political party election campaign funding and, as such, the political parties exploit all sorts of funding sources internally and externally before and during elections. Whoever or whichever institution funds political parties for this purpose remains a secret known only to the top echelons of the parties. Certainly, this veil of secrecy is a cause for lack of accountability on how funds meant for election campaigns are actually used.

However, it took so long for the parties to produce and submit audited accounts on these finances to the Auditor General that Parliament threatened to freeze the funding. Thus, charges of political corruption are widespread among political parties suspected of using their resources for patronage to influence political behaviour in Parliament especially on crucial issues of national interest. Poverty is viewed as the principal cause of social and political vulnerability to corruption among senior members of political parties, most of whom have no other career alternatives as a basis for survival. Political parties to such people are more of a source of livelihood than mere collective interest aggregating

agencies. Some political party leaders even personalize the resources of their parties and bank party funds in their personal accounts. At the grassroots, poverty is a cause for the deepening patronage among members of political parties who support them so that they get rewards in return should their respective parties get into power. Such people support political parties not because of their agenda but because they offer an opportunity for them to take turns in cutting their share of the national cake.

Political Party Registration

Since 1993, it has been easy to start and register a political party in Malawi without much ado. The fact that more than 22 political parties have been able to get registered in the country since 1993 is evidence of this fact. However, the coming of the National Democratic Alliance (NDA) party – a breakaway party from the ruling UDF has been a source of political unease in the country. The NDA, born out of the desire to fight constitutional amendments aimed at extending President Muluzi's term of office, conducted its first convention in 2nd January 2003 where a former Cabinet Minister and close ally to Muluzi, Brown Mpinganjira, was elected President of the new party. Surprisingly, on 3rd January 2003 three journalists, Thom Chiumia, Chikumbutso Mtummodzi and Ndanga, obtained forms for political party registration and registered the NDA party in their name with the same manifesto, flag and Constitution. While it takes several days or even weeks normally to register a political party in Malawi, the "copy cat NDA" leaders took registration forms from the office of the Registrar General on Friday 3rd January 2003 and got their certificate the same day. This came as a blow to the "genuine" NDA because once a political party has been registered no one else can register another party under the same name whether or not the first party's registration has been cancelled. It meant, therefore, that the "genuine" NDA would be forced to look for another name 16 months before the general elections. Meanwhile, a legal battle on the issue is going on at the High Court.

Lawyers have argued that the UDF led government is behind the registration of the "copycat NDA". In fact, it has been reported that "government backs NDA copycats".⁶⁵ This seems true since the Director of Public Prosecution (DPP) has indicated that he is unwilling to prosecute the "copycats" and that the registrar for the registration of political parties, Vincent Mzumara, is also defending them. Furthermore, Minister of Information, Kaliyoma Phumisa, has added suspicion to the whole drama by accusing the Media Council of Malawi for disowning the journalists when the media organization banned them from practising journalism in the country as long as they engage in full time politics. Phumisa considered these journalists to be outside of the ethics of journalism and media fraternity".⁶⁶ In this case government was described as sponsoring and encouraging political fraud: "the fraudsters were paraded on television and radio for which I pay tax yet we are being denied to air our views on the same television and radio".⁶⁷

It has been revealed that some of the signatories to the "copycat" or "bogus" NDA's papers are dead while others, who were not consulted for the inclusion of their names on the list of supporters, are threatening legal action against the three journalists who, the Director of the Civil Liberties Committee (CILIC), Emmie Chanika, views to have the blessings of a Cabinet Minister.⁶⁸ Apparently, this drama has unfolded as a result of the growing popularity of the new party, which is also based in the Southern UDF stronghold, and boasts of former and sitting Cabinet Ministers and principal secretaries among its rank and file.

Institutional Analysis of Political Parties

Political parties in Malawi are mass parties with branches usually at local, area, district, regional and national levels. They strive to be permanent and to function beyond mere vote mobilization in an election. In very special circumstances some small parties show elements of being "caucus" or "cell" parties pursuing specific group interests or run by executive committees. However, ethnic and regional considerations and influences have a major impact on the policies and functions of political parties in Malawi.

Political parties headed by "home mates" are a cause for regionalism and patronage as they get more support from their constituencies at home where they have an inclination to

channel their energies once elected. A study conducted by the University of Malawi in 1999 on political parties in Malawi revealed that these parties are ideologically weak⁶⁹. This creates a vacuum in the sense that their efforts to attract votes may not be based on ideas but patronage and nepotism. In other words, political polarization and the need to create a majority for certain objectives in parliament, for example, have proffered an incentive for politically corrupt tendencies.

In this context, the institutional weakness among political parties usually leaves them unable to attract and consolidate a solid constituency of electorate. Thus, the need for a parliamentary majority on either side induce political parties to the tendency of corrupting cooperating partners in the House in order for them to either pass their agenda or defeat the agenda of their rivals. The alliances and counter-alliances in Parliament depend on what the other party offers, and the ruling party has an upper hand in this game as it uses state resources for its party agenda. Since parties do not have strong institutions of accountability, it is difficult for the people to hold them accountable for what they do. Party conventions and Constitutions are avenues for enhancing values of accountability but these too have been trivialized. UDF held its last convention in 1994 in contravention of its party Constitution that mandates the party to hold conventions annually. The MCP and AFORD have held several sham conventions over the years as a result of internal power struggles. Some of these conventions have turned into court circuses while others have actually been nullified. Resolutions of these conventions are sometimes subverted by the party leadership thereby trivializing the will of the people. For example, AFORD held its convention in 2002 at which delegates agreed that the party should not support the defeated constitutional amendment that suggested the "open term" for the President. But the party's President, Chakufwa Chihana, and some of his Members of Parliament openly defied these resolutions and voted for the bill when it came up in Parliament making observers wonder who these leaders were representing. It is difficult for such party leaders to represent and be accountable to the people.

Supreme Audit Institution

Powers, Duties and Functions

The office of the Auditor General (AG) is part of the broad array of civil service institutions in the country. Created by section 184 (1) of the Constitution, the AG has powers to "audit and report on the public accounts of Malawi". He/she submits public finance reports once every year to the National Assembly to which he/she is accountable through the Minister of Finance.

The AG is appointed by the President and confirmed by the National Assembly by a majority of the members present and voting. The Auditor General has to possess the right qualification and experience as stipulated under the Public Audit Act 2003 and sub section 3 of section 184 of the Constitution, but the Public Appointments Committee may enquire at any time as to the competence of the person so appointed to perform the duties of that office and as to the financial probity of the person appointed to hold that office so far as it is relevant to the performance of the duties of that office. The person appointed to that office shall serve for five years unless the President re-appoints him/her for a further five-year term of office.

This office promotes financial accountability in public affairs in the country. The office of the Auditor General has strengths to combat corruption in the country because it is mandated to do so and it has requisite "expertise" to audit state and parastatal accounts and verify assumptions. However, this office is weak because it is unable to prosecute suspects, audit presidents, the army, police and embassy accounts and it generally lacks independence. The independence of the office is compromised because the Auditor General is a "political appointee" and may not be adequately protected by the Constitution on dismissals. Performance is usually stalled because of lack of authority deriving from the law. Because of legal weaknesses, for example, "fraud is found but it's not corruption (yet fraud can be either the cause or result of corruption)"⁷⁰.

The Auditor General enjoys the support of the general public through anonymous letters and reports, the courts, the Anti-Corruption Bureau, civil society, the Law Commission, the Human Rights Commission and government departments. The Auditor General works with these institutions on investigating and prosecuting cases and allegations of corruption. And yet, cases and allegations of official corruption have risen in the country. The AG has recently accepted that this problem starts with the law makers in Parliament, but that in most cases there is an abuse and misallocation of funds where parliamentarians allocate themselves more allowances – which are tax free – in a manner that is not transparent.⁷¹ Unfortunately, says one commentary, “this lack of transparency on perks is also well-entrenched in other branches of government, including the Executive”.⁷²

Press reports about corruption act as sources of vital information about corruption for the Auditor General, and these reports have been found to be fairly reliable.

Removal

Section 184 (6) of the Constitution gives the President powers to remove the Auditor General from office “by reason of that person being:

- Incompetent in the exercise of his or her duties;
- Compromised in the exercise of his or her duties to the extent that his or her financial probity is in serious question;
- Otherwise incapacitated; or
- Over the retirement age.

Independence and Neutrality of the Auditor General

The Constitution guarantees that subject to section 6, which mandates the President to remove the AG under specified conditions, the AG under section 7 of the Constitution “shall not be subject to the direction or control of any other person or authority”. This threatens the independence of the AG because powers of removal under section 6 of the Constitution are solely rested on the President. The said section does not provide internal checks and balances, thereby leaving the control entirely in the hands of the President in as far as the removal of the AG is concerned. In short, this threatens to jeopardize the independence and neutrality of the AG.

The AG reports to the Legislature once every year through the Minister of Finance. The delays in the submission of reports by the AG to the Legislature sometimes take up to several months particularly when the Legislature or its Public Accounts Committee (PAC) is not in session. For example, it has been reported that PAC has just started its meetings after the committee had failed to meet for almost a year.⁷³ A further issue concerns the independence of the PAC. In theory, the Public Accounts Committee (PAC) of Parliament is headed by a Member of Parliament from the biggest opposition party in Parliament at present (MCP). When the chair of the PAC was removed in 2000, there was a real opportunity for government influence. The MCP at that time was split into two factions - one headed by its president, Gwanda Chakuamba and another headed by its Vice President, John Tembo. Chakuamba was (and still is) a persistent critic of the UDF government while Tembo sympathised with the government. At the time PAC released the K187 million scam report into the Ministry of Education, Science and Technology, the chairman of the PAC was a loyalist to Chakuamba. When Tembo ousted Chakuamba as leader of opposition in Parliament with the help of the ruling party, he immediately fired the chairman of the PAC.

In his reports, the AG usually refers to abuse and misappropriation of public funds rather than corruption. Once the reports are submitted, the Legislature debates them and takes appropriate action. This marks the beginning of long battles in the courts and the daunting challenge of implementing the AG’s recommendations in the bureaucracy, which can be very long processes depending on the nature of the reports. If the report implicates senior politicians and government officials, the ensuing investigations and legal battles are more likely protracted than they are when it implicates junior officers.

Judiciary

The “Judicature” in Malawi falls under section 103 of the Constitution. It is composed of the Supreme Court of Appeal, the High Court and the Subordinate Courts. The Supreme Court is the highest appellate court with jurisdiction to hear appeals from the High Court and such other courts and tribunals as an Act of Parliament may prescribe. The Justices of the Supreme Court of Appeal are:

- The Chief Justice;
- Other Justices of Appeal not less than three, as may be prescribed by an Act of Parliament.

The Chief Justice is a qualified person legally appointed by the President and confirmed by the Public Appointments Committee of the National Assembly by a majority of two thirds of the members present and voting. He can be removed through the same process. All other Judges are appointed by the President on the recommendations of the Judicial Service Commission.

It is the President who has the prerogative (the Constitution under section 111) to appoint a Judge with recommendations from the Judicial Service Commission. A Judge can, however, be removed from office by the President with recommendations from the same Judicial Service Commission.

Accountability of the Judiciary

Since the President appoints all Judges with confirmation from the National Assembly and the Judicial Service Commission respectively, one would assume that the Judges are accountable to the President, the National Assembly and the Judicial Service Commission. However, through a directly elected President and a directly elected National Assembly, the Judges are also accountable to the people (electorate) indirectly. Similarly, the professional Magistrates and lay persons appointed by the Chief Justice with recommendations from the Judicial Service Commission remain accountable to these institutions and by extension to the President who appoints them and finally to the people.

Judicial Review

The High Court has original jurisdiction to review any law, and any action or decision of the government, for conformity with the Constitution, save as otherwise provided by the Constitution and has such other jurisdiction and powers as conferred on it by the Constitution or any other law. The Judges of the High Court should not be less than three in number, and as many as may be prescribed by an Act of Parliament.

There are subordinate courts to the High Court, presided over by professional Magistrates and Lay Magistrates. Those are magistrate courts at the lower level below the High Court. The difference between the Magistrate Courts, the High Courts and the Supreme Courts are in their jurisdiction and finality of authority. The higher the court the wider the jurisdiction and powers. Courts act on formalities meaning unless there is litigation, courts in Malawi do rarely take on matters on their own let alone from the press. There is an Industrial Court, which falls in this category for settling labour disputes and such other issues relating to employment. Furthermore, “Parliament may make provision for traditional or local courts presided over by lay persons or Chiefs: provided that the jurisdiction of such courts shall be limited exclusively to civil cases at customary law and such minor common law and statutory offences as prescribed by an Act of Parliament”.⁷⁴

The Chief Justice on the recommendations of the Judicial Service Commission appoints the magistrates and persons appointed to other judicial offices. They hold office up to the age of 70 unless otherwise removed.

The Lower Courts - Magistrate Court

The Magistrate court is an integral part of the judicial system, which is a crucial branch of government in the country. It is part of the lower courts in the country involved in the prosecution of corruption cases. The strength of the lower court in fighting corruption lies in its ability to convict suspects upon conclusive prosecution based on evidence that convinces the court beyond "reasonable doubt" that a crime was committed. The major weakness of the court is that it can only act on "official" reports usually brought before it by the police. The court is also limited by lack of resources to investigate some cases thoroughly. Furthermore, the court's effectiveness is hampered by the nature of cases it handles particularly those originating from the Anti-Corruption Bureau which are based on "mere suspicion".

The court works with the police, the bureau, and some donors. The court does not act on press reports because these are rushed and often unreliable. In fact, "whistle blowers" do a much better job than the press. The court rather acts on official complaints than speculative reports from such institutions.

Independence of the Judiciary

Independence of the Judiciary is a contentious issue in Malawi. Politically, Judges perceived by the ruling party and government as working for the opposition have had their careers on the line only to be saved last minute. For example, mid last year, Justices Dunstan Mwaungulu, Anaclet Chipeta and Chimasula Phiri were thrown into suspension pending proceedings by Parliament to "impeach" them for misconduct. All the movers of the motion to impeach them were ruling party backbenchers who argued that Justice Mwaungulu had shown his political bias by analysing the controversial 1999 presidential elections in which the UDF were accused of rigging the polls and that his behaviour on the matter was unacceptable. Justice Chipeta was accused of acting as personal assistant to opposition National Democratic Alliance Leader, Brown Mpinganjira, while Chimasula Phiri had plunged Parliament into disrepute when he ruled that the suspended leader of opposition, Gwanda Chakuamba be reinstated into Parliament pending a judicial review. In fact, Council for the three Judges, Ralph Kasambara, noted that the only clear thing about his clients was that all had ruled against the government recently. The Executive went further than that on Justice Mwaungulu when he ruled later against an unconstitutional presidential ban on demonstrations in support of or against his proposed open terms bill in parliament. The government suggested that the Judge be removed from the bench and be seconded to the University of Malawi as a law lecturer. Both the Faculty of law and the Judge himself refused to take and implement such orders, so he remained High Court Judge up to now.

Financially, the Judiciary in Malawi does not have full control over its budget and staff. Either the Civil Service Commission or the Judicial Service Commission hires judicial Staff. Its finances are allocated to it by government and approved by Parliament in the national budget.

In a recent study on judicial corruption 40% of respondents indicated that public prosecutors demand or expect bribes in return for services rendered while 39% indicated that judges demanded or expected bribes. However, informed sources have reported that there is little corruption at the Higher Courts, while there are anecdotal reports of corruption in the lower courts.⁷⁵

Table 8 Independence of the Judiciary

The Judiciary is:	Public Opinion Percentages
Independent of other branches of government in its operations	16.0%

The Judiciary is:	Public Opinion Percentages
Largely independent of other branches of government in its operations	25.9%
Somewhat independent of other branches of government in its operations	38.3%
Hardly independent of other branches of government in its operations	14.8%
Fully dependent on other branches of government in its operations	2.5%

Source: Report on Indicators for Monitoring Indicators for Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 120.

Technically, however, the Constitution under section 103 (1) provides for the independence of the Judiciary, the courts and all persons presiding over those courts, their functions, powers and duties. What compromises this constitutional provision and the independence of the Judiciary generally in Malawi are the politics, dynamics and realities that prevail among all the branches of government and their relations. Therefore, some of the major constraints facing the Judiciary are:

- **Political interference:** the Executive and the Legislature politically interfere with the Judiciary and threaten it with political reprisals should their rulings be perceived as being pro-opposition.
- **Lack of financial autonomy:** since the Executive makes national budgets and the Legislature approves the same, the Judiciary remains on the receiving end and vulnerable to manipulation in the budget cycle where it has no real influence on the process. The Judiciary receives mere budgetary outcomes, which may restrict its financial autonomy.
- **Power abuse in parliament:** it has been observed in Malawi how Parliament dominated by the ruling party as a result of the fragmentation and impoverishment of the opposition sometimes renders the Judiciary powerless with its Judges facing threats of removal and drastic reductions in the annual budgetary allocations.
- **A weak Judicial Service Commission:** when the Judiciary is opposed by the Executive and the Legislature, the role of the Judicial Service Commission is obscured despite the fact that such a role and authority in disciplinary matter involving judicial officers is clearly stated in the Constitution under section 118.

Civil Service

The civil service in Malawi is mandated to carry out its duties in an impartial manner. The Constitution under section 193 (1) provides for the independence of functions, powers and duties of the civil service. However, research has established that 41% of the expert group respondents felt that appointments and promotions within the civil service are rarely or not at all governed by merit-based principles while only 12% thought that they were. This implies that at least the perception of the civil service is being politicised.⁷⁶

The civil service in Malawi suffers from consequences of regionalism, tribalism, nepotism, favouritism and cronyism. Values of professionalism and ethical conduct are compromised easily in preference to political and ethnic judgment for recruitment, promotion and

performance. Thus, the civil service perhaps marks the icon of patronage in Malawi with most senior officers acquiring well paid performance based contracts as rewards for political loyalty. For example, in a country where a University of Malawi lecturer gets about K16,000 basic salary, an ordinary Principal Secretary graded PS (S2) gets K55,000 as basic pay, K4,000 for water, K7,200 for electricity, K6,750 for ground phone, K3,600 for a cook, K3,600 for a gardener, K15,000 for a security guard, K13,260 for a cell phone, K2,500 education allowance, K30,000 housing allowance, and K50,000 fuel allowance per month and in cash.⁷⁷ The Economics Association of Malawi (ECAMA) added that even the considerable contracts given to the state bureaucracy amounts to abuse and misallocation of resources since they are not based on performance. In fact, the contracted staff should be held accountable on the basis of the performance of their ministries⁷⁸. Overall, research indicates that the public remains sceptical about government accountability in Malawi. (See table 9).

Table 9 Criteria for Appointments and Promotions in the Civil Service

Appointments, Promotions and Career Developments of Civil/Public Servants are:	Public Opinion Percentages
Governed strictly by merit based principles	2.5 %
Governed by merit based principles to a great extent	9.9 %
Governed by merit based principles to some extent	32.1 %
Are rarely governed by merit based principles	33.3%
Are not at all governed by merit based principles	17.3 %

Source: Report on the Indicators for Monitoring Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 123

Moreover, even the independence of the government from foreign forces is widely doubted. Of significant influence are international multilateral financial institutions, which provide budgetary support to the country. For example, in 1999 24.6% of the country's Gross Domestic Product (GDP) came from foreign donors.⁷⁹ Since donor aid is accompanied by stringent conditionalities and preferences, a country badly in need of that aid simply loses its independence and sovereignty in deciding its destiny.

The government has acknowledged that there are civil service ghost workers on the pay roll used by top officials to drain government resources. This is being prosecuted by the relevant authorities. As a result, government plans to introduce contracts for civil servants over and above the ones designated for principal secretaries as a way of elevating morale and productivity among civil servants.

Independence and Accountability in the Civil Service

Accountability is a problem in the civil service. The Constitution under section 187 (1) vests the powers to "appoint persons to hold or act in offices in the civil service, including the power to confirm appointments, and to remove such persons from office" in the Civil Service Commission which is appointed by the President under section 191 (1) subject to satisfying the Public Appointments Committee on issues of competence. It means, therefore, that the civil service is accountable to the Civil Service Commission and to the Parliamentary Public Appointments Committee depending on their levels of seniority. Ultimately, they are accountable to the President and, through him, to the people.

However, there are simply no effective mechanisms for transparency and accountability, internal controls and audits within ministries and those that do exist are staffed by untrained and very junior personnel who do not adhere to the rules of managing public

funds.⁸⁰ Controlling officers rarely provide replies to the findings of the Auditor General's office and the Parliamentary Accounts Committee (PAC) on their ministerial and departmental finances. Furthermore, the PAC receives the report of the Auditor General late in the year – the time when those involved have been transferred, retired or passed away.⁸¹ Moreover, the Budget and Finance Committee of Parliament argues that when the departments submit reports to the Department of Finance and Economic Planning these reports did not provide the information the Committee needed to assess effectiveness or policies, especially the cash budget system. Nonetheless, the fact that the Parliamentary Accounts Committee (PAC) the Budget and Finance Committee are able to criticize the performance of government departments augers well with the principle of separation of powers, checks and balances required to hold the government accountable. Unfortunately, these have so far failed to curb spiralling corruption in the civil service.

What happens in the civil service reflects the state of governance and accountability in the machinery of government. It also reflects the fact that a civil service that thrives on patronage cannot be independent since it lacks the capacity and autonomy to demonstrate and use professional skills, technical information and knowledge typical of a professional bureaucracy. Thus, such a bureaucracy cannot be effective to provide checks and balances constraining the power and authority of the Executive.

Table 10 Accountability of the Government

The Government :	Public Opinion Percentages
Always acts in an accountable manner	2.5%
Mostly acts in an accountable manner	14.8%
Sometimes acts in an accountable manner	25.9%
Rarely acts in an accountable manner	35.8%
Never acts in an accountable manner	19.8%

Source: Report on Indicators for Monitoring Good Governance in Malawi, United Nations Economic Commission for Africa, Center for Social Research, University of Malawi, 2002 p. 125

These results imply that the government in Malawi is rarely accountable in the way it transacts its business. Generally, lack of accountability is a breeding ground for corruption. The result of this in Malawi has been loss of integrity by the civil service. Thus, the above quoted research indicates that 2.5% of the Citizens have "high respect for the integrity of the civil service"; 31.3% have "some respect for the integrity of the civil service"; 51.3% hold "very little respect for the integrity of the civil service" and 8.8% have "no respect for the integrity of the civil service".

Politicisation and patronage are however some of the problems that undermine the integrity and performance of the civil service in Malawi. That these are public problems is evidenced by public perceptions of the same in the country. Even some local popular musicians, such as Billy Kaunda, condemn and sing about these social problems in the civil service.

When the former Cabinet Minister and ruling UDF party strongman, Brown Mpinganjira, was removed by the UDF regime, many people who came from his home district of Mulanje also lost their jobs, were punitively transferred, recalled from foreign services and victimized or were demoted in the civil service on suspicion that they had political connections with or sympathy for Mpinganjira. The latest victims of this politicization of the civil service and patronage include the former Director of Economic Planning and Development, Mr. Zak Chalira who has been dismissed from his job on political grounds and the son of former ruling UDF party Treasurer General, Member of Parliament and Cabinet Minister, Hon. Sir. James Makhumula who has been recalled from foreign service in Japan by the Ministry of Foreign Affairs and International Cooperation without any explanation following the downfall of his father from the ruling party.⁸² Likewise,

unqualified people have been sent to serve in the foreign services because they are politically loyal to the regime. The politicisation of public services goes beyond personalities and includes businesses of the victims. Makhumula, a business tycoon himself, complained that "the unjust decision of the UDF has caused me, not only economic hardship, but also physical pain. When I was removed from the UDF the government froze all business transaction with my company".⁸³

A legal battle is pursued at the High Court, following President Muluzi's appointment of 4 High Court Judges, 3 Ministers and 4 permanent secretaries. The Civil Liberties Committee (CILIC) is challenging the appointment of the judges on the ground that the procedure followed in the appointments was "unconstitutional, discriminatory and flawed". Four applicants for the posts of High Court Judges – Chief State Advocate, Maclean Kamwambe, Deputy Chief Legal Aid Advocate, Gaston Menelupembe, Chief Legal Aid Advocate, Wezi Kayira, and Industrial Court Chair, Charles Mkandawire – were left out allegedly because they all come from the Northern region of the country where the country's leadership and the ruling UDF party do not enjoy significant support. The Southern region is home to the ruling UDF party and its leadership. One of the state run institutions deeply affected by politicisation is the national radio MBC. Victims of political machinations at MBC include four radio personalities, Patrick Mphaka, Geoffrey Msampha, Rusk Mkwapatira and late Thom Chisuse, who were fired from their jobs because "they were taking out MBC tapes to MCP officials and were insubordinate to their bosses". As a result, the former MBC Director General, Wilson Pamkuku, went to the former Minister of information, Sam Mpasu, "to ask for a political decision" to fire the four.⁸⁴

The Civil Service Commission

Duties, Powers and Functions

Section 186/7 of the Constitution creates the Civil Service Commission with powers to "appoint persons to hold or act in offices in the civil service, including the power to confirm appointments, and to remove such persons from office". It has powers to exercise "disciplinary control" over such persons. Its powers can be delegated under specified conditions. Furthermore, its decisions are subject to appeals and judicial reviews of the High Court.

Removal

The members of the Civil Service Commission are appointed by the President with approval from the Public Appointments Committee of the Legislature to serve a term of five years each unless otherwise renewed. The members of the Commission may be removed by the President subject to recommendations of the Public Appointments Committee. This decision is subject to appeal to the High Court by the removed person should there be need to do so.

In practice, the Civil Service Commission does very little to solve problems of patronage and corruption among its rank and file. This is because political patronage and corruption exist also in the structures that appoint the Civil Service Commission and, as such, the Commission is not free of fear of reprisals when it acts on the problems facing the civil service. In other words, the civil service in Malawi is highly centralized and politicised. In reality, once the President decides to remove members of the Commission, or indeed any other boards, it is likely that the Public Appointments Committee will rubber-stamp the presidential decision. This process is often extended to the social network of the ruling party and top government officials who wield enormous political influence and power. For example, the Director of the ACB, Gilton Chiwaula, was removed from the ACB in October 2002 in this manner. Following the presidential decision, the Parliamentary Public Appointments Committee simply endorsed that decision and the case remains unresolved to date.

It can be concluded that politicisation of the civil service and patronage the Civil Service Commission has rendered these institutions virtually ineffective in Malawi.

The Parastatal Sector

The parastatal sector has also been perceived to be a breeding ground for corruption. For example, the Malawi Housing Corporation has lost millions of kwachas in ghost housing schemes and dubious contract awards, the Sugar Corporation of Malawi (SUCOMA) is a haven of patronage and influence-peddling as politicians seek to monopolize the sugar business, and this is just the tip of the iceberg. In Malawi, dubious tenders and contracts cost government K26.4 million in 1997 alone.⁸⁵ The Apex Land Rover scam which has been pending in court for quite a long time, as reported elsewhere in this chapter, is another example.

The Private Sector

Malawi has a small private sector, especially now, since over the past six months more than 20 private companies have shut down business due to the high economic downturns the country is facing. Reputable companies such as import and exports, hardware general dealers, Changalume cement factory and many others have suffered closures amid charges of corruption and mismanagement. On 3rd December 2002, a private travel conglomerate, Travel Agents Association of Malawi, in a joint statement with the ACB raised the concern about "the practice which is rife among officers in the private and public sector as well as non-government and international organizations" who go about doing their jobs demanding "kickbacks in return for business deals" without the knowledge of their employers.

It was alleged that these officers while arranging travel for staff in their companies or government agencies "go round pretending to get quotations when they are actually trying to get an agent willing to give them a cut". Business people, tourists, public and private sector officials have fallen victim to "this kind of corruption and giving between two to five percentages of their commissions..." "Agents receive money from airlines, hotels, car hires, and tour operators in form of commissions for services offered to the public under an International Air Travel Agency (TATA) agreement".⁸⁶

Police and Prosecutors

Powers, Duties and Functions

Section 152–158 of the Constitution creates the Malawi Police Forces and stipulates that the Police shall "be an independent organ of the Executive which shall be there to provide for the protection of public safety and the rights of persons in Malawi according to the prescriptions of this Constitution or any other law". In the exercise of their powers, members of the Police Force shall be under the "direction of the courts and shall be bound by the orders of such courts". Furthermore, "political responsibility for the Malawi Police Force shall vest in a Minister of the Government who shall ensure that the discipline and conduct of the Malawi Police Force shall accord with the prescriptions of this Constitution and any other law".

The Police are headed by the Inspector General (IG) of Police who is "accountable to the Minister responsible for the Police". The IG is appointed by the President for five years, is liable to re-appointment for a further term and the appointment is confirmed by the National Assembly by a majority of the members present and voting, "but the Public Appointments Committee may at any time enquire as to the competence of the person so appointed to carry out the duties of that office..."

The Police Forces in Malawi do not have a "fraud squad" as such but that all corruption related crimes may fall under the Criminal Investigations Departments (CIDs) and neither do they have powers to prosecute corruption cases without the consent of the DPP. Their functions are mostly facilitatory in nature. That is to say, they facilitate prosecution by

carrying out orders from the DPP to make arrests of suspected agents of corruption and bring them to court to be charged and subsequently tried by the courts.

Removal

The person "holding the office of Inspector General of Police shall be subject to removal by the President only by reason of that person being:

- Incompetent in the exercise of his or her duties;
- Compromised in the exercise of his or her duties to the extent that his or her capacity to exercise his or her powers impartially is in serious question;
- Otherwise incapacitated; and
- Over the age prescribed for retirement.

The IG may delegate his authority by notifying the Police Service Commission, which shall prescribe the manner in which delegation may be governed, the nature and form of the reports to be produced by the person holding the office on his behalf.

The Police Service Commission has the powers to appoint all other police officers other than the IG and has the powers to confirm such appointments and to remove such officers from office.

Independence and Neutrality of the Malawi Police Forces

The Malawi Police Forces have no powers to prosecute anyone for corruption alone. Their role is to facilitate prosecution by effecting arrests and bring the suspects to court once they are asked to do so by the DPP, the Ombudsman, the ACB and other agencies with consent from the DPP.

The Malawi Police Force is currently under public attack for its lack of independence to fight political, moral and financial corruption in the country. While the security department has often been perceived as a political instrument for the ruling party Young Democrats and government, the road traffic department is alleged to receive bribes from road users through payments for petty crimes that are effected without any official receipts. Political and moral violence in Malawi is rampant leading to the deaths of several political opponents. Political beatings take place in the presence of the police and sometimes right at the police stations but consequently these are left without any arrests particularly when the ruling UDF party is involved. For example, the leader of the MCP opposition party, Gwanda Chakuamba and his Treasurer General, Dr. Hetherwick Ntaba, were nearly killed, allegedly by UDF Young Democrats, at the Police Station in Kasungu District in 2002 and the culprits have never been arrested⁸⁷. Another MCP Member of Parliament, Hon. Kizito Ngwembe, was also beaten and left for the dead and naked at the same Police Station by the same group of UDF Young Democrats who still remain at large as Police continue to investigate. And further opposition MP from the AFORD party, Hon Sam Kandodo Banda, was severely beaten on his way to Parliament because of his critical stand on the third term bill and his assailants are still at large.

Furthermore, members of a controversial pressure group, the National Democratic Alliance (NDA) were also beaten right on the premises of Parliament and in full view of the Police and the culprits walked away scot-free. Similarly, Mpinganjira was nearly killed at the Bunda turn-off roadblock in Lilongwe when he and his colleagues were ambushed by the same alleged political activists who remain at large. More recently, the newly formed MAFUNDE party officials were forced to seek refuge at Malawi Army Training Camp at Senga Bay in Salima after being chased by UDF Young Democrats, led by Presidential Advisor on Youth Affairs, Henry Moyo.⁸⁸ Ironically, 15 people were immediately arrested by the police when the ruling UDF party "outspoken district governor for Blantyre, Eric Chiwaya, Wednesday night escaped death at the hands of angry Manase township residents who beat him up and smashed his official car after their village head revealed that Chiwaya had tried to give him money".⁸⁹ The President who usually remains silent

when opposition members fall victim to political violence, has since ordered the Police to make more arrests on those who beat up the ruling party government.

Another classic partisan Police operation took place recently in Mulanje district. When a UDF constituency Chairman in Mulanje died in political violence that ensued during clashes with the National Democratic Alliance (NDA) members, numerous arrests were immediately made and some of the NDA suspects are still in Police Custody while others are in court. The NDA leader, Brown Mpinganjira, was even enlisted by Interpol in connection with the same case while he was abroad on a fundraising trip for his NDA pressure group. Mpinganjira is still under probe.

The Church has also doubted the independence of the Police. The Catholic Church in Malawi is concerned to hear and read that violence such as beating up the defenceless citizens is taking place within the police force.⁹⁰ Thus, the anticipated independent role of the police in public matters is questionable.

Public Procurement

In Malawi there is no Central Tender Board (CTB) at present through which public goods and services are tendered for public bidding and procurements. Initially Malawi had a CTB but the government dissolved it "after graft allegations rocked the board four years ago" and that since then "the government contracting unit overseen by the Office of the President and Cabinet (OPC) took over its functions".⁹¹ This means that all public procurements are now under the direct control of the Executive.

The current procedure followed by the contracting unit is that calls for bids are usually placed in the media through advertisements for interested parties to bid. However, developments at the OPC contracting unit suggest that the process of public tendering is sometimes influenced by politics. For example, recently about K400 million worth of government contracts to supply plastic chairs and books in the Ministry of Education, Science and Technology were awarded under controversial circumstances to CrissOffset whose managing director, Farook Gani, is young brother to Altaf Gani, a ruling UDF councillor. In fact, CrissOffset secured the whole deal despite other lower bids from other printers in the country to supply notebooks worth K105. Similarly, high ranking UDF officials, including the Attorney General and Minister of Justice, Henry Dama Phoya, obtained a K18 million contract to supply 40 paged note books at a cost of K17 per book and 20 paged ones at K7 each. These costs were not in line with prevailing market prices where a 40 paged notebook cost about K7 and K11 for an 80 paged one.⁹²

In another reported example of this nature the OPC contracting unit in July 2002 awarded a software contract for maintaining 300 users to Coda, a British Firm, after abruptly ending another contract with a local firm, ICL Malawi Limited, run by national chairman of the opposition MAFUNDE party. This time, government did not tender the contract it gave to Coda after abruptly terminating the one with ICL. In 1998, an open tender for the supply of financial system and equipment software was put up and six bidders, including Unipro, Unisys, Business Computer Services and ICL, expressed interest. ICL secured the 3-year contract with the government but this was cut short after only a year".⁹³ The contracting unit suffered from political manipulation because in the subsequent dispute that ensued between government and ICL, it was later discovered that some highlevel government official directed that all dealings with ICL be dropped because of ICL's political affiliation to a political party known as MAFUNDE.⁹⁴ MAFUNDE is one of the newly launched small opposition parties in the country.

Public procurement services and structures in Malawi are fragmented. That is, some of the government ministries and departments also have their own internal procurement committees. For example, the Ministry of Education, Science and Technology has an "internal procurement committee" charged with the responsibility of procuring learning and teaching materials and other public goods and services thereof. And yet, this Ministry is also reeling under the MK187 million notebook scam that was exposed in 1999 by parliament's Public Accounts Committee (PAC).

Parliament has just passed a procurement law where oversight responsibility will lie with the office of the Director of Public Prosecution (DPP) whose head is accountable to the State President. The law has been heavily criticised by different people because it puts the agency who shall regulate and monitor public procurement to be "accountable to and operate under the general supervision of the president" (Nation Newspaper, 16-17 August 2003). Commentators argue in the same paper that this will make public procurements more open to political abuse and that it would have been better to put the "statutory office of the DPP" under a committee of Parliament to which it should account. MCP Member of Parliament from Lilongwe Mpenu has described the rushed legislation as "legislation by ambush" which the government rushed through without giving MPs ample time to debate it or refer it to a committee of Parliament for fine tuning as is normally done (and made worse by the fact that, currently, Parliament has adjourned indefinitely).

Ombudsman

Powers, Duties and Functions

The office of the Ombudsman is a constitutional body established by an Act of Parliament under section 120 of the Constitution. Under section 121 of the Constitution, "in the exercise of his or her powers, functions and duties, the Ombudsman shall be completely independent of the interference or direction of any other person or authority".

The Ombudsman is appointed by the Public Appointments Committee through public advertisements. He is a qualified person widely held in high esteem by the public but ignored by government. Once appointed, section 123 of the Constitution empowers the Ombudsman to "investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practical remedy." In practice, the Ombudsman does not have powers to prosecute except by way of making recommendations to the DPP to consider carrying out public prosecutions on cases emanating from the office of the Ombudsman. The Ombudsman also reports the activities of that office to the Parliament's Committee on the Ombudsman.

However, the decisions and powers of the Ombudsman are subject to judicial reviews. Thus, section 124 of the Constitution stipulates that the powers of the Ombudsman "shall not oust the jurisdiction of the courts and the decisions and exercise of powers by the Ombudsman shall be reviewed by the High Court on the application of any person with sufficient interest in a case the Ombudsman has determined".

Independence and Neutrality of the Ombudsman

The Ombudsman is accountable to Parliament (the Parliamentary Committee on the Ombudsman) and submits his/her reports to Parliament each year. This report includes an account of all complaints and applications to his/her office; an account of the exercise of powers in relation to applications; of the remedies afforded to applicants in respect of grievances; and shall also include a record of the general recommendations of the Ombudsman in respect of grievances".

However, the Ombudsman Act has come under attack recently. The Legal Affairs Committee of Parliament has described the Act to be out of line with the Constitution". Among other things, the Act is said to cause friction between the Ombudsman and the courts and that it needs to provide protection of the Ombudsman's tenure of office and give it the powers to enforce its determinations. This meant that the office of the Ombudsman does not have adequate powers to perform its duties and functions. This was blamed on political interference by the Executive, which erodes the independence of the Ombudsman. For example, Lilongwe Mpenu Member of Parliament, Louis Chimango, and Nkhatabay South Member of Parliament, Sam Kandodo Banda, believes the main obstacle to be the Executive since it feels threatened by the Ombudsman's independence. Furthermore, government is unwilling to release enough funding for the institution by

using the Treasury to keep and control the money, and giving less than approved.⁹⁵ To undermine the independence of the Ombudsman further, the Executive seems to deliberately ignore the directions of the Ombudsman and reduce its influence. Such an interference of duties, however, affect the foundations of the institution that are supposed to be protected by the constitution, as expressed by the Ombudsman himself, Mr. Enock Chibwana,⁹⁶

Undoubtedly, the office of the Ombudsman is one of the public offices perceived by the public as an example of how a public office can function fairly and independently. For example, the public in Malawi voted Ombudsman, Enock Chibwana, "a man of the year"⁹⁷ in 2001 basically because of his tireless struggle for justice and the protection of the rights of the people in the country. The Ombudsman's strength is that his office handles cases of maladministration and other "minor" complaints of abuse of office. However, the lack of resources to enforce mechanisms to deal with maladministration are a restraint. Sometimes officials at the office of the Ombudsman work in fear of unknown reprisals, and a culture of silence has a negative hangover on the people who do not yet know their right to justice and do not report cases of maladministration to the Ombudsman.

Other anti-corruption institutions working with the office of the Ombudsman mentioned include parliament, the media, donors, government and civil society. Areas of their cooperation are on civic education, human rights and public hearings.

Removal

The Ombudsman is appointed for a five-year term. However, the Public Appointments Committee reserves the right to re-appoint him/her for a further five-year term. Similarly, the Committee has Constitutional powers to remove the Ombudsman from office. The bases for removal are, however, that the Ombudsman must be:

- In such circumstances where had that person not been Ombudsman, that person would have been disqualified from being appointed;
- For gross misconduct; or
- On reaching the age of sixty-five years.

Staffing

The office of the Ombudsman is staffed with personnel of different skills. This office has three regional offices in each of the country's three regions. The Southern region, for example, is based in Blantyre and it runs the department of investigations, the accounting department, the human resource department and the finance and administration departments. There are 11 members of staff – 3 investigators, 1 assistant human resource officer, 3 complaint in-take clerks, 1 clerical officer, 2 security guards and 1 messenger. The main source of funding to the Ombudsman is government through the annual budget parliamentary allocations, but He clearly lacks staff, funds and equipment.

While the Ombudsman is perceived largely as one of the most efficient public institutions in the country, it is not without problems. Some of the problems faced by the office of the Ombudsman include inadequate funding by government, delay by affected parties to implement the rulings of the Ombudsman and the problems associated with the Ombudsman Act, which some commentators have said creates jurisdictional overlaps between the Ombudsman, the Constitution and the courts. The Ombudsman Act is currently being reviewed.

Investigative/Watchdog Agencies

Watchdog institutions include Human Rights Commission, DPP, ACB, Auditor General, PAC etc.

The Anti-Corruption Bureau (ACB)

The ACB is an institution supported by both government and the donor community. The ACB is an institution created by an Act of Parliament, the CPA (1995), which forms the central legal framework for government's anti-corruption policy. It is the legal framework that also guides donor support for anti-corruption strategies in the country.

Powers, Duties and Functions of the ACB

The ACB is established by an Act of Parliament – the Corrupt Practices Act. The Corrupt Practices Act (CPA) of 1995 provides for the establishment, powers, duties and functions of the ACB. The bureau's strength in combating corruption is in its effective investigations of corrupt cases at all levels of society. The bureau is mandated by law to carry out investigations and prosecutions of corruption cases in the country. According to responses in an empirical study, the bureau officials are well qualified to carry out their duties except "one man who does not even have a junior certificate" and yet he holds a very technical position at the bureau. Some of the weaknesses that affect the performance of the bureau include lack of resources, a weak Corrupt Practices Act, no robust strategy and no commitment from other institutions to cooperate with the Bureau.

The Act provides that "the Bureau shall be a Government Department and the finances of the Bureau shall be charged to the Consolidated Fund"... "The President shall, on such terms and conditions as he thinks fit, appoint the Director, and the appointment of any person as Director shall be subject to the confirmation by the Public Appointments Committee". It empowers the ACB to investigate and prosecute any corrupt practice but with the consent of the Director of Public Prosecutions (DPP). The bureau is however handicapped by limitations of the Corrupt Practices Act (1995). The Act does not cover certain aspects of corrupt practices such as "fraud" and "abuse of office", which the bureau sometimes encounters but has no jurisdiction and authority to investigate. In such cases, the bureau is completely ineffective.

On the functions of the ACB, interviewees for this NIS study held different perceptions. Interviewed officials tend to think that their institution is effective in combating petty corruption as opposed to grand or top level official corruption. This is the case because cases of petty corruption are effectively investigated, prosecuted and logically concluded. Top level or grand corruption is usually investigated by the bureau but not logically concluded by other institutions such as the courts and the office of the Director of Public Prosecutions.

On strategy, the Bureau follows a participatory approach to combating corruption with its cooperating partners. In this regard, the Bureau works with the courts, the Auditor General, the Ombudsman, the Police, the Director of Public Prosecutions (DPP), Malawi Revenue Authority (MRA), the department of immigration, UNICEF, Malawi National Examinations Board (MANEB), and civil society. Areas of cooperation in this consortium include awareness, prevention and investigation. Usually, issues of tax evasions, custom duties, passports, examination leakages and cheating, fraud and abuse of office are routine encounters. Cooperating institutions support the Bureau by providing vehicles, whistle blows and anonymous letters and reports. The Bureau works through a forum with civil society organizations but it is not perceived to have any real power. The effectiveness of the anti-corruption are thus limited. Furthermore, crucial partners in this initiative such as international agencies and donors also do not have clear strategies of their own against corruption. If the strategy is in place then it is either not clear or people lack information on it. Comparing press reports and what happens in practice, the Bureau's position regarded the press to have a very vital role to play in supporting the Bureau in its activities.

Removal

At the ACB, "a person holding the office of Director may be removed from office by the President, with the confirmation of the Public Appointments Committee, for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour".⁹⁸ In practice, removal from office by the President may take place with confirmation by a Parliamentary Public Appointments Committee in a situation where such a Committee may be dominated by members of a majority ruling party subjects the office of the Director of the ACB to the vagaries of partisan politics and interests.

Staffing and Funding

There are three main functional departments at the ACB namely Operations, Support Services and Management. Under the Operations department there are three divisions namely: the Investigations and Prosecution Division, the Public Education Division and the Corruption Prevention Division. Out of the 25 required members of staff in the Operations Division, 22 are already employed with 1 Principal Officer and 2 Senior Officers. In the Support Services Division there are 3 members of staff out of the 5 required while at the Corruption Prevention Division there are 3 members of staff out of the required 4.

There are 76 staff members at the ACB. Of the 76 employees, 2 (the Director and the Deputy Director) are presidential appointees. The rest are employed by the ACB on contract. 85% of all the employees are University graduates with 4 of them holding Master's degrees. There are 9 drivers, 2 telephone operators, 6 secretaries, and 3 messengers.⁹⁹ Staff development (capacity building) at the ACB is mainly funded by DFID and the World Bank. DFID funding will run up to January 2004 while that from the World Bank will come to an end in August 2003. Government funding to ACB varies from year to year and from issue to issue and Donor funding focuses on specific activities and departments. For example, DFID provides financial assistance for training of staff at the operations department while NORAD supports corruption prevention and research. The EU finances public education and investigations and the World Bank focuses on staff training.

The workload at the ACB is heavy. For example, in less than a year of its launch, between March 1997 and January 1998, the ACB received a total of 3,100 written reports and complaints of corruption in the country.¹⁰⁰ In 1999, the ACB received 1,385 complaints; in 2000 it received 1,455 complaints; in 2001 it received 1,457 complaints; in 2002 it received 1,236 complaints and in 2003 so far the bureau has received 147 complaints.¹⁰¹ Of these, 12 investigations on cases have been completed and they are waiting for the DPP's consent for prosecution or discontinuation. In Lilongwe (capital city) 15 cases have been referred to court, in Blantyre (commercial city) 15 cases have also been referred to court and in Mzuzu (municipality) 4 cases have been referred to court respectively.

There is need in future to develop a broad and participatory strategy, reform the Corrupt Practices Act to include such grey areas as fraud, abuse of office and restructure the anti-corruption institutions in the country. What has come out of the ACB of late is an admission in Mangochi during an awareness workshop with the media by the ACB deputy director, Alexius Nampota, that the most important way to fight corruption is by raising the values of transparency and accountability as major themes of democracy and good governance. The media, he noted, has a vital role to play in this regard. On the other hand, the ACB's technical advisor, Paul Russell, said that the ACB's core function is to enforce the CPA and prevent corruption. He said that the "overriding aim of the ACB is prevention of corruption, hence it should not be judged by the number of people arrested for corruption and taken to court". In fact, he argued, "when we reach that point (arrests and prosecutions) it's a sign of failure and weakness in the systems".¹⁰² The ACB captains observed that the coalition against corruption will not be effective if the media is not included. Echoing Nampota's view, Russell pointed out that good governance is key because it checks wasteful expenditure, enforcement of the rule of law and support for an independent media.

Independence and Neutrality of the ACB

The CPA provides that “the Director shall be subject to the direction or control of the Minister on all matters of policy, but otherwise shall not be subject to the control or direction of any person in the performance of his professional duties”. The required conformity to government policy and the need to obtain the DPP’s consent either to prosecute or discontinue a case makes the ACB dependent on the direction of central government and the office of the DPP. These are instruments therefore that constrain the independence of the ACB without which the ACB cannot conclude matters alone. Thus, it is possible that the ACB in Malawi is a centralized institution.

Media

The One Party State – the Media as a Suppressed and Monopolized Institution

The media in the one party state was a suppressed institution because of tight State controls. This resulted in the stifling of media independence in the country, the media did not function effectively. Between 1964 and 1994, Malawi as one party state under the rule of the Malawi Congress Party (MCP) monopolized and totally controlled the media. For example, the 1968 censorship and control of entertainment bill made it an offence to publish anything likely to undermine the authority of, or public confidence in, the government. The powers of the censorship board extended to include writings with the same ideological and philosophical base of the government.¹⁰³ By 1975, the board had banned 849 books including those written by renowned authors such as George Orwell, Wole Soyinka and Baldwin; banned over 100 periodicals and 16 films. Independent Journalists in Malawi became objects of forced and voluntary exiles, political eliminations and detentions without trial.

However, it is generally agreed that without information there is no accountability. “It has also been recognized that people who have access to information amass power. Therefore, information is power”.¹⁰⁴

The Multiparty State – State Dominance in Media Institutions

Breaking from a culture of silence as recently as 1992, the media in Malawi acquired a new identity with both independent and partisan publications. This followed the launch of the new Constitution, which provides Press Freedom under section 36 besides the liberalization of politics in the country. Between 1992-1993, besides the then State controlled *Daily Times* and *Malawi News*, 16 other newspapers emerged. Towards the 1994, the press started to develop a culture of character assassination, mud-slinging, propaganda and opinionated reporting because of the political affiliation and ownership of newspapers that influenced the editorial policies.¹⁰⁵

Ownership of mass media institutions and the political affiliations behind this ownership reflects a measure of political control of the media institutions in Malawi. Government officials and Cabinet Ministers endorse this development and openly deny access to the opposition to State controlled media houses. What the Minister of Information, Kaliyoma Phumisa, did on 28th December 2003 when he banned opposition views on State run radio MBC is not a new political outgrowth in Malawi.

Table 11 Radio and Television Stations Ownership and Political Affiliation

Radio Station	Ownership
MBC 1	Government/State

Radio Station	Ownership
MBC 2	Government/State
Power 101 FM	Mr. Thomson (son of an influential ruling UDF Cabinet Minister)
Capital 102. 05 FM	Mr. A. Osman (former Press Officer to the State President)
Malawi Television	Government/State
MIJ 90.3 FM	Malawi Institute of Journalism (MIJ)

Similarly, newspapers have remained largely controlled either by the State or by political parties in the multiparty system of the country.

Table 12 Political Affiliations and Ownership of Newspapers in Multiparty Malawi

Daily Newspapers	Ownership	Party Affiliation
<i>Daily Times</i>	Blantyre Print & Publishers	MCP
<i>Daily Nation</i>	Hon. Aleke Banda	UDF
<i>Daily Monitor</i>	Hon. C. Stambuli	Independent
<i>Malawi News</i>	Blantyre Print & Publishers	MCP
<i>Malawian</i>	Mr. C. Mputahelo	MCP
<i>Malawi Democrat</i>	Mr. M. Mkandawire	AFORD
<i>The New Voice</i>	New Voice Publications	AFORD
<i>Herald</i>	Midas Printing	AFORD
<i>The Mirror</i>	Hon. B. Mpinganjira	UDF
<i>The Enquirer</i>	Mr. Chikuni	UDF
<i>Michiru Sun</i>	Mr. Bwanali	Independent
<i>Financial Observer</i>	Mr. A. Osman	UDF
<i>New Express</i>	Mr. W. Zingani	UDF
<i>Weekly Mail</i>	Weekly Mail Publications	Independent
<i>The Watchers</i>	Julius Kaliya	UDF
<i>The Chronicle</i>	Mr. Jameson	Independent
Biweekly Papers	Ownership	Party Affiliation
<i>UDF News</i>	UDF party mouthpiece	UDF
<i>The Independent</i>	Mrs. J. Karim	Independent

Source: Patel, N. op. cit. p. 165. See also Article 19, At the Crossroads, Article 19 Media Monitoring Project, March 2000 p. 117-119

Note: The *Daily Times* and the *Daily Nation* have a daily circulation of between 12,000 – 15,000 copies.

Just as other civil society organizations, the media has gained a voice in the country with the introduction of pluralism. Following the launch of a liberal Constitution in 1994, the Media has used the freedoms and rights provided for under the Bill of Rights (Chapter iv) of the Constitution to its advantage. Of particular importance are the “freedom of conscience”, “freedom of opinion”, “freedom of expression”, “freedom of the press”,

“access to information”, “political rights” and others (as the Constitution has a bill of rights that provides for all human rights). There are several newspapers and radio stations in the country now. The media in Malawi has grown strong and quick to defend its hard-worn freedom: “As far as freedom of expression is concerned we as a nation have crossed the Red Sea and we have been to the mountain top. If Mr. Chibwana wants to go back to Egypt, let him go back alone. We will not be dragged back to the ice age by heavy-furred, thick-coated dinosaurs who cannot stand the heat”.¹⁰⁶ This is a media reaction that has followed a recent ban on the popular independent Blantyre based radio station, radio MIJ FM 90.3 (Malawi Institute of Journalism), which has been ordered to stop broadcasting political news because it is biased towards a certain political party. The order came from the board Chairman of the radio, Mr. Henry Chibwana, who has since “excelled himself by committing what will go down as the most unspeakable terrorist act to freedom of expression in the history of a new Malawi”. This follows Minister of Information, Kaliyoma Phumisa, who on December 28, 2003 “condemned the voice of opposition parties as confusing and, therefore, undesirable on MBC”.¹⁰⁷

The British Government, the main donor supporting the MIJ radio, has since threatened to withdraw its support of MIJ Radio because they do not support bias in radio broadcasting.¹⁰⁸ In fact, last Friday street vendors selling the independent *Daily Times* carrying news as its lead story with a title “sayimanso” (the incumbent State President will not run for office again), as implied by the President when he addressed a mass rally in Mulanje district, were severely beaten and their newspapers violently confiscated and shredded by alleged UDF ruling party fanatics – the Young Democrats.¹⁰⁹

The Legal Core of Media Independence and Neutrality in Malawi

The tendency to isolate dissenting views from mass media houses grows more fervent towards national electoral campaigns. The question of equal access to the media by all political actors remains contentious and challenging to the State, civil society, the Electoral Commission, the opposition and the donors in the country. Due to donor pressure, the government passed the Malawi Broadcasting Corporation (MBC) Act, the Telecommunications Act and the Malawi Posts and Telecommunications Corporation Act incorporated into a single new Act to create an independent regulatory body and strategy for the communications sector. This new regulatory body called The Malawi Communication Regulatory Authority (MACRA) was established to oversee all the communications industry in the country.

The bill leading to the creation of MACRA was passed by Parliament in 1998, but it left several loopholes and discretionary powers to the President. For example, Section 6 of the Communications Act on membership of the Authority incorporates the inclusion of two ex officio members – the Secretary to the President and Cabinet; and the Secretary for Information. Having ex officio members is a direct contradiction of the independence of the Authority”.¹¹⁰ The Presidential prerogative in matters of appointments and monitoring of all activities of the Authority and the Ministerial approval are clear sources of State influence and control on the media industry in the country sanctioned by law. This obviously compromises media freedom and independence.

Thus, the existence of these media institutions does not signify real independence of the media in the country particularly during election time. In 1999, even civic education was also politicised on the MBC towards the UDF.¹¹¹

Table 13 Political Party Campaign Advertisements 13-26th May 1999

Party	Number of Adverts	Percentage of Total Adverts
UDF	295	78%
MCP/AFORD Alliance	17	4%

Party	Number of Adverts	Percentage of Total Adverts
MCP	8	2%
AFORD	8	2%
United Party	4	1%
Others	48	13%

Note: These adverts announced the campaign rallies' venue, time, speakers and sometimes the issues to be articulated by the candidates. These were done at the discretion of MBC while the Electoral Commission sponsored programmes for Party Policies, platforms and Manifestos in different languages.¹¹²

Civil Society

The ACB Director, Justice Michael Mtegha, stated that the active participation of a well informed civil society has a major and crucial role to play in the fight against corruption.¹¹³

Since the advent of multiparty democracy in 1993, civil society in Malawi has increasingly raised its voice on matters of public interest, including corruption, and it has exerted force on the state. The Constitution under its Bill of Rights (chapter iv) guarantees freedoms and rights that facilitate the growth of civil society organizations in the country. However, most of the civil society organizations are not effective in their functions and duties because of deficiencies in areas such as finance, personnel, technical expertise and equipment. This is the case because most of these organizations are not government funded and thus donor-dependent. Donor funds in Malawi flourish mostly when it is time for an election. In the interim, many civil society organizations are left to fend for themselves and may not survive the time between major political changes. The State also contributes towards the demise of civil society organizations perceived to be politically opposed to it, for example, the state recently banned a newsletter run by GTZ, which was launched with donor funds for civic education. The State has also banned a large project, which the British Department for International Development (DFID) was about to launch on Human Rights in the country accusing them of sponsoring NGOs that are critical of government. In fact, the State has also embarked on creating its own civil society organizations to counter those that criticize its agenda. For example, during the recent general elections in Zimbabwe in March 2002, donors asked government to list credible NGOs to be funded to go and monitor elections in the capital Harare. Instead of doing that, the Special Advisor to the President on civil society matters, Ms. Nyandovi Kerr, created bogus NGOs and compiled the list for donors to fund them on the trip to Harare. However, some genuine NGOs questioned the list which was then reviewed only to find that indeed some of the listed NGOs were either government creatures or they did not exist at all.

Civil Society and Political/Donor Pressure

The civil society in Malawi and particularly the NGO community are under political pressures and therefore politicised themselves. The Non-Governmental Organizations Board of Malawi, with the purpose to register and regulate activities of NGOs has recently warned NGOs not to turn into political parties or become representatives for an individual political party. If an NGO is perceived as practicing partisan politics, the board will either cancel or suspend its registration. Moreover, NGOs are supposed to pay registration fees (for registering the organization), processing fees (for administrative costs), and annual subscription fees before they get registered. The registration fee for national NGOs is K15,000 while that for international NGOs is K50,000. The annual subscription fees for national NGOs is K7,500 while that for international NGOs is K20,000. Processing fees comprise of K500 per applicant.

The board is governed by the NGO Act 2001, whereby it is not clear to what extent it is political – it should have real political independence, although it is very difficult to separate

the work of NGOs from politics. As a result, the NGO board is very unpopular and this could explain that only three NGOs have been registered.¹¹⁴

The ruling UDF party has been particularly critical of NGOs in the country. For example, at a meeting on civic and voter education organized by the EC, ruling UDF officials argued recently that “we don’t support the accreditation of NGOs because all NGOs have clearly demonstrated that they side with the opposition. A partisan organization is always partisan and you cannot trust such an NGO to conduct non-partisan civic and voter education”.¹¹⁵

Generally, civil society in Malawi is weak except in situations where the Church reinforces them by taking a lead role on issues of governance, democracy and development. Here the churches, particularly the Catholic Church and the Church of Central Africa Presbyterian, are very strong. All the churches in the country are grouped under the umbrella body - the Public Affairs Committee (PAC), which recently opposed the ruling party because of its critical stand against the defeated open presidential term of office with the pending third term of office proposed constitutional amendments.

Some civil society organizations pursue anti-corruption objectives in the country. The Bill of Rights under the Constitution of Malawi provides for freedom of assembly and association. This provision enables civil society and non-governmental organizations to emerge or be formed and function under the law in Malawi. Of course, such agencies need to get registered with the office of the Registrar General and the NGO board in order for them to function legally.

Transparency International Malawi Chapter is a civil society organization, which has existed for over three years now. Its main objective is to fight corruption in the country. Mr. Revi Mihowa, one of the active board members for the TI Malawi chapter, TI Malawi has adequate expertise to tackle corruption as it is composed of a lawyer, a high court judge, an accountant, administrators, the clergy, representatives from the Anti-Corruption Bureau (ACB) and the Auditor General and himself a former Treasury senior official.

The TI Malawi chapter works in collaboration with the ACB, the Auditor General, the Ombudsman and international donor agencies such as DFID, Berlin (TI headquarters) and the Danish government among others. The chapter has so far successfully conducted civic education about corruption in all the three regions of the country, i.e., at Malosa in Zomba district in the southern region, Natural Resources College in Lilongwe district in the central region and in Mzuzu city in the northern region between the years 2000 and 2001. These civil exercises revealed that the north, which is by far the least populated region, was quite ahead of the other two regions in terms of popular awareness about human rights and responsibilities, and the link between human rights, corruption, development and governance in the country was highlighted. This implied that the majority of the Malawian population was ignorant of such issues, and there has since been a high demand for such civil exercises. However, the chapter is experiencing funding problems since the Danish government quit the country. In addition, the British Department for International Development (DFID) and the Berlin (TI Headquarters) imposed their own new conditionalities on their financial support, including an overt demand for deep structural reforms or an overhaul of the chapter’s institutional structures. Donor pressure is a major factor that affects institutions that are donor funded in Malawi. Consequently, the TI – Malawi chapter is not able to perform its functions without donor support. Among other things, NGOs such as TI Malawi perform their functions in line with a culture of plural politics; checking and holding government accountable to the people, promoting people’s liberties and freedoms, protecting individual rights and participating in public governance and development.

Regional and Local Government

Structures, Powers and Functions of Local Government

Local government in Malawi has evolved from the one party state to the multiparty state. Under the one party state, local government was subservient to central government in that

the district councils lacked autonomy and institutional capacity to perform their duties and functions effectively. What actually existed on the ground under the one party state was not local government as such but field administration. Indeed in November 2000 the country held its first local government elections since a return to multiparty politics in 1993. With the advent of multiparty politics, decentralization and local government reforms have taken centre stage as instruments of popular participation in governance and development.

The Constitutional, the Local Government Act (1998) and the National Decentralization Policy (1998) constitute the legal framework for local government and decentralization in Malawi. The main idea inherent in these instruments is to devolve decision-making powers from the centre down to the people at the grassroots. Thus, since 1994 local government structures have been undergoing reforms in the country. For example, the district council has been reformed by the introduction of the District Assemblies that have merged field administrative and council structures. The political wing of the District Assemblies are led by elected councillors while the administrative arm is led by appointed central government technocrats – the Chief Executives/District Commissioners – who form the core of professional staff. These structures are located in each of the 27 administrative districts, city assemblies in Mzuzu, Lilongwe and Blantyre and a Municipal assembly in Zomba district. Each district, city and municipal is divided into Wards and each Ward elects a councillor to represent its interests at the District Assembly. Besides the Wards, there are Area Development Committees (ADCs), Area Executive Committees (AECs) and Village Development Committees (VDCs) as grassroots democratic structures. These structures are headed by elected chairpersons and/or traditional authorities respectively. In reality, in many areas and communities these structures are not yet in place. In other words, these democratic structures are headed by unelected traditional leaders. Ideally, development plans are supposed to be initiated at the Village Development Committee levels and passed on through the institutional matrix of the Area Development Committee and Area Executive Committee to the District Assembly for approval before implementation. Members of parliament, interest groups and traditional chiefs from each particular district also sit in the District Assembly as ex officio members without any vote.

Among other things, constitutional functions and duties (article 146) of local government include the promotion of “infrastructural and economic development through the formulation and execution of local development plans and the encouragement of business enterprise; to ensure the consolidation and promotion of local democratic institutions and democratic participation”. The Local Government Act further stipulates that local government is responsible for mobilizing resources in the local government areas for governance and debt payments; maintaining peace and security in conjunction with the Malawi Police Forces and making by-laws. Specifically, the jurisdiction of local government includes sewerage disposal; killing vicious and ownerless dogs, and inspecting premises where articles of food and drink are being sold.

Accountability and Autonomy of Local Government

Local government is mandated to account to the central government for the resources that they use every six months before the end of the financial year. They give their audited financial reports to the Local Government Ministry, the Budget and Finance Committee of Parliament and the Auditor General. The Auditor General is then mandated to give his report of the audited accounts to the Ministry of Local Government, the Local Government Finance Committee and Parliament.

However, there are often delays in submitting these resources and frequent reports of misuse of resources by local authorities. For example, Rumphi District Assembly is currently soiled in a financial scam involving K6 million donated by President Muluzi through AFORD President, Chakufwa Chihana, for development in the district. The same assembly is said to have misallocated K30 million it received for a water project. Generally, mechanisms to ensure accountability and transparency in local government are rarely or never effective.¹¹⁶ These resources were lost through corrupt, improper and weak accounting procedures. In fact, many local authorities in the country have been accused of misusing public resources meant for development funding ruling party campaigns. They,

for example, ferry supporters of the ruling UDF party to and from party meetings and rallies.¹¹⁷ Corruption has also reared its head at the Lilongwe City Assembly where two elected leaders are facing 16 counts of corruption in a court case brought against them. City Mayor, Charles Chimdzeka and his deputy, Beatrice Baisi have been dragged to Lilongwe Magistrate court to answer charges of corruption. Chimdzeka was accused of corruptly giving money amounting to K20,000 as gratification and inducements to 16 councillors, who in turn were to vote for him as mayor of the city during elections in December 2000, and Baisi was similarly accused of bribing the 16 councillors with K7,000 as a reward for voting her deputy mayor".¹¹⁸

The problem of centralization of power still exists in the country despite the fact of current decentralization and local government reforms that are being implemented. In practice, there is centralization in decentralization in Malawi. Instead of devolution of powers, the current local government vs. central government structural relations promotes de-concentration. In other words, local authorities are not allowed to make and implement independent decisions on public affairs affecting them without referring back to the central government authority. For example, in an empirical study conducted in 2002 in Zomba and Balaka District Assemblies it was found that centralization of strategic resources such as land, finances, human resources and technical expertise hamper the autonomy and independence of local authorities¹¹⁹. This is reflected in the fact that in all local areas land is still controlled by the Ministry of Lands and Valuation; finances are controlled by the Ministry of Finance and Economic Planning which even controls local budgets and approves financial aid to local authorities; and the hiring and firing of technical staff is controlled by the Local Government Service Commission – a branch of the Ministry of Local Government as an arm of central government. These controls mean that the local authorities are dependent on central government and that their independence and autonomy is theoretical rather than put to practice.¹²⁰

Continued centralization stifles local autonomy and independence. Lack of independence and devolution of powers are some of the factors that weaken institutions of public accountability and transparency. Lack of public accountability and transparency between the local rulers and the ruled, therefore, promote corruption. The more local actors do not know the sources of revenue in their assemblies and the more these sources remain centralized the weaker the local actors become too weak to press for accountability.

Anti-corruption Activities

Government Anti-Corruption Activities

The Malawi government's overall anti-corruption reforms over the past 8 years are wrapped up by the institutional infrastructures the government has created namely the Anti-Corruption Bureau, the Office of the Ombudsman, the Auditor General, the Director of Public Prosecutions, the Courts, the Police, the Legislature, the Judiciary, the Executive and several other enabling legal instruments namely the Corrupt Practices Act, the Malawi Constitution, the Ombudsman Act and the Declaration of Assets bill among others. These institutions and legal instruments, at least in principle, work against corruption in the country.

However, it would appear that anti-corruption measures in Malawi are weakened by several factors. Firstly, there is lack of local resources especially finances in most of the anti-corruption institutions in the country. Government funded anti-corruption institutions are most affected by lack of adequate and timely funding. As a result, most of these institutions are donor dependent. Clearly, donor aid has its own technical, moral and political conditionalities that in practice, however, may hamper initiatives against corruption. This rather poor performance of its anti-corruption activities of Transparency International in Malawi over the past 3 years illustrates this dilemma.

Secondly, there is a lack of strong political will to fight corruption in the country. Weak cooperation and sometimes political interference among the NIS pillars are easily observed. This is the case because some of the pillars seem to pursue different agendas from their peers under the same theme of corruption. For example, while the ACB may seek justice through the prosecution of alleged corruption cases, the Executive is perceived sometimes to intervene and obstruct or delay justice. This is seen through a number of cases that involve members of the Executive. Such cases are either stalled in court or investigations remain inconclusive and indefinite. Because of a clear lack of political will people in the rural areas have lost confidence in government anti-corruption measures. To quote a street vendor from Phalombe district, who is unable to trust these measures "when we all know that the government is clinging on to Clive Macholowe in prison because he stole millions of kwachas to start his business so that he should assist the poor people by giving them employment and also pay tax to government. And yet, the same government has released serial murderers who have been chopping off women's breasts in Chiradzulu district for rituals simply because they have political connections with top corrupt government officials – these people talk about corruption when it is not in their own interest".¹²¹ Even the distribution of free farm inputs (starter packs) by government has been infested with corruption as only those with political connections are accessing these inputs leaving the poor and deserving people out of the equation completely. Land distribution is also corruptly skewed in favour of the rich and powerful. Women's loans for small scale businesses offered by FINCA have limited their access to the rich and the powerful wide open by placing high interest rates, short gestation period and high security requirements. The affluent corruptly negotiate all these stringent requirements and when they pass their gestation period, the Bank takes its time before it decides to confiscate their property or close down their business. This is in contrast to the poor people who, even under bad circumstances, have lost the little they had when they unexpectedly fell sick and had their businesses unceremoniously collapsed or closed down¹²².

Thirdly, conflict and duplicity of purpose is another problem whereby the ACB and the DPP seem to pursue conflicting agendas and obstruct progress on certain cases. It is easy to get to a situation here where the ACB thinks there is a genuine case of corruption worth prosecuting urgently but the DPP's interpretation of the matter and sense of urgency may be different. This simply reflects lack of a well-coordinated and common understanding about corruption. This has contributed towards the slow pace at which corruption cases are

taken to courts. Once in court, corruption cases are treated just like any other case. This means that the cases in question have to queue on a first come first served basis.

Fourthly, the absence of an anti-corruption infrastructure among civil society and local organizations is also a source of weakness. This encourages the over-loading of work and over-reliance on the ACB whose capacity is also in the formative stages. By encouraging local and civil society organizations to take on issues of corruption as part of the primary justice system government would enhance integrity and capacity for accountability within the NIS.

Fifthly, lack of a common understanding about corruption has largely left the rural meanings of corruption out of the current legal frameworks. In rural Malawi corruption is perceived as "the art of doing things that please oneself regardless of principles of justice and fairness".¹²³ It is an act that contravenes justice transacted secretly between two actors vis-à-vis the corrupter and the corrupted for their mutual benefit. In an act of corruption, the primary mode of transaction is money, word of mouth, human body (sexual gratification), social influence, power and status. Invariably, these are used by individuals and groups of people to gain favours. This kind of corruption is caused by "kusowa chilungamo" (lack of justice), desire to get rich quickly, selfishness, to induce efficiency, to get a "cover up", "kusowa chikondi" (lack of love), lack of confidence, greed and scarcity of resources. Corruption has left dire effects on the living standards of the people in the rural areas such as high incidences of poverty, underdevelopment, unemployment, conflict, illiteracy and ignorance, general suffering among children and women, gross economic inequalities, lack of justice and loss of confidence among people and in their leaders and institutions of government.

Common forms of corruption in the rural areas include incidences of buying justice when there are land and tribal or ethnic conflicts, buying examinations, offering bribes to gain favours, influencing local contracts, employment and business opportunities, giving money and property in exchange for something which consequently disadvantages someone, use of words and body as sexual inducements.

There are some organizations working against corruption in rural areas. In Phalombe district, for example, it was discovered that villagers know of some of the anti-corruption institutions and activities going on in the country. These include those supported by government and donor agencies such as the Public Affairs Committee (PAC), the Anti-Corruption Bureau (ACB), the Malawi CARER, National Initiative for Civic Education (NICE), ActionAid, the Churches, the Police, the Courts, Donors, NGOs and the Ombudsman. These institutions employ various strategies with different levels of success and failure. The strategies include preaching the gospel, conducting awareness campaigns and surveys, arrests, prosecutions, investigations, reporting and encouraging transparency and accountability in the NIS. However, instead of encouraging wider awareness and combat of corruption, government provides disincentives to some of these institutions by discouraging them from taking up full anti-corruption measures arguing that such activities are political and should be left to political parties and politicians. It is feared that such pursuits may tarnish the good image of government.

Sixthly, although government has shown some political will by putting up anti-corruption institutions and legal instruments such as the ACB, the Ombudsman and anti-corruption legal instruments in the country, not enough is done. The government is failing to support many anti-corruption agencies and activities in the country. The failures of government include a lack of capacity to create a conducive environment and offer incentives for anti-corruption work, and as a result there is too much corruption within government structures. Since corruption appears to be flourishing in government, other institutions and private sector officials find it easy to emulate corrupt practices. As a rural participant argued, "there is no hope for us to support the government in its drive against corruption because it [government] is evil and is doing nothing". Its anti-corruption institutions such as the ACB and the Ombudsman have no real powers and are just barking like "toothless dogs". These agencies have failed "to club down" corrupt top officials in government. Corruption is thus caused by abuse of influence, poverty, greed and selfishness, ignorance, scarcity of land, financial and material resources, patronage, culture, lack of love, lack of

justice and fairness, gross inequalities, weak institutions like the ACB, weak legal regimes like the CPA and a culture of bribes and nepotism.

To move out of the current predicament, the Malawi government needs to flex its muscles on the ACB and other anti-corruption agencies and concentrate on creating an enabling work environment for them to function effectively. There is need for the intensification of civic education, the removal of the fear of reprisals for whistle blowers, a resistance to bribes, the encouragement of ethical behaviour and a democratic political culture to remove bias. People should be fair with one another and follow procedures in their public dealings. The creation of an alternative non-state anti-corruption infrastructure is desirable. Similarly, political parties, as major actors in corruption issues, should be involved in most of the anti-corruption crackdown beyond their parliamentary caucuses. Undoubtedly, empirical research should form the basis for all major anti-corruption initiatives in the country to bring them in line with the prevailing socio-economic and political realities.

Donor Anti-Corruption Activities

The British Government is one of the key donors supporting anti-corruption initiatives in the country. Among other things, the British Government is funding the Police Reform Program with the intention of breaking the one party authoritarian culture in the highly centralized Police Forces and to bring them in line with the tenets of liberal democracy and good governance. These reforms include the fight against corrupt practices in the Police Forces. The British Government is also the chief donor to the Anti-Corruption Bureau (ACB) and other similar agencies working on governance issues in the country.

However, currently the British government is concerned about high levels of official corruption in Malawi and it is withholding 12.5 million pound sterling in budgetary support from the Malawi government. Similarly, the IMF is withholding K4.1 billion for the stalled Poverty Reduction and Growth Facility (PRGF). Lately, the British government has been alarmed by reports that the ruling UDF party bribed Members of Parliament (MPs) by offering 22 opposition MPs K2 million, each on the ground that they supported efforts by the ruling party to amend section 83 of the Constitution and allow President Muluzi to run for a third term of office. The British High Commission in Malawi has since urged the Anti-Corruption Bureau to expedite investigations into alleged corruption of these MPs. This comes at the time when the Bureau is failing to conclude investigations among MPs alleged to have been bribed to support similar stalled efforts on changing section 83 of the Constitution when the failed "Open terms bill" was introduced and defeated in Parliament in July 2002. Following spiralling official corruption and scandals in government, the World Bank requested the Malawi government to pay back about K135 million which the Bank invested for various projects affecting areas of education, health and nutrition. The Malawi government has so far failed to account for this money.¹²⁴

The British High Commission, however, is able to exert greater strength in combating corruption in the country, as it finances some institutions that promote good governance and respect for the rule of law. It provides technical expertise to the ACB; helps in capacity building by paying for training; finances workshops for magistrates to enhance their understanding of the Corrupt Practices Act; finances Police reforms; and the British Department for International Development (DFID) pays ACB prosecutors' salaries and is financing a national project on primary justice.

The Commission has succeeded in many of its activities because of commitment among its staff and its cooperating partners such as the ACB, cordial bilateral relations among the donors, mutual belief in the rule of law, accountability, transparency and good governance. Areas of British support in the fight against corruption therefore include finance, technical expertise, capacity building and advocacy.

Commenting on press reports about corruption, the Commission said these reports were not perfectly reliable because statements were sometimes unverified. However, media

reports play a vital role in a fight against corruption in the country because they “give tips which results into serious investigations or prosecution”.

In its view, the Commission sees the ACB as one way that symbolizes government’s institutional strategy against corruption. This strategy is effective and good. Donors do not have their own strategies, legal framework and agenda but support those of government or at least approved by government. However, it is not applicable to talk about which types of corruption are well tackled and which ones are not in the country.

What is needed for future purposes and strategy is to increase staff at the ACB, offer more training, for example, to public education officers at ACB, managerial accountability training in the Corruption Prevention Division, speed investigations and prosecution of allegations of corruption, and encourage amendments to the Corrupt Practices Act aimed at reducing delays in prosecutions. Nevertheless, the major obstacle for donors remains the fact that their aid often gets misappropriated within the NIS, especially by core government ministries. Worse still, the accused in the misappropriation are often not taken to court expeditiously or have their cases concluded in a timely manner.

Other Donors that fund initiatives against corruption tend to focus on political and institutional corruption. These include the support towards electoral and political reforms and processes. Some of the donors in this regard include the Royal Danish Embassy, the Republic of China, the European Union, GTZ, Government of Japan, the United States of America and the Canadian International Development Agency (CIDA), DFID, IFES and the UNDP (see sections on Electoral Commission). The UNDP is a major sponsor of the government run democracy consolidation program through the Inter-Ministerial Committee on Human Rights and Democracy (IMCHR) under which numerous studies on governance, democracy and development are funded for stakeholders to run through public bidding. The World Bank also sponsors research work on corruption in Malawi (although, despite the WB advertising through the ACB for expression of interest for professionals to carry out a corruption survey some months ago nothing is heard of the progress on such a survey).

Effectiveness of Government and Donor Activities

In Malawi, corruption is difficult to investigate effectively, particularly at the topmost levels of the state and top management of the private sector because the parties there are capable of destroying, hiding and tampering with evidence. For example, the widespread diversion of public funds, cars, human resources etc by the ruling UDF leadership for its partisan activities amounts to abuse of office. Since there is no clear distinction between state functions and party functions, it has been difficult to investigate such activities for corruption beyond the usual protests by the opposition parties.

The Corrupt Practices Act covers both private and public corruption. This is the legal instrument that gives the Anti-Corruption Bureau authority to investigate allegations of both private and public corruption. But corruption cuts across borders in that parties that corrupt or get corrupted by other parties, sometimes export their excess abroad in overseas bank accounts and investments. Therefore, linkages need to be developed, understood and utilized right from the Act, the Constitution and international treaties, protocols and agreements on corruption. For example, “fraud” is a broader term that includes the causes or the effects of corruption and may sometimes itself be straight forward case of corruption. However, fraud is not included in the Malawi Corrupt Practices Act and the ACB therefore has no authority to deal with it effectively, while in other neighbouring countries this may not be the case. Supported by the media, the ACB comes across allegations of fraud among other corrupt practices cases. However, the ACB needs donor, judicial and civic support from the donors, the courts and the people and political will from Parliament and the Executive to fight corruption. Donors support the ACB because they have their interests in donor-funded development projects, which they want to protect against corruption. The courts need to prioritise cases of corruption in their allocation of resources.

There is need to amend the Corrupt Practices Act to deal with corruption broadly and effectively in Malawi. In this sense, it was noted that amending the Act in itself is not enough because the law cannot be perfect. For example, "equality before the law" is simply impossible in circumstances of inequality because while the rich can afford legal services and have access to justice the poor cannot simply afford these services. There needs to be a political will to use whatever resources are available in order to fight effectively against corruption. Some participants in this NIS study felt that the fact that corruption cases cannot be prosecuted by the ACB without the consent of the DPP means that the ACB is "toothless". The DPP's office is a constitutional office with powers to prosecute and/or discontinue public cases. But other participants noted that removing the DPP's consent requirement is not necessarily to remove a legal impediment from the ACB. Political interference is possibly the reason why the DPP and even the Auditor General are, to some extent, not performing well. These are political appointees who are essentially accountable to those who appoint them. It was argued that the appointment of the DPP has to be restructured to make the incumbent accountable to the Legal Affairs Committee of Parliament. What is needed are alliances, infrastructure and mobilize resources to fight against corruption. For example, the Legal Affairs Committee of Parliament should work closely with the ACB and assist the ACB by making public statements on cases that the public is anxious to see concluded. Some effort may not bear fruits if it is exclusive. For example, the Transparency International chapter in Malawi excludes politicians in its rank and file and yet politicians are key players in this game.

Corruption cannot decline significantly if its roots are not tackled. A political regime that assumes the reigns of power corruptly may be the root of corruption in the country. Participants expressed dissatisfaction with the country's Electoral Commission (EC) and the Police Forces in the way they conduct their duties during electoral processes. The Electoral Commission lacks independence and neutrality, appointments of its members are subject to intense political pressures, and there are no clear guidelines for salaries, cars and allowances for Electoral Commission staff. Government and foreign donors are the main financiers of the Commission, and government exerts an enormous influence on the Electoral Commission and the police. The police hold their job in trust for the public and yet are abused to play partisan roles by the ruling party militia (the Young Democrats) and senior ruling party politicians. During elections, the voting process is often flouted deliberately in areas where the ruling UDF party is weak e.g. the Northern Region where voting materials are diverted, delayed and destroyed to disenfranchise opposition voters. Sometimes, the votes are simply inflated by the Electoral Commission.

There is also a need to build national chapters of Members of Parliament, the Judiciary, civil society, Cabinet and the church to work with local and global partners on corruption. It is important that this is done because now people want results and not words of promises to combat corruption.

Moreover, corruption is an issue of development, culture, the state of the economy and much more. It is a social problem that can only be managed but not eradicated. In the light of growing economic inequality, it will not be possible to deal effectively with corruption. Underdevelopment, poverty and a culture of fear and self-aggrandisement remain the gloomy realities of our society. The ACB is working with various partners – local civil society and reform partners and global partners such as Southern African Development Community (SADC) Forum Against Corruption, Parliamentary Lobby, DFID, NORAD, and others on anti-corruption legal reforms, awareness, mobilization and prevention. With the help of its partners, the ACB has expedited the prosecution of some cases such as the PCC. But there is a lack of addressing the broader issues of development, poverty, culture and governance, where people receive bribes because they are poor, where people fear to report cases because they are accomplices and threatened, and where people cannot afford to keep the money involved to be tendered as evidence in court when they are starving. The present economic system with its inequality and poverty, inevitably breeds corruption". Culture has to change at all levels, development expedited and good governance enhanced if we are to succeed in the fight against corruption. Issues of corruption should be incorporated into primary school curricula. Generally, the strengthening of institutions of governance and democracy will give the fight against corruption a chance.

Corruption in Malawi is generally caused by poverty and underdevelopment, lack of strong political will to combat it, patronage, bad governance, weak legal regimes, lack of resources and greed. Corruption in turn perpetuates those same factors. Whatever measures are put in place, the main challenges are those of implementation and enforcement. However, future strategy will need to focus on Coalition Building. The coalition will have to focus on tackling the following issues:

- Encouraging political will;
- Strengthening institutions of governance and democracy;
- Expediting socio-economic development;
- Stimulating cultural change;
- Continuing with legal reforms;
- Mobilization of resources and people for awareness;
- Electoral reforms to tackle political corruption.

Oral interviews and focus group discussions conducted so far have shown that there is a gap between the legal formal position and the practical realities (i.e., informal positions) about corruption in Malawi. While the formal institutions and legal regimes fighting corruption are narrow and timid in their approach, definitional scope and effectiveness, the real situation on the ground about corruption and its consequences is almost exploding. Reports of grand corruption are almost a daily menu in the local media and people at the grassroots, observers on the national level and the international donor agencies have often expressed worry and dismay about the widespread incidences of corruption in the country and how these are poorly managed. Both grand and petty forms of corruption are a widespread phenomenon in the country. This has made some commentators to note that while petty theft and violence might have the most visible effect on people's daily lives, large scale government and corporate corruption is arguably having a far more debilitating effect on the economic livelihood of the people in this country. Furthermore, there are many explanations and excuses for the deepening crisis of corruption in the country. Poverty, undoubtedly a major obstacle to Malawian development, can also be used as an excuse for corruption, financial mismanagement and the poor prioritization of resources.¹²⁵ This is partly because government and donor-supported anti-corruption initiatives are not effective in tackling grand corruption in Malawi.

First of all, anti-corruption initiatives that are donor driven also suffer from a top-down bias in the way corruption is understood and approached. Donors should decide to fund grassroots anti-corruption institutions and research as such an approach does not seem to be emerging spontaneously. While government initiatives are weak, as is often the case with officialdoms, donor aid has its own conditionalities, technicalities and politics that may weaken government and civil society agencies further. For example, NGOs such as the Transparency International – Malawi chapter are close to collapse because of the uncertainty in donor support. While donor support is imperative, anti-corruption initiatives need to foster a bottom-up approach so that they have popular support and consensus for their sustainability. In supporting anti-corruption measures, donors and government need to appreciate the internal dynamics of corruption beyond the formal state institutions.

Secondly, there is lack of resources mobilized and committed to anti-corruption activities locally. This is partly due to resource scarcity and partly because of lack of serious priorities that relate to anti-corruption initiatives. For example, the President through the OPC statehood expenditure spends K200 million in 4 months inspecting development projects when the Anti-Corruption Bureau and the Ombudsman can hardly be sustained without donor financial support. These are resources concentrated on the Executive through the use of monopoly power that make it possible for the use of state resources to prop up a faltering regime. The Malawi Revenue Authority (MRA) has just been exposed by the media as being the one institution using millions of Kwachas in state funds (tax payers' money) to fund a campaign by the ruling UDF party to amend the Constitution and allow State President Bakili Mulizi another term of office, which is currently¹²⁶ unconstitutional. This is widely regarded as a form of political corruption. Government and the regime in

power have been ineffective in looking after themselves by putting the scarce resources to good use through proper prioritisation.

Thirdly, the leadership of the country has not effectively demonstrated a clear sense of standing on the high moral ground and shown strong political will in tackling corruption. For example, top government officials are allowed to continue holding public offices while they are under investigation for allegations of corruption. This obstructs fairness and justice and finally defeats the whole purpose of conducting effective investigations. Presently, Minister of Finance, Friday Jumbe, has refused calls from the opposition and civil society organizations to step down from his Cabinet post and pave way for full and effective investigations into his alleged role in the plunder of the national strategic grain reserves which has since caused hundreds of deaths from starvation in the country. The President also has so far failed to sack Mr. Jumbe, thereby weakening chances for the rule of law and accountability to take their unimpeded full course.

Fourthly, there are no good and effective working relationships among some of the NIS pillars in Malawi to the extent that some members of the pillars sometimes refuse to appear before certain institutions to answer charges of corruption unless coerced. For example, the Ombudsman's orders to subpoena government officials have been ignored on several occasions, thereby making the office of the Ombudsman powerless if not irrelevant. Others have argued that they are not comfortable with the Office of the Ombudsman having too much powers – an argument that has partly prompted the current review of the Ombudsman Act.

Fifthly, conflict of roles and lack of unity of purpose between the ACB and the DPP in matters related to prosecution of corruption cases sometimes weaken team spirit and the effectiveness of the anti-corruption drive. For example, the requirement for the ACB to obtain the DPP's consent for prosecuting corruption cases has been described by Justice Chimasula Phiri and others as contradictory and as a duplication of roles.

Sixthly, although political parties are the major actors in the corruption equation, they are usually left out of the main anti-corruption activities except where they come in through their parliamentary roles. Certainly, political parties and politicians should perform a central role in anti-corruption reforms both inside and outside parliament. Strengthening their institutional capacity and effective cooperation may be a move in the right direction.

Seventhly, different stakeholders perceive corruption differently thereby risking confusion in the anti-corruption initiatives. Different levels of personal development, culture, morality and other motives seem to be at play in this situation. There is need for an effective consensus as to what actually and exactly constitutes corruption, its causes and effects in Malawi.

Eighthly, there are no national empirical research findings about corruption evident in most anti-corruption activities. This is despite the fact that effective anti-corruption measures can only be realized if there is an effective link between theory and reality. Perhaps this is caused by the social and political sensitivities and fears of reprisals associated with corruption in Malawi. More often than not, working on corruption in Malawi invokes feelings of taking too much of a political risk and provoking suspicion.

Discussion of Key Issues

The NIS

The NIS institutions are also the major pillars of governance. It is important that the governance framework be strengthened in the country if the fight against corruption is to succeed. By strengthening governance with both short term and long term measures, corruption is significantly reduced. Presently in Malawi there are several institutions that collectively form the NIS and they are either weak or formative. Strengthening governance includes a mixture of measures such as reforms in economic policies, financial controls, public and civil society oversight, the legal system and Judiciary such as law reforms that will require public officials to declare their assets on their assumption of official duties, and civil service reforms. Ironically, declaration of assets in Malawi by public officials remains problematic and public appointments based on patronage have even pervaded the diplomatic service. A combination of these reforms works with different success and/or failure across countries. Economic policy reforms include the inducement of macro-economic stability, deregulation, tax simplification, budget reforms, customs reforms, and transparent privatisation.

In Malawi, evidence shows that privatisation of state companies has only allowed less than 10% of Malawians to take part in the economy against well more than 50% foreigners who now own shares in privatised companies. Civil service reforms that include disclosure of assets, pay incentives, restructuring, meritocracy, and modernization have not produced desired results. There has been a rise in ghost workers, ghost contractors and ghost salaries further draining the government coffers. Legal-judicial reforms may strengthen judicial independence, judicial reform and restructuring, and meritocratic judicial appointments. It is rare in Malawi that the government pioneers and funds judicial and legal reforms. These reforms are often prioritised by donors who make suggestions to government so that government initiates the process with the promise that donors will finance the process. Financial controls which entail financial management, procurement reform, budget reform, audit standards and transparent procurement are also weak. This is evidenced by high rates of fiscal indiscipline in the country. Public procurement is centralized under the OPC and has become an instrument of political appeasement and patronage. Civil society fails to participate effectively in the formulation, and to monitor the implementation, of the national budget because of lack of technical capacity to do so. Thus public scrutiny on the budget is weak. Public oversight and civil society measures could be strengthened in the areas of parliamentary oversight, civil society/media participation, the creation of an independent NGO consortium, international community support, and a coalition building process, and also the use of empirical data on anti-corruption initiatives, laws and policies.

There is need for a free media for anti-corruption activities to succeed. In Malawi, this means restructuring mass media institutions like the Malawi Broadcasting Corporation (MBC) and the Malawi Television (TVM). A robust information highway that empowers the public to become aware of the prevalence and social and economic costs of corruption, the impact of corruption on the quality of business and investment, and public sector vulnerabilities, prepares public opinion to support reform measures aimed at dealing with corruption and enables the public to hold officials accountable for their actions and decisions without suffering from reprisals.

Institutional reforms in an effort to combat corruption constitute the core of the anti-corruption initiatives. The essence of any anti-corruption strategy is to change policies and systems, rather than focussing on isolated cases, adding new laws and regulations, or calling for a moral renovation. As the Malawi News (22-28 February 2003) stated, "where there is the combination of monopoly plus official discretion minus accountability (M+D-A=C), we will tend to find corruption".¹²⁷ It has been demonstrated how the ruling UDF regime in Malawi monopolizes the public media, political power and through the intense

campaign aimed at perpetuating its tenure in power has undermined the need to change the way of governance and the policies that have since 1994 proliferated corruption in the country.

The political culture of a country also needs to be understood if anti-corruption initiatives are to bear positive results. A successful anti-corruption strategy is one that focuses on addressing these systematic problems. Such a strategy in Malawi should tirelessly seek ways to reduce monopoly power, limit and clarify discretion, and increase transparency.¹²⁸ A political culture characterized by the zeal of the regime in power to remain in power at all costs by manipulating the Constitution is one that defeats the purpose of accountability and perpetuates monopoly power. Since such manipulations are done by the top-level officials in government, one wonders whether the proliferation of top-level corruption in government is mere coincidence. Having a strategy in Malawi would mean developing a clear and transparent idea of ends and means in the short, medium and long terms. Corruption as a crime of calculation and not of passion, and it is important to distinguish between various types of corruption. Corrupt systems must be understood both at local and central government levels and in both rural and urban areas. This requires analytical tools, diagnose how these systems work in particular context, work to overcome political and bureaucratic resistance and garner support. Since there is an absence of a well-informed national research record on corruption, its dynamics, causes and effects, this is difficult to accomplish.

Payment of meagre salaries to public officials without rewarding performance and rare use of tough penalties against corrupt personnel cause corruption to flourish. In Malawi, civil service salaries are the lowest in the entire SADC region where a university graduate earns about K5,000 a month. Corruption is entrenched where there are multiple and complex regulations, ample and un-checkable official discretion, authoritarianism and monopoly. What persists in Malawi is a legacy of the one party authoritarian regime. Rule regimes in many public institutions have not yet been adapted to suit the new era of multiparty democracy. Separation of powers, checks and balances, transparency and accountability, a good system of justice, and clearly defined roles, responsibilities, rules and limits reduce corruption. Sometimes the spirit of separation of powers in Malawi is undermined by the fact that members of the Legislature are also allowed to be members of the Executive. This is what some political scientists have described as dangerous for democratic liberalism in the country. This doubling of roles enables the Executive to exert enormous pressure on the Legislature meaning the two arms of government can easily pressure and even politically intimidate the Judiciary. This was clear when the Legislature in 2002 sought to impeach 3 High Court Judges on charges viewed by many as politically driven. On the other hand, corruption tends to decline where there is a democratic culture, competition and good systems of control and where people (employees, clients, overseers) have rights to information and rights of redress. Since institutions of redress, information dissemination and democratic competition in Malawi are weak and sometimes state controlled, there is need through governance and democracy consolidation to strengthen them in a bid to combat corruption.

The governance and political framework in Malawi is violent, volatile and sensitive. Presidential elections and the acceptance of results of such elections in 1999 for example only led the major parties into a protracted legal battle thereby casting doubt on the credibility of the process. The effect of this development and other cases of political violation has created an atmosphere of political uncertainty in the country. It has left the major opposition parties split and fighting within themselves. The ruling party has since followed the trend of internal party factionalism because of differences on the proposed constitutional amendments (s. 83) aimed at extending the tenure of office for the incumbent President. Some ruling UDF party leaders and Members of Parliament such as Hon. Cassim Chilumpha, Hon. Jan Sonke, Hon. Joe Manduwa, Hon. Peter Kaleso and other underground dissidents have opposed the amendments alongside the opposition parties, civil society and other UDF expelled Members of Parliament who have formed the National Democratic Alliance (NDA) pressure group to fight the constitutional amendment before registering their organization as a political party. Because of the proposed constitutional amendment political violence precipitated by the ruling UDF party "Young Democrats" has risen tremendously where people including street newspaper vendors, church leaders,

opposition party leaders, University students and civil society leaders have fallen victim to incidents of political violence, arbitrary political arrests and Executive decrees banning them from demonstrating peacefully in defence of the Constitution through the Forum for the Defense of the Constitution (FDC). These decrees have even been reinforced regardless of court orders against them. The political irony is that ruling UDF party cadres are allowed to demonstrate for their cause and are in fact given full police security at short and irregular notice.

Social and economic indicators in the country have plummeted. Many observers including the UNDP have indicated that Malawi is now poorer than it was 10 years ago and the fight against poverty remains far from over. In this sense, if corruption is to be fought as an integral problem of poverty and underdevelopment then the fight against corruption in Malawi is far from over, too. As a result of deepening poverty, economic inequality and a crisis of corruption, institutions of governance are suffering from neglect. In an atmosphere of massive serious material want like in Malawi now, talk of good governance sometimes simply becomes a mere luxury and the pursuit of a few well-fed elites. Ironically, corruption cannot be successfully dealt with without strengthening participatory institutions and values of good governance for all the people. This is the core challenge in fighting corruption in Malawi.

Priorities and Recommendations

The focus group discussions on the status of corruption in Malawi revealed that people saw corruption levels in Malawi as alarming with no sign of decline, on the contrary, they felt it was on the increase. Top-level corruption cases have often not been effectively prosecuted for lack of evidence while some have been pending in courts for far too long. Corruption is not easy to prove because the corrupter and the corrupted have their own ways of survival and concealing corrupt activities. Signs that grand corruption is on the rise in the country include the European Union (EU) case in which the EU is demanding K650 million from the Malawi government which was misallocated, the maize scam which has left hundreds of people dead. There appears to be a lack of guiding principles and rules to follow in transactions in the public sector and parastatals. The Ministry of Education scam in which ghost contracts were massively awarded and funded show that there is a serious lack of professionalism in the public sector. These ghost projects are planned, coordinated, approved and executed activities, which imply top-level complicity on both the corrupt and the corrupter. The general professional environment is full of suspicion, fear and mistrust which makes it easy to corrupt political appointees to thrive at the expense of the common good delivered professionally. Thus there needs to be an environment and a deliberate policy initiative where people are accepted and promoted on merit. Because of the ubiquity of this evil of corruption in Malawi, the ACB alone cannot win the battle. Rather, government should provide rules on procurement and contracts and act seriously on suspects of corruption in its ranks and files to ward off the burden currently facing the ACB. For this the leadership, including principle secretaries, Ministers, Presidents, Members of Parliament, needs stand on higher moral ground and serve as models for society. Conversely, an inactive leadership that permits corruption at any level, including the top executive the top-level of the system or when some people do it at whatever level and the leadership does nothing about it, as happens often in Malawi – this smacks of complicity by those in positions of authority.

Corruption is difficult to uproot in Malawi because of procedural complications. Even the DPP consent required for corruption cases to be prosecuted goes through a process of investigations to verify those of the ACB before it is granted. The courts have their own procedures and corruption cases do not take any priority in Malawi. So, these cases, no matter how serious they may be, queue with all other cases in the court. International corruption involving cases such as the Petroleum Control Commission scam in Malawi take more complicated dimensions as they transcend various legal and political dimensions.

To deal effectively with corruption in the country, therefore, there is need to put in place the following measures in future:

- Tighten rules and regulations on public procurements and contracts.
- Enforce these rules and regulations.
- Remove interested parties from positions of authority when suspects are being investigated.
- Give merit and professionalism a chance in public appointments.
- Leadership must have vision, commitment, moral and political integrity as models.
- Stress merit and professionalism in public appointments.
- Fight poverty and illiteracy generally.

Specifically, the TI Malawi Chapter can forge an effective future if the following measures and recommendations are put in place:

- Strengthen the institutional foundation that has already been laid down for TI operations rather than replacing it as others have suggested. The chapter needs more and reliable funding, professional staffing, research, workshops and networking or coalition building with similar agencies against corruption.
- Create benchmarks for the consolidation of integrity system in the country.
- Encourage the role of women in the fight against corruption as they have proved elsewhere to be more stable, committed and reliable than men.
- Strengthen the legal regimes against corruption in the country by allowing the chapter, as a civil society organization, to take part in the process of legal reforms. These reforms should primarily focus on cutting red tape in procedural matters and reflect practice on the ground, based on credible research findings.
- Conduct a national empirical research on corruption in Malawi to determine the different perceptions people have about corruption in the country. Up to date, no well-constituted research/survey has ever been undertaken on corruption in Malawi to mark the basis for other anti-corruption activities.

Future Research and Donor Support

Firstly, findings of this study indicate that there is need to make empirical research on corruption a priority. The findings of such empirical research should form the basis for consensus building as to what constitutes corruption, its nature, causes and effects and should also form the basis of anti-corruption policies and measures in the country. Mostly, people are defining corruption in terms borrowed from western literature and political culture while in practice and especially in rural areas the perception varies. For any legal regime and policy on corruption to have meaning and be effective, there is need to harmonize these discrepancies. In other words, there is a need to bridge the gap between western theory about corruption and the realities of corruption in Africa and Malawi in particular. In this regard, comparative research findings and experiences with corruption from other countries in the region and the continent may serve as points of departure to guide similar research in Malawi and inform policy.

Secondly, the next step is to strengthen the institutional and legal capacity of all actors involved in combating corruption. Public procurement and accounting procedures also need to be strengthened. Already anti-corruption actors are few in the country against a background of escalating corruption cases in the country. More specifically, there is a need:

- For a new, robust and all-inclusive Corrupt Practices Act (CPA) to deal with all forms of corruption in a more specific manner; one that deals with both the

corrupter and the corrupted and prohibits unnecessarily turning suspects into state witnesses;

- For a task force or Cabinet Committee on corruption and the strengthening of a parliamentary committee system;
- For strong partnership on mobilization, institutionalization and prioritization of anti-corruption campaigns, strategy and resources;
- To improve public governance and relations so as to remove a culture of fear, silence and suspicion among stakeholders on corruption;
- To strengthen anti-corruption policies and institutions in the country; create an enabling environment for such anti-corruption agencies to work as a participatory and inclusive coalition against corruption; and encourage transparency and accountability in public and private institutions; and
- To introduce anti-corruption courses in school curricula through social and development studies as a way of raising public awareness about corruption.

Thirdly, the anti-corruption bureau, the Ombudsman and all other anti-corruption institutions need to recruit more experienced professionals and technically qualified officers, investigators with, as noted by participants, criminal investigations departmental (CIDs) and police experience to enhance their technical capacity; go beyond grassroots or petty corruption and address grand and international corruption involving the powerful and wealthy to would be offenders; create more awareness through political, moral and ethical training on good governance and democracy among stakeholders and the general citizenry; and treat corruption within the broad framework of development, governance and democracy. The general focus here should be on institutions of governance and public sector reform.

Fourthly, since not all forms of corruption can be fought concurrently and effectively bearing in mind scarcity of resources and the cultural and social dynamism associated with corruption, it is advisable to prioritise areas and types/forms of corruption that need immediate action in the short term and those ones that will need action in the long term. Prioritisation of certain forms of corruption should go along side the prioritisation of resources committed to fight corruption.

Fifthly, future institutional and legal reforms and strategy, therefore, will need to focus on grand corruption because at that level the effort will set an example and a higher moral ground to be emulated by the lower fabrics of society. The public procurement unit should be removed from the OPC and be an autonomous institution. This requires strong political will which is scarce in Malawi. Mentioned here also are the presidential paraphernalia, the Executive, the Legislature, the state bureaucracy, the Judiciary, the military, police, embassies, corporate and international corruption, political networks and the "political party machines". At all levels, the strategy must broaden the legal, political, social and economic meaning of corruption coined from empirical research findings and blended with internationally accepted theoretical standards. Clarity and separation of roles and responsibilities need to be enhanced especially between ministries and permanent secretaries. So far, as a result of lack of clarity of roles and responsibility among institutions, corruption is widely perceived to exist in the country without much precision.

Sixthly, the institutions and laws of the state need to be strengthened in terms of democracy and good governance so that the state and non-state actors are not seen to operate antagonistically while working on corruption. The state and non-state institutions should accept the requirements of transparency and accountability and the role played by non-state actors to enhance good governance and democracy.

Endnotes

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³ Semu-Banda, P. "Apex Land Rovers Case Resurfaces" in *The Nation*, 1st November 2002.

⁴ AFORD President, Chakufwa Chihana, and his party colleagues left the coalition government with the UDF in March 1995 accusing UDF of "corruption and mismanagement" but never give evidence to support his claims at the time. He has, however, rejoined the ruling UDF in a "government of national unity" two weeks ago. Asked by the *Weekend Nation* newspaper (19-20 April 2003) about corruption in government now, Chihana simply said: "it is my government. I have come back to my government. Development has changed, political performance is superb and I am happy to rejoin it".

⁵ Chimbuto, J. "Muluzi confesses funding Tembo faction" *Daily Times*, 18th November 2002

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¹⁶ Khembo, N.S. and Mcheka, E., op cit

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¹⁸ *Daily Times* 19th November 2001

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²⁰ Kaunda, JM "The Transition to a Multiparty System and Consolidation of Democracy in Malawi" 1998 p. 440

²¹ Former PCC General Manager, Denis Kambalame, ruling UDF party regional governor, Davis Kapito, and Water Development Minister, Dumbo Lemani, were implicated in the PCC scam. However, the ACB dropped both Lemani and Kapito from the case for "lack of evidence".

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²³ Mtika, C. "War on Heavyweights: Chihana Dodging Investigators" in *Daily Times*, 15th September 2004

- 24 Chimbuto, J. "Muluzi Confesses Funding Tembo Faction" *Daily Times*, 18th November 2002
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- 29 Caroline Somanje "Probe Jumbe – OPC" *Malawi News* 26th October – 1st November 2002, p. 2
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- ¹¹⁹ Khembo, N.S. *Local Government and Decentralization*
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121 These were observations of a street vendor who works along the Kamuzu Highway in Limbe but comes from Phalombe district. (Clive Macholowe is a convict who is serving a jail sentence for bank robberies. He is alleged to have been a businessman and the street vendor in the report felt that such a convict would have better been left alone to invest his loot into his business and employ people who are jobless like the street vendor himself rather than letting them stay in prison while their money is idle out there.)

122 Focus Group Discussion, Phalombe District, October, 2003

123 These are views expressed by participants to a focus group discussion held on 13th November 2002 at Migowi in Phalombe district. Participants included government officials, police officers, civil society representatives, church leaders and traditional authorities.

124 Denis Mzembe, "The World Bank Wants K135 million Back", *The Nation* 7 February 2003

125 *Nation* 13th March 2002

126 *Malawi News* 22-28 February 2003

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128 See also Hamish Badenoch "On Poverty and Responsibility" in: *The Nation* 25th November 2002 p. 14

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