



National Integrity Systems
Transparency International
Questionnaire

Malawi 2004

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Contents

Executive	4
Legislature	8
Electoral Commission	9
Political Parties	10
Supreme Audit Institution.....	11
Judiciary	12
Civil Service	13
Police and Prosecutors	15
Public Procurement.....	18
Ombudsman	20
Investigative/Watchdog Agencies	21
Media	22
Civil Society	23
Regional and Local Government.....	24
Progress with Government Strategy	25
Donor Anti-Corruption Initiatives	26
Future Research and Donor Support.....	27

Malawi

The National Integrity System Indicators

Questionnaire

Executive

Can citizens sue Government for infringement of their civil rights?

Yes, they can. For example, under section 15 (1) of the Constitution the executive, the legislature, the judiciary and all agencies of government are required by law to uphold all civil and political rights and freedoms enshrined in the Constitution. If the government violates any of these rights, citizens are free to sue it at the High Court.

Practice

Not many citizens sue the government although violations of these rights by government are not hard to observe. Reasons:

- Poverty
- Illiteracy and ignorance
- Fear of reprisals
- Court delays in handling cases

Are there procedures for the monitoring of assets, including disclosure provisions, for Cabinet and other Government Ministers?

Yes. For example, the Disclosure of Assets Bill is being drafted for parliamentary approval. In this bill, the President faces "impeachment" while other members of the government risk dismissal if they fail to disclose their assets and liabilities upon their assumption of public office.

Practice

Very few public officers in Malawi have declared their assets and liabilities upon their assumption of office. Indeed many people do not even bother to ask or know what the public leaders own or have acquired during their tenure of office. This might be one of the reasons why there is widespread lack of accountability and transparency among public officials and institutions in the country.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high-level officials?

No. The procedure is the same.

Are there conflict of interest rules for ministers?

Yes and No.

No. There are no rules on disclosure of assets or financial interests for politicians, cabinet ministers and MPs in Malawi as of now because the "Declaration of Assets Bill" is still pending to be tabled in parliament.

Yes. For example, Cabinet Ministers are not allowed to buy public assets when they are being sold or privatised.

Practice

Some Cabinet Ministers serve also as members of Parliament and in this way their interests are sometimes pursued using their privileges in both branches of government without raising the qualms of "conflict of interest". A number of Cabinet Ministers have bought shares in the state privatised assets in a manner that is hardly accountable to the people. For example, some cabinet ministers and public officials have been mentioned in the maize scam currently being investigated by parliament and the ACB. Apart from other public officials, the minister of finance is alleged to have taken part in the selling and buying of maize, which is said to have been corruptly sold to private traders.

Are there conflict of interest rules for high-level officials?

Yes. In principle public officials are not supposed to buy assets privatised by the state. However, practice by some public officials contradicts this principle. This has been the same with regard to the rules governing the declaration of assets by public officials.

Practice.

Public officials at the Malawi Telecommunications Limited (MTL), for example, were said to have "shared telephone bureaus and public telephones" among themselves through privatisation sales until the time when some whistle blowers raised the issues in 2001. 11 top bosses at MTL were arrested in connection with the issue but later were released on bail. For two years now, the DPP has not given the ACB his consent to prosecute them so that the cases have stalled before going to Court.

On the declaration of assets, for example, the former General Manager of the Petrol Control Commission, currently on trial for corruption charges, also failed to declare his assets when asked to do so by the corporation. In this case, he only declared four cars and a house but he did not declare a bank statement which shows that he had about 60,000 pounds sterling in his accounts in the Channel Islands.

Are there rules and registers concerning gifts and hospitality for ministers?

Yes. For example, hospitality given as gratification or "kick backs" to ministers so that one is assisted in getting public contracts is prohibited by legal rules such as those of the Corrupt Practices Act (CPA).

Are there rules and registers concerning gifts and hospitality for high-level officials?

Yes and no.

Yes. Public officials are not allowed to receive hospitality, gratification, bribes and kickbacks from people they deal with in their official capacities. Attempting to corrupt or bribe a public official is an offence in Malawi. For example, an attempt by two Indian businessmen to bribe Justice Mackson Mkandawire of the High Court with an offer of about K1 million over a case in which the two are accused of defrauding government by evading

custom duties has made the accused (the two Indian businessmen) to suffer arrests, investigations and now court trial. This was after the judge refused to take the bribe and blew the whistle.

No. There are no rules on registering gifts and hospitality for public officials in Malawi and there are no registers on gifts and hospitality of public officials in Malawi.

Practice

Officials are on record as having received hospitality for corruptly awarding contracts to certain individuals and companies. For example, there is a case worth millions of kwachas currently in the High Court in which some public officials at the Petrol Control Commission (PCC) are on trial for having corruptly awarded contracts to fuel suppliers that offered them hospitality as part of inducements.

If so, are these registers kept up to date? By whom?

N/A.

Have they legal powers to enforce disclosure?

N/A.

Have they staff to investigate allegations?

N/A.

What powers of sanction are in place against parliamentarians?

Constitutional punishments include dismissal from parliament if they are guilty of a crime involving moral turpitude and dishonesty.

Practice

No parliamentarian has ever been punished for such offences yet. Right now, investigations by the ACB are underway on parliamentarians who are alleged to have been bribed to support the defeated proposed amendment to the constitution to give the state president an extra term of office. And yet, those parliamentarians under investigations still sit in parliament and have not been asked to step down to pave way for free and fair investigations into the allegations.

Have they ever been invoked?

No.

What powers of sanction are in place against ministers who are not parliamentarians?

Presidential prerogative may be invoked for their dismissals from cabinet posts.

Have they ever been invoked?

Yes. For example, the President dropped Hon. B. Mpinganjira, Peter Chupa, Cassim Chilumpha, Mangulama and Sam Mpasu from their cabinet posts when they were alleged to be involved in corruption cases. In particular, K187 million Education Ministry case

(quoted in the *Daily Times*, 13 August 2003) has seen the President, Bakili Muluzi, dismissing high profile politicians like the Education Minister, Brown Mpinganjira, and other top government officials. The speaker of parliament, Hon. Sam Mpasu, was also dropped from cabinet when his name was involved in the fieldyork exercise book scandal but he was later cleared of any wrong doing by the courts.

Are there restrictions on post ministerial office employment?

No.

Are members of the executive obliged by law to give reasons for their decisions?

No.

Do Ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases?

Yes. They have *de facto* powers to make such decisions.

Practice

In practice they do but these are highly political issues that one can hardly find evidence to suggest that they indeed do that. For example, the former permanent secretary of Education, Science and Technology, Dr. Sam Safuli, after he was fired from his post when the K187 million scam in his ministry was exposed by the parliamentary accounts committee (PAC) in 2000 said that he had made some decision on awarding contracts leading to the scam as instructed by some top politicians.

Is this power limited to special circumstances?

No. It depends on the interests of the particular Minister or Government Official. What matters here are the social networks of patronage and political influence over the public sector and other political institutions.

Are there administrative checks and balances on decisions of individual members of the executive?

Yes. There are administrative checks and balances on the decisions of individual members of the executive including the State President.

Practice

In a country where parliamentarians also sit as cabinet ministers some parliamentary decisions are also regarded as executive decisions because of the overlap between the legislature and the executive. Even these decisions, however, have sometimes also been checked by the judiciary. For example, when two ruling UDF parliamentarians, Hon. Joe Manduwa and Hon. Jan Van Sonke, differed with their ruling party colleagues on the need to amend the constitution in order to give the state president a third term of office, they were thrown out of parliament in a move initiated by their colleagues in the executive branch of government. However, the two petitioned the High Court for a judicial review of the decision of parliament. As a result of this petition, parliament reversed its decision.

This was the case because individual citizens and organizations in Malawi have the right to petition the High Court for a judicial review of decisions taken by members of the executive. However, the President cannot be sued unless he/she is out of office.

Legislature

Is the legislature required to approve the budget?

Yes. The legislature approves the national budget annually. This happens after heated debates among opposition members of the legislature and those from the ruling party. The national budget is initiated and brought to parliament by the executive branch of government.

Practice

Unapproved public expenditures in Malawi are a major drain on public resources. Ironically, some public institutions such as the Office of the Ombudsman sometimes do not even get their approved share of the budget while other institutions chronically overspend resources from the same budget. Each year since 1994, the government of Malawi has been overspending leading to donors freezing aid to the country in the area of budgetary support. Currently, the IMF, USA, UK, EU and others are withholding aid because of bad governance, public over-expenditure and corruption. What is worrying most is the fact that this overspending is not done on pro-poor areas but on politically expedient agendas such as presidential tours and political campaigns of the ruling party machine.

Are there significant categories of public expenditure that do not require legislative approval?

No.

Practice

Almost all departments and Ministries have been involved in overspending prompting government to introduce the cash budget system. The ministry of education and the office of the president and cabinet are among the top most culprits in this case. But even this system has failed to curtail public expenditure in the country. For example, Office of the President and Cabinet alone has just spent unbudgeted money amounting to K200 million in four months on "presidential development tours" while the Malawi Revenue Authority has blown K7 million in two days of tax payers' money to fund the UDF campaign to amend the constitution in order for the president to stand for another term of office. Public over-expenditure and corruption in the country constitute over 30.3% of the annual budget.

Are there conflict of interest rules for parliamentarians?

No. There are no rules on disclosure of assets or financial interests for politicians, cabinet ministers and MPs in Malawi as of now because the "Declaration of Assets Bill" is still pending to be tabled in parliament.

Are there rules and registers concerning gifts and hospitality?

Yes. For example, the Corrupt Practices Act (CPA) is one legal instrument that governs gifts and hospitality given to public officials.

Practice

Since there are no strictly kept registers and records on gifts and hospitality, public officials receive hospitality and sometimes gratification in their official capacity as inducement to perform certain functions. A number of cases pending in court or at the ACB

have records of such gifts and hospitality regarded as "bribes" or "kickbacks" given to certain individuals in order for contracts to be awarded.

If so, are these registers kept up to date? By whom?

N/A.

Have they legal powers to enforce disclosure?

N/A.

Have they staff to investigate allegations?

N/A.

What powers of sanction are in place against parliamentarians?

N/A.

Have they ever been invoked?

N/A.

Are there restrictions on post legislature employment?

No.

Electoral Commission

Is there an independent Electorate Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?

Yes. There is an independent electoral commission in Malawi created in 1993.

Practice

The independence of the electoral commission is in practice compromised because of several factors. Firstly, commissioners are nominated by political parties and appointed by the President. They often turn out to be serving party rather than non-partisan interests. Secondly, the presidential prerogative to appoint the commission has not been through free and open consultations as recommended by the law. This has sometimes created conflicts within parties as internal political party rivalries have also been duplicating each other and found their way into the commission. The current chair of the commission, Justice James Kalaile, is battling charges by the church and civil society levelled against him that he intends to use the doctrine of state necessity obtained from Pakistan as a way of brainwashing the judiciary and make it serve the interests of the ruling UDF party in 2004. In fact, Kalaile indeed circulated the controversial doctrine among his colleagues in 2002. (State necessity is a form of legal instrument which the state uses to do certain things seemed necessary for the interests of the state even if they may be unconstitutional

or have no legal backing. It has been used in Malawi in 1995 when the UDF government seized former President Banda's assets).

Who appoints the Head of Commission?

The State President appoints the Head of the Commission with consultations from other stakeholders in the political process.

Political Parties

Are there rules on political party funding?

No.

Are substantial donations and their sources made public?

No.

Are there rules on political party expenditures?

No.

Are political party accounts published?

No.

Are accounts checked by an independent institution, are they published and are they submitted to parliament?

Yes. For example, the Auditor General, irregularly, checks party accounts. The accounts are also submitted to parliament but not published.

Practice

Well, it takes more than a year for the Auditor General to finally get those parties working on their financial reports, which up to now have remained very scarce to the public. Nevertheless, political parties receive funds from well-wishers and donors both locally and externally for their political campaigns, running of secretariats, holding annual and other conventions etc.

Does that institution start investigations on its own initiative?

Yes, but not regularly.

Practice

The office of the Auditor General is a very busy government institution that does not prioritise political party accounts highly as compared to its responsibilities over the bureaucracy. Therefore, political party accounts are usually scrutinized when there is either an outcry or a public alarm on how parties use their funds from taxpayers' contributions through parliament.

Who appoints the Head of the Institution?

The State President appoints the Auditor General.

Supreme Audit Institution

Is the national auditor general independent?

No.

Is the appointment of the general auditor required to be based on professional criteria/merit?

Yes. The incumbent is expected to have some high qualifications and experience in accounting.

Practice

On top of experience and professional qualifications political loyalty to the ruling regime is a crucial element that determines one's appointment, survival and success as auditor general. The auditor general is subjected to the same procedure of appointment and/or dismissal as any other senior bureaucrats.

Is the appointee protected from removal without relevant justification?

Not really. The President has powers to remove the Auditor General at his discretion. This creates political vulnerability and lack of security of tenure for the Auditor General.

Are all public expenditures audited annually?

Yes. The Auditor General's office audits all public expenditures annually. He/she is supposed to submit financial reports to parliament annually as well.

Practice

The audited financial reports from the auditor general are often submitted to parliament late. Sometimes they do not provide all the required information to answer all the pertinent questions. This is partly due to lack of adequate resources to run and manage the office of the Auditor General effectively and also failure by parliament to meet regularly especially the Public Accounts Committee (PAC) of parliament.

Is reporting up to date?

Not so often. Reports from the Auditor General's office to parliament are often late and information therein is sometimes insufficient.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature?

Yes. This is, however, erratic.

Practice

Parliament debates the reports of the Auditor General and make recommendations on the way forward. However, in reality, no significant implementation of recommendations of these reports is seen by many observers, as corruption cases therefrom overstay in the courts and other investigative agencies without getting logically concluded.

Are all public expenditures declared in the official budget?

Not really. There is always a huge chunk of over-expenditure in Malawi, which is not declared in public but often gets unearthed by the press and other watchdog institutions.

Judiciary**Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)?**

Yes. The High Court in Malawi has the jurisdiction to review the actions of any member of the executive including the President. For example, recently the High Court reviewed the presidential decree banning peaceful demonstrations for or against the proposed constitutional amendment to allow the President to stand for an open or third term of office. The judicial review declared the decree "unconstitutional".

Practice

The courts in Malawi are relatively independent. This is the case because the executive and the legislature sometimes intimidate the court officers with dismissals and/or a squeeze on their budgets. Since most senior appointments to the bench, promotions and demotions rest with the executive, the court personnel in Malawi review executive actions cautiously because of fear of unknown repercussions.

Are judges/investigative magistrates independent?

Yes. However, some judges are more independent than others.

Practice

The judges are, generally, fairly independent. However, some judges such as Judge Danstan Mwaungulu and Judge Mackson Mkandawire are regarded as more independent than others. These judges and others of similar mind at the High Court have in fact suffered political intimidation and harassment because of their independence and resistance to political interference and influence by the executive and the ruling party.

Are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?

Yes. Judges are appointed on merit in terms of their qualifications and experience. Their removal by the President is required to be recommended by the Judicial Service Commission. This process requires that there be reasonable grounds for the removal of the Judges.

Practice

Some judges are not appointed on merit alone. Political loyalty to the ruling regime and its leadership, patronage and ethnic/regional considerations also influence the appointments. In fact, some appointments are currently being challenged in court for these reasons.

Are recruitment and career development based on merit?

Yes.

Practice

No-one can become a judge without relevant professional qualifications including experience. Their career development, to an extent, also depends on these variables. This is not to rule out political and social manipulations altogether in the judiciary. For example, 4 newly appointed High Court Judges are currently having their appointments being challenged in courts because of allegations of patronage and discrimination against applicants from the northern region of the country.

Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

No.

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Yes. Bribery is punishable by law in Malawi. The current wording of the Corrupt Practices Act (CPA), which is under review, is however vague on what constitutes bribery.

Are there rules requiring political independence of the civil service?

Yes. The Constitution provides for the independence of the Civil Service governed by the Civil Service Commission. That is to say, civil servants are required by law to serve the citizens and the elected government of the day impartially.

Practice

However, in practice the commission suffers from a number of problems such as:

- Political interference
- Patronage

For example, one member of the judicial service commission was heard at Wanderers Club in Blantyre by one complainant of the recent judicial appointments currently being challenged in court as saying that some applicants would not be appointed because they are northerners.

Are recruitment/career development rules based on merit?

Yes. The rules and conventions of the public service are in principle based on merit.

Practice

Rules of recruitment and career development sometimes get flouted or ignored. Instead, political loyalty, nepotism, favouritism, cronyism, tribalism, ethnicity and regionalism are often used as criteria for recruitment and promotion in the civil service.

Are there specific rules to prevent nepotism? Cronyism? (Note: rules discriminating positively in favour of marginalized or minority groups are not included in this description)

No.

Are there rules (including registries) concerning acceptance of gifts and hospitality?

No.

If so, are these registers kept up to date? By whom?

N/A.

Have they legal powers to enforce disclosure?

N/A.

Have they staff to investigate allegations?

N/A.

What powers of sanction are in place against parliamentarians?

Dismissal from parliament if they are found to behave in a manner that reflects dishonesty and moral turpitude.

Have they ever been invoked?

No.

Are there restrictions on post public service employment?

No.

Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, Building plots, tax assessments, etc)?

No.

Are there complaint mechanisms for public servants and whistleblower protection measures?

No.

Are there means for complaints by members of the public?

Yes. The main and popular institutional mechanism for public complaints is the Office of the Ombudsman.

Practice

The office of the Ombudsman is popular and accessible to people especially the needy. However, the Ombudsman suffered recently from political interference and attempts by legislature to curtail the autonomy, jurisdiction and powers of this office. The Ombudsman also fails to deliver services efficiently because funds approved by parliament for the Ombudsman are controlled by the treasury and sometimes the Ombudsman eventually gets less than the parliamentary allocations.

Are there administrative checks and balances on decisions of individual public officials?

Yes. Some of them are the Industrial Court and the Office of the Ombudsman.

Practice

All stakeholders do not obey the decisions of these institutions all the time. For example, sometimes agencies of the executive overrule the Ombudsman. One of such agencies is the Police. The commissioner of police in Malawi is not independent and openly defends the ruling UDF party and government officials at the expense of the general public and those sections of society perceived to be critical of the regime in power. Many people perceived to be anti-government have been beaten by the UDF "Young Democrats" in full view of the Police Commissioners and on government premises such as parliament buildings when the state president just finished addressing parliament. No arrests have been implemented on the suspects. However, when UDF district governor for Blantyre, Eric Chiwaya, was beaten by unknown people at his house accusing him and the ruling party of being blood vampires, more than 15 people were immediately arrested and the state president ordered that more people even up to 200 needed to be arrested in connection with this issue.

Police and Prosecutors

Is the commissioner of police independent?

No.

Are appointments required to be based on merit?

Yes. The law requires that those appointed to the positions of commissioner of police have requisite qualifications and experience for the position.

Practice

In practice, however, political considerations are given priority when appointing police commissioners. Most of those promoted are loyalists of the ruling UDF party. This has been

the cause for widespread accusations levelled against the police partisan behaviour in the country.

Is the appointee protected from removal without relevant justification?

Yes. For example, the Constitution protects the police appointee from arbitrary removal from office.

Practice

The presidential good will and prerogative have been the main factors influencing removal from or continuity in office of the police commissioners. Most of the Inspector Generals of Police since 1994 have come from the ruling UDF's stronghold in the Southern region. Rather than constitutional safeguards, political influence has been the main reason for this development.

Are public prosecutors independent?

No.

Are there special units for investigating and prosecuting corruption crimes?

Yes. In Malawi, there is the Anti-Corruption Bureau, which is the main unit for investigating and prosecuting corruption. The civil society, courts of law and the police also perform certain facilitatory functions related to anti-corruption activities.

Practice

These institutions fail to prosecute corruption cases expeditiously because of weak political support, inadequate resources and lack of prioritisation of corruption cases by the court system. In the courts, corruption cases queue for attention along other cases ordinarily without being given special attention and priority because there is no legal basis for this treatment.

Is there an independent mechanism to handle complaints of corruption against the police?

Yes. There is the Ombudsman, which performs that function. The Anti-Corruption Bureau also performs that role.

Practice

The independence of the Ombudsman and the ACB in dealing with police case varies depending on what side of the political divide one/the accused belongs to and the level of involvement in the cases by senior politicians or influential political figures. Instead of being thoroughly investigated, policemen and women usually get transferred around within the system when accusations of corruption and criminal acts against them emerge.

Does civil society have a role in such a mechanism?

Yes. Civil society cooperates with the Anti-Corruption Bureau to fight corruption. For example, the Transparency International – Malawi Chapter is specifically dedicated to performing that role.

Practice

The civil society in Malawi is weak, lacks information about corruption and has no adequate skills and resources to deal with corruption. Even the Transparency International – Malawi Chapter is largely a dormant agency designated to fight against corruption in the country.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

No.

Are there any cases of corruption within the prosecuting agencies?

No.

Which legislative instruments the police and public prosecutors use for the investigation and prosecutions of cases of corruption/bribery can use?

The Corrupt Practices Act (1995) is used to prosecute corruption cases. The constitution is another.

Is the law applied?

Yes. It is applied in principle but not equally.

Practice

On petty corruption for example, the law moves quickly on the suspects while on cases of grand corruption it takes to long for the law enforcers to act against those accused of corruption. Lack of political will has enabled grand corruption to escalate in the country.

Is private-to private corruption punishable by law?

Yes.

Practice

Both members of the private and the public sector are vulnerable to be punished by law should they be found guilty of corruption. Nevertheless, issues of equity in application of the law remain contentious and uncertain.

Is the law applied?

Yes, but differently.

Practice

The top public sector brass is generally not subjected to the rigorous arm of the law because of politics and patronage. In spite of overwhelming evidence against some bureaucrats, political patronage tends to provide protection for those that are well connected in the political circles.

How many cases of prosecution have been undertaken in the past years?

Quite a number of petty corruption cases but very few, if any, high profile cases have been undertaken and logically concluded to the satisfaction of the public in the courts of law.

How many have been successful?

None.

If the number is low, are there other effective measures or other good reasons why the number is low?

Lack of capacity and autonomy for the prosecuting agencies to conclude corruption cases. There is no political will from the country's leadership to tackle top-level corruption cases. There are allegations of high-level political interference in corruption cases, which impede successful prosecution against the alleged individuals and agencies.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Yes. The rules governing the conduct of the OPC based contracting unit require competitive public bidding for public procurement.

Practice

Public procurements in Malawi are largely conduits of politics of appeasement and patronage. Rules are often bypassed in preference for political loyalty when awarding public tenders and contracts. Most beneficiaries of large-scale public contracts since 1994 have been members of the ruling UDF party, cabinet ministers and members of parliament. A recent law giving monitoring and regulatory responsibility to the Office of the DPP is not expected to improve the situation.

Are the rules laid down in documents publicly accessible?

Yes. These are made available to the public through public media advertisements.

Practice

The OPC Contracting Unit places advertisements for public bidding to offer public services. However, political considerations and patronage take precedence in awarding public tenders and contracts. These contracts/tenders have become a haven of political appeasement, patronage and corruption ever since they were under the disbanded Central Tender Board (CTB) and even now that they are centralized at the Office of the President and Cabinet (OPC). Beneficiaries who have benefited from this system include cabinet ministers, members of parliament and ruling UDF party officials and top bureaucrats.

Are there strict formal requirements that limit the extent of sole sourcing?

Yes. The rules of public procurement require, in principle, that a diversity of bidders enter the competition fairly and transparently.

Practice

However, more often than not these rules are flouted and by-passed as political patronage takes its toll. Government ministries and departments carry out sole sourcing to agencies that are familiar in a manner that is hardly transparent and accountable.

Are all major public procurements widely advertised to the private sector?

Yes.

Practice

Both the public and private media carry these advertisements to the public and private sectors. However, the actual awarding of the contracts is a political and a largely unaccountable process.

Are procurement decisions made public?

Yes, but rarely.

Practice

These are made public through the media advertisements. Otherwise, people get to know them after the private media has unearthed a scam at the contracting unit now based at the OPC or during implementation of the project.

Is there a procedure to request review of procurement decisions?

Yes. There are, in principle, court injunctions and judicial reviews, which can be obtained against suspicious public procurement decisions.

Practice

Very few people and agencies seek such remedies once the decisions are made. Judicial reviews are sought on exceptional cases involving exceptional and big agencies such as international companies.

Can an unfavourable decision be reviewed in a court of law?

Yes.

Practice

An appeal can be launched at the High Court for a review and if successful the decision can be reversed. The problem remains one of raising awareness about this process and confidence among the people in the justice system.

Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

No.

Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?

No.

Are assets, incomes and life styles of public procurement officers monitored?

No.

Ombudsman

Is there an ombudsman or its equivalent (i.e. and independent body to which citizens can make complaints about maladministration)?

Yes. There is the office of the Ombudsman in Malawi.

Is the ombudsman independent?

Yes.

Practice

The Ombudsman is widely perceived as an independent institution in Malawi. However, this independence sometimes comes under political pressure from other institutions of the central government such as the legislature and the executive. It is an institution which, because of its growing popularity in the country, some officials think has "too much powers". Recently, a visiting Ugandan Ombudsman condemned the Malawi parliament for its attempt to reduce the powers and independence of the Ombudsman in the country.

Are appointments required to be based on merit?

Yes.

Practice

The Ombudsman must be a person with legal qualifications and experience. The person must demonstrate high levels of integrity and professional maturity.

Is the appointee protected from removal without relevant justification?

Yes.

Practice

Both the Constitution of Malawi and the Ombudsman Act protect the Ombudsman from arbitrary removal from office. Nonetheless, attempts by other institutions of the state to either remove the Ombudsman or weaken his/her office remain a practical and real threat to this institution.

Has an ombudsman been removed without relevant justification in the last five years?

No.

Can petitioners complain anonymously if they fear possible reprisals?

Yes.

Practice

People have the discretion to complain to the Ombudsman either anonymously or publicly depending on the nature of their complaint and their personal concerns.

Are reports of the ombudsman published?

Yes.

Practice

They are also made available to the legislature and get published as part of government publications. Even public inquiries of the Ombudsman are published in the media.

Does the government act on the ombudsman's recommendations?

Sometimes it does and sometimes it simply ignores them.

Investigative/Watchdog Agencies

Are there special investigative or watchdog agencies?

Yes.

Practice

There are the Anti-Corruption Bureau, parliamentary committees and other civil society agencies, which act as special investigative watchdog agencies. There are also several non-state organizations in the country with an oversight on public affairs.

What are their main responsibilities?

The main responsibility for the Anti-Corruption Bureau for example and other non-state actors is to prevent, investigate and prosecute corruption cases in the country. They also carry out awareness campaigns through civic education programs.

Practice

Investigation Investigations are mainly done by the ACB assisted by the police. However, some investigations have taken too long to conclude and continue to be matters pending.

Prosecution ACB prosecutes its own suspects, but only after consent is received from the DPP (currently Parliament is reviewing the removal of this requirement).

Prevention The ACB and its cooperating partners perform this function. The ACB prevents corruption through civic education. This role has, however, been poorly performed by the ACB and, as a result, corruption levels in Malawi have since risen to higher than they were in 1999.

Education and Awareness The ACB and its cooperating partners perform this function. They conduct workshops and seminars with the media, ordinary people, institutions and other stakeholders and strive to raise their awareness about corruption and its dangers.

Courts The courts suffer from lack of resources and political support to fight against corruption in the country.

Are they independent?

Yes.

Practice

The Anti-Corruption Bureau (ACB) is fairly independent. However, the procedure for the appointment of the Director and the Deputy Director of the Anti-Corruption Bureau is more politicised and somehow compromises its independence. The legal requirement that the ACB obtains consent from the DPP first before it can prosecute any case practically makes it lose its autonomy.

Are appointments required to be based on merit/ are appointments generally based on merit?

Yes.

Practice

The appointments ought to be based on merit but they are sometimes, in practice, flouted. Nonetheless, the top positions carry with the requirements of specific professional and integrity qualifications.

Are the appointees protected from removal without relevant justification?

No.

Are their reports published (other than when criminal charges are pending)?

No.

Do they report publicly to the legislature on the general scope of their work?

Yes.

Practice

Especially those agencies bound by law to do so, such as the Ombudsman.

Can people complain to the agency without fear of recrimination?

No.

Media

Is there a law guaranteeing freedom of speech and of the press?

Yes.

Practice

Section 36 of the Constitution guarantees freedom of the press. But in practice, political party activists and hooligans sometimes intimidate the press in the country. Reporters have sometimes been beaten up by political agents on political grounds and some have merely been caught up in political violence.

Is there censorship of the media?

No.

Is there a spread of media ownership?

No.

Does any publicly-owned media regularly cover the views of government critics?

No.

Have journalists investigating cases of corruption been physically harmed in the last five years?

No.

Does the media carry articles on corruption?

Yes.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

No.

Are libel laws or laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

No.

Civil Society

Does the public have access to information and documents for public authorities?

Yes.

Practice

These documents and information are not readily available to the public. Even journalists, particularly the ones from the independent media, have to struggle and take risks first before they get the documents for news.

Do the public authorities generally co-operate with civil society groups?

No.

Are there citizen's groups or business groups campaigning against corruption?

Yes.

Practice

One of them is the Malawi Economic Justice Network (MEJN) – a network of civil society organizations that fight corruption through the promotion of good economic governance. The other one is the Transparency International – Malawi Chapter.

Are there citizen's groups monitoring the government's performance in areas of service delivery, etc?

Yes.

Practice

The Malawi Poverty Reduction Strategy Paper (PRSP), a donor supported initiative, on poverty alleviation, democracy, governance and development is closely monitored by civil society. However, the civil society groups themselves led by MEJN have acknowledged their inability to monitor the implementation of the PRSP effectively because of shortfalls in skills and knowledge especially in the area of the national budget. That is why MEJN is now conducting the "economic literacy" program among NGOs and civil society in general to improve capacity for monitoring the government in the country.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

No.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

No.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest gifts and hospitality, and post public office employment?

Yes.

Practice

The Local Government Act (1998) contains provisions that govern disclosure similar to those operating at the national central government.

What public offices at regional and local levels are appointed by the national government?

The District Commissioners, the Chief Executive and the Directors of Departments. These are technocrats or professional civil servants employed by the central government but operating at the district/local assemblies.

Is there a legal requirement that meetings of city/town councils be open to the press and public?

Yes.

Practice

The Local Government Act (1998) mandates the district assemblies to make public information regarding their finances, by-laws and crucial meetings including by-law proposals.

Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?

No.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

Yes.

Practice

These institutions have a national jurisdiction, which covers regional and district geographical areas as well. For example, the Auditor General has official links with the regional and district offices of the ministry of finance. However, the anti-corruption bureau and the ombudsman do not have typical institutional or structural facilities at such levels. These agencies operate mainly at the national and regional levels.

Progress with Government Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

Yes.

Practice

The institutionalisation of the Anti-Corruption Bureau and its strategy came about as a government initiative and strategy to fight corruption in the country. However, lack of genuine and continued government support particularly lack of political will and other constraints continue to undermine the strategy.

How much of the strategy has been implemented?

Not really in terms of prevention and prosecution of corruption cases. The strategy has so far been focused on receiving and investigating complaints but with little success in achieving its laid down objectives regarding prevention and prosecution of cases of corruption. This is verified by the fact that corruption continues to rise up in the country despite having the bureau and that few if any cases of grand corruption have been satisfactorily resolved at the auspices of the bureau.

Is the strategy at national level or regional/local level?

At national level.

Practice

It is at national level. That is to say, the Anti-Corruption Bureau is a national institution and government policy recognized as such by law.

Is the government meeting its own timetable?

No.

Donor Anti-Corruption Initiatives**Which bilateral and multilateral donor agencies are based in the country?**

The European Union (EU), British Department For International Development (DFID), World Bank (WB), International Monetary Fund (IMF), NORAD, GTZ, USAID, UNDP, Canadian International Development Agency (CIDA), African Development Bank and several embassies, High Commissions and other international and regional organizations.

What types of anti-corruption initiatives have they supported?

They support the government through the Anti-Corruption Bureau on awareness about corruption, prevention of corruption, investigations and prosecutions of corruption cases. For example, DFID and the World Bank fund capacity building (staff development) of the Anti-Corruption Bureau and the Police Reform Program. They also fund the interministerial committee on the consolidation of human rights and democracy, which promotes good governance, human rights and democracy in the country. The poverty alleviation program is also donor dependent.

Are there any examples of donors cooperating or coordinating their programmes?

Yes.

Practice

The British Department for International Development (DFID), UNDP and USAID among others cooperate on some projects on governance, human rights, democracy, primary justice and development.

Future Research and Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?

A national research or survey on the nature, causes and consequences of corruption in Malawi; legal reforms on the anti-corruption laws and regulations; effective prosecution of top corrupt cases; awareness campaigns about corruption, investigation and prevention of corruption and securing the independence of the public procurement unit are key areas. Broadly, to enhance good governance, human rights, access to justice and rule of law, democracy and participatory development in the country will have a positive impact on corruption.

Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?

Grand and international corruption by top-level corporate and government officials in the private and public sectors or within the NIS and, thereafter, the link between grand national and international corruption.

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Coalition building and popular fight against corruption. This approach is good because it involves issues of social inclusion such as the rights approach to development, gender and equity, accountability and transparency, decentralized governance and democratic participation.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

Research, awareness and prevention campaigns, legal reforms, expeditious investigation and prosecution of corruption cases need donor funding. Donors remain a key source of funding in most of these areas and issues because the government is severely constrained on its scarce resources and also because it lacks strong political will to tackle corruption as a matter of priority and urgency.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming basis for potential donor prioritisation, sequencing, cooperation and coordination?

Research, enhancing good governance and democracy, awareness and prevention campaigns, legal reforms, investigation and speedy prosecution of corrupt cases.