

U4 Helpdesk Answer

U4 Helpdesk Answer 2022

Overview of corruption and anti-corruption efforts in Malawi

Nine years after the “Cashgate” scandal, Malawi has taken some steps to improve its anti-corruption efforts. The government elected in the re-run 2020 presidential election has demonstrated some commitment to tackling corruption and taken measures to strengthen the Anti-Corruption Bureau in particular.

A new strategy against corruption has been developed and launched, and the government recently announced the creation of an Economic and Financial Crime Court, which will deal exclusively with corruption and financial crimes.

However, corruption remains a major problem as indicated by several high-profile scandals that have been exposed since 2020, implicating prominent public officials, including the Vice-President, as well as the Inspector General of Police and the President’s Chief of Staff.

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Query

Please provide an overview of corruption and anti-corruption efforts in Malawi, including the institutional landscape and legal framework.

Contents

1. Background
2. Extent of corruption
 - a. Forms of corruption
 - i. Political corruption
 - ii. Clientelism and patronage
 - iii. Grand corruption
 - iv. Petty corruption
 - b. Main sectors affected by corruption
 - i. Agriculture and food security
 - ii. Public services
 - iii. Law enforcement
3. Legal and institutional anti-corruption framework
 - a. Legal framework
 - b. National anti-corruption strategy II
 - c. Institutional framework
 - i. Anti-Corruption Bureau (ACB)
 - ii. Office of the Ombudsman
 - iii. Public Procurement and Disposal of Assets Authority (PPDA)
 - iv. National Audit Office
 - v. Office of the Director of Public Officers Declaration (ODPOD)
4. Other stakeholders
 - a. Media
 - b. Civil society
 - c. Faith-based organisations
 - d. Private sector
5. References

MAIN POINTS

- In 2019, the presidential election was marred by massive irregularities and the results were annulled by the Constitutional Court. In the fresh presidential elections in 2020, an alliance by the Malawi Congress Party and the United Transformation Movement under the label of 'Tonse' was elected on an anti-corruption platform.
- The fallout from the 2013 'Cashgate' scandal continues to cast a long shadow over debates about corruption in the country.
- The second five-year National Anti-Corruption Strategy (NACS II) was launched in 2020, after a seven-year hiatus from the previous NACS, which ended in 2013.
- NACS II adopts a participatory, multi-stakeholder approach and its design involved extensive consultations with all three branches of government, civil society, the private sector, faith-based organisations as well as the mass media, youth, academia, and women's organisations.
- The Anti-Corruption Bureau has enjoyed some recent successes in investigating corruption cases and making arrests.

Background

Malawi had a population of 17.5 million at the time of the latest census in 2018 (Government of Malawi, 2020:5). With an annual growth rate of 2.7%, the total population is projected to reach about 20 million in 2022. In 2018, the population density was 186 per km², making Malawi one of the most densely populated countries in sub-Saharan Africa. The bulk of Malawi's population reside in the Central and Southern regions. Agriculture is Malawi's main economic sector, contributing about 30% of GDP and employing over 80% of the population. Tobacco, sugar, tea, nuts, and cotton are the main exports of agricultural produce (Government of Malawi, 2020:7; World Bank, 2022).

Despite the importance of commercial agriculture, the majority of the population are involved in small-scale subsistence agriculture. However, despite the fact that most of subsistence farmers are women, only 24% of the land is owned solely by women. Most land is inherited, owned and operated by men (World Bank 2021: 27). Households in small-scale agriculture suffer from food insecurity, and according to the World Bank (2022a), around 2.3 million people face food insecurity, and a total of 3.8 million people face critical food security outcomes in the near future (World Bank, 2022a). Overall, food insecurity hit 72% in June 2020 before dropping to 58% in October 2020 (World Bank, 2022b:109). Malawi ranks among the poorest countries in the world, with 50.7% of the population living on less than US\$ 1 per day and 81.4% with less than US\$ 2 (World Bank, 2022a and 2022b).

A presidential multi-party democracy, Malawi has a unicameral parliament. Both the president and the other representatives are elected by popular vote for terms of five years (ACB, 2020:6). Despite the irregularities that marred the 2019 elections,

leading to the results being annulled by the Constitutional Court, Malawi is judged to be a democracy with mid-range performance, having held elections every five years since 1994 (IDEA Democracy Index, 2021; World Bank, 2022a). The country is deemed to perform less well in local and direct democracy, observance of social rights and equality, and in the absence of corruption (IDEA Democracy Index, 2021).

In 2019, the announcement of then-President Peter Mutharika's re-election victory led to nationwide protests by civil society organisations denouncing the electoral outcome (Wills Kateta, 2021; Matonga, 2022). The main opposition parties claimed the elections were characterised by irregularities, including the use of a correction fluid ('Tipp-Ex') on tally sheets, affecting more than 1.4 million of the 5.1 million votes cast (IDEA, 2020). The subsequent court proceedings were broadcast live and closely monitored (IDEA, 2020).

Eventually, the Constitutional Court found sufficient evidence of fraud and malpractice in the 2019 elections to overturn the outcome (IDEA, 2020). This led to fresh presidential elections in June 2020. The two main opposition parties and several smaller parties formed a nine-party coalition labelled 'Tonse' which means 'together' in the national language of Chichewa. This alliance won the election on a platform comprising anti-corruption commitments (Matonga, 2022). All political actors accepted the winner of this election and power was peacefully transferred (US State Department, 2021).

The outcome of the debacle over the 2019 presidential election was considered a test case for democracy in Malawi, which the country seemed to pass. Various aspects were discussed in a recent 15-chapter anthology (Patel and Kanyongolo, 2021).

Since assumption to power by the Tonse alliance, President Lazarus Chakwera from the Malawi

U4 Anti-Corruption Helpdesk

Congress Party has been vocal about the need to curb corruption, pledging to prosecute corrupt officials and launching a nationwide anti-corruption campaign under the slogan “Corruption is our biggest enemy and is not welcome here” (Reuters, 2021; VOA News, 2020; 2022a). The population, however, is growing dissatisfied with performance as demonstrated by recent protests demanding the government to do more against corruption (VOA News, 2022b; Agenzia FIDES, 2022).

Extent of corruption

Malawi performs poorly on the Corruption Perceptions Index, with a score of 35 out of 100, thus ranking 110 out of 180 countries (Transparency International, 2022). The high level of perceived public sector corruption is consistent with other assessments of the state of governance in Malawi over the past two decades; it is estimated, for instance, that between 2009 and 2014 Malawi lost around US\$723 million to fraud and corruption (Wills Kateta, 2021). In 2001, the International Monetary Fund, the World Bank and other international donors suspended aid to the country due to corruption concerns (The New Humanitarian, 2015).

The situation did not improve significantly in the subsequent decade, and, in 2013 the so-called “Cashgate” corruption scandal triggered the dissolution of the cabinet by then-president Joyce Banda (Economist Intelligence Unit, 2013). The scandal involved up to US\$250 million lost through fraudulent payments for undelivered services as well as the attempted murder of the former budget director (BBC, 2014). Again, this crisis led to international donors pulling out or freezing aid (BBC, 2014; African Democratic Institute, n.d.).

The government of Peter Mutharika, which came to power after the scandal, promised to get rid of corruption and restore confidence (African Democratic Institute, n.d.). However, perceptions of corruption levels remained high, and both in 2014 and 2017 most Malawians considered that corruption was on the rise according to an Afrobarometer survey (ACB, 2020:8). President Mutharika and his party were accused of receiving undue payments, with some reports suggesting that US\$10 million was unaccounted for, and US\$1 million awarded to projects that were never completed (Economist Intelligence Unit, 2018; VOA News, 2020).

The incumbent president, Lazarus Chakwera, promised to curb corruption upon assuming office in 2020 and has since been vocal about this objective, pledging to prosecute corrupt officials and launching a nationwide anti-corruption campaign (Reuters, 2021; VOA News, 2020; 2022a). Chakwera’s administration has increased the resources (funds and staff) available to the Anti-Corruption Bureau (ACB) and the Director of Public Prosecution. This could be interpreted to mean that tackling corruption is a government priority (ACB, 2021:11; Nyasa Times, 2022).

However, the most recent survey by Afrobarometer (2022:49-50), based on a representative sample of respondents across Malawi, revealed that 40 per cent or more considered that some or most officials of key institutions have been involved in corruption, including the president and officials in his office, civil servants, members of parliament, district/town/city councillors, police officers, judges and magistrates, tax officials, traditional leaders, as well as religious leaders. More seriously, 66.3% considered the level of corruption to have increased ‘a lot’ or ‘somewhat’ in the past year (Afrobarometer 2022:51).

According to the Anti-Corruption Bureau’s annual report (ACB), 2020/2021 recorded a 90% increase

U4 Anti-Corruption Helpdesk

in corruption complaints from the previous year (Malawi 24, 2022a). This brought the level of cases close to the “Cashgate” period when the ACB recorded 1,565 complaints (Malawi 24, 2022a).

Moreover, corruption scandals continue to haunt Malawian politics. In October 2021, a British businessman born in Malawi, Zuneth Sattar, was arrested by the UK’s National Crime Agency in relation to a procurement scandal involving up to 16 public contracts amounting to US\$150 million awarded by the Malawian government between 2017 and 2021 (Chinele, 2022; Daily Times, 2022a). Subsequent investigations by the Malawian Anti-Corruption Bureau have reportedly indicated that, between March and October 2021, a total of 53 former and present public officials had received money from Sattar (Daily Times, 2022a). Despite Sattar visiting Malawi in March 2022, he was questioned neither by the police nor by the Anti-Corruption Bureau (Chinele, 2022).

The sprawling Sattar case reportedly implicated President Chakwera’s own Vice-President, the Inspector General of Police and his Chief of Staff, as well as cabinet ministers, members of the armed forces and law enforcement bodies (Chinele, 2022; Daily Times, 2022). In June 2022, Chakwera responded by firing or suspending many of those alleged to have acted improperly, and stripped Vice-President Chilima of all delegated powers (Matonga, 2022). Chilima was later arrested by the ACB (Malawi News, 2022).

To make matters worse for the incumbent administration, demonstrators took to the streets this year to protest against corruption and the rising cost of living (Agenzia FIDES, 2022; VOA News, 2022b).

It appears that corruption continues to be a severe challenge in Malawi, and the US State Department (2021) has observed that the enforcement of anti-

corruption legislation appears insufficient and slow.

The National Anti-Corruption Strategy II for 2019-2024 identified the following drivers of corruption in the country: a lack of accountability culture; informal networks that promote nepotism and favouritism; institutional gaps; capacity challenges in the law enforcement agencies; inadequacy of resources for anti-corruption; weak coordination between agencies; perception that there is a lack of political will to curb corruption; and low salaries for public officers (Republic of Malawi, n.d.:9-11).

Forms of corruption

Political corruption

Before 2018, there was no comprehensive law regulating the activities of political parties, leading to a significant accountability deficit in the operation of political parties (Dulani, 2019:135). Allegations arose that the government had illicitly paid legislators to oppose electoral reform bills (Malawi 24, 2017). Despite this apparent opposition, the Political Parties Act was approved in 2018, suggesting important progress in improving the legal framework. The Act defines what activities can be covered by public funds, setting out an accounting process, empowering the Auditor General, and detailing how private funding and donations are to be handled (Dulani, 2019:147-148). However, the policy to disclose funders is unclear and, since the introduction of the new law, parties have not always complied with the new obligations in practice (Wills Kateta, 2021, Daily Nation, 2021).

For Malawian social commentator Humphrey Mvula, corruption in the use of public funds is the result of an intentional tactic of blurring the line between the government and the ruling political

party (Wills Kateta, 2021). In the years before 2020, there were several high-profile cases of corruption involving political parties and leaders (Dulani, 2019:136). One of the individuals involved in the “Cashgate” scandal was a member of the then ruling party, the People’s Party, who had donated 22 vehicles to the party, which it later transpired had been financed by “Cashgate” proceeds (Dulani, 2019:142).

In 2018, former president Mutharika and his political party were accused of benefitting from payments made by a contractor supplying food to the police force (Economist Intelligence, 2018). The contractor received a letter of guarantee months before the contract was officially awarded (Dulani, 2019:143). Almost US\$200,000 were reportedly deposited into a party account for which the president was the only signatory (Economist Intelligence Unit, 2018). Once the contract was awarded, the company increased the price and the Treasury was requested to pay the additional fee (Dulani, 2019:143).

Clientelism and patronage

In Malawi, the appointment of public officials has long been characterised by clientelism and patronage (Martínez B. Kukutschka, 2014:4; Transparency International, 2013). People are often appointed to important government positions based on their loyalty to the party or other affinities (Wills Kateta, 2021). Governing parties used to appoint loyalists as directors of the ACB, making it difficult for the Bureau to prosecute cases involving the party or loyal party members (Wills Kateta, 2021).

Moreover, public officials who are appointed without transparency can easily be replaced, creating a sense of insecurity (Martínez B. Kukutschka, 2014:4). According to Chinele (2022), civil servants in Malawi who incur the displeasure of their superiors by associating with perceived

opponents of the ruling party or opposing corrupt practices face being sent to what some public officials informally refer to as ‘Guantanamo’: a form of internal exile into dead-end jobs.

However, in recent years, more attention has been devoted to recruitment practices in the public sector. During her tenure as Malawi’s Ombudsman, the current Anti-Corruption Bureau director, Martha Chizuma, investigated recruitment procedures in government institutions and parastatals (VOA News, 2021). Another example relates to a case involving public servants from the National Statistical Office, who were charged with the misuse of public office for recruiting 21 individuals who did not meet the necessary requirements (ACB, 2021:37). In another instance, the Ombudsman found that in the appointment of the deputy CEO of the Malawian oil company the appropriate procedures of a competitive process had been flouted following a directive by previous president Peter Mutharika (ACB, 2021:37; Daily Times, 2022e). The parliamentary Public Appointments Committee plays an oversight role as shown in the recent controversy surrounding the appointment of the deputy director general of the National Oil Company of Malawi (Daily Times, 2022h; Nation, 2022e).

Although the current government has pledged to counter corruption, some consider that it has continued the practice of predominantly hiring political supporters, and public appointments have reportedly favoured Tonse Alliance’s political base in the central region from which the president hails and which is the stronghold of the MCP, rather than people from the southern and northern regions of the country (Matonga, 2022).

Grand corruption

Beyond the aforementioned “Cashgate” scandal, other corruption incidents have also involved large amounts of money and high-ranking government

U4 Anti-Corruption Helpdesk

officials. After “Cashgate”, reports led to an investigation by the Ombudsman that uncovered irregularities in the government sale of tractors and other farm machinery in 2010, in a case dubbed “Tractorgate” (Office of the Ombudsman, 2020). The scandal involved first a US\$50 million credit line for the procurement of tractors and other farm implements from India, which turned out not to be fit for the purposes of the project, and then selling the tractors for less than a seventh of their original purchase price (CIJM, 2019).

Radio France Internationale (RFI) (2021) reported that the former finance minister and the former reserve bank governor allegedly falsified Malawi’s gross liability and net reserve base to pretend the country was meeting the conditions of an Extended Credit Facility given by the IMF. The former finance minister is also facing charges for the fraudulent sale in 2015 of the state-owned Malawi Savings Bank (RFI 2021). The business tycoon who bought the bank was arrested in 2020 for allegedly attempting to bribe judges who were hearing the case about irregularities in the 2019 presidential election. He was charged under the Corrupt Practices Act and found guilty of bribing two justices (ACB, 2021:26-27).

The recent case involving Zuneth Sattar mentioned above also points to the continued complicity of high-level public officials in corrupt dealings (Matonga, 2022). Indeed, the former director of the ACB and the former Board Chair of the Public Procurement and Asset Disposal agency have themselves been investigated by the ACB on allegations that they received kickbacks in exchange for influencing the decision to award a contract to one of Sattar’s companies (The Africa Brief, 2022).

It remains to be seen how many people are brought to justice for recent corruption cases. According to Chinele (2022), the justice system does not have a strong record in prosecuting and convicting high-

profile suspects. She notes that “only one former government minister is presently serving a jail term for corruption”, while “a top official from the same party was initially convicted but later freed on appeal” (Chinele 2022). Likewise, a corruption case against former president Bakili Muluzi, who left office in 2004, has not made notable progress in 16 years, while cases also drag on against suspects in the “Cashgate” scandal (Chinele 2022).

Petty corruption

According to the ACB (2021:32), traditional leaders, the police, the judiciary, private companies and ESCOM (the electricity supply company) are the bodies against which the highest number of complaints of corruption are levelled.

The ACB has received several complaints filed against traditional leaders for allegedly demanding bribes in return for favourable rulings, receiving bribes to install village heads or grabbing customary land (ACB, 2021:32). There is a perception that, to obtain certain documents, such as a driving licence or a passport, bribes to the responsible officials are needed to expedite the process quickly and smoothly (Nkhata, 2022).

In general, complaints made to the ACB (2021:32) indicate pervasive levels of petty corruption, especially among police officers, court clerks and medical workers. The situation is similar in the education sector, where a report indicated that 57% of parents paid bribes to their children’s schools (Nation, 2019). Finally, sextortion appears to be widespread, and women’s risk of encountering sexual corruption increases in informal network settings (Stahl, 2021). The corrupt abuse of power to demand sexual acts affects women in a wide range of settings, from attempting to import goods at customs posts to pursuing an already awarded public contract that has become “stuck in bureaucracy” (Stahl, 2021:7).

U4 Anti-Corruption Helpdesk

Main sectors affected by corruption

Agriculture and food security

A recent investigation brought to light allegedly fraudulent payments made to a British agent in relation to a fertiliser import deal, in which the Ministry of Agriculture bypassed national procurement laws disregarding the stipulation that high-value procurement contracts must first be vetted by the ACB (Investigative Platform, 2022). The alleged fraud has put the provision of fertilisers through the Affordable Inputs Programme (AIP) at risk and led to President Chakwera dismissing the agriculture minister and his deputy (Nation, 2022a; RFI, 2022a). In addition, when denouncing this instance of corruption affecting the AIP, Chakwera committed his government to ensuring that farm input purchases for the 2022/2023 farming season would be done in a timely and efficient manner (Malawi 24, 2022b).

The AIP, which gives coupons to poor farmers to buy farm inputs at subsidised prices, has in the past failed to deliver the expected results due in part to corruption on the part of intermediaries. The coupons did not always reach their intended beneficiaries and instead ended up in the hands of supporters of the previous ruling party or of traders who cashed them instead of buying farm inputs (Mweninguwe, 2020). Selling agents, in theory in charge of selling subsidised inputs to poor farmers, also engaged in corruption, either by selling the inputs to vendors or demanding extra money from the farmers (Ragasa *et al.*, 2022:4).

In 2021, the ACB arrested four individuals for extracting money from beneficiaries of the AIP in a fraudulent scheme for collecting the money in advance (ACB, 2021:37). Furthermore, a farmer testified that women were “using their bodies to get inputs” (Ragasa *et al.*, 2022:4), which suggests vendors and other intermediaries were engaging in

sextortion. Corrupt practices in the programme are likely to exacerbate food insecurity among poor farmers.

In another instance, the government suspended all operations of the Agricultural Development and Marketing Corporation (ADMARC) due to alleged corruption (Nyasa Times, 2022b). The parastatal was funded to increase the volume and quality of Malawian agricultural exports but had found itself in the middle of allegations of theft, embezzlement and the misuse of public resources (Nyasa Times, 2022b).

Finally, some locals reportedly perceive that foreign investors have been able to acquire valuable land by bribing government officials (US State Department, 2021). If accurate, this is a concerning development as agricultural land is key for household-level food security, and land corruption affects farming and thus food security (Land Portal, n.d.; Transparency International, 2019).

Healthcare and education

In the health sector, the plundering of public funds has led to health facilities being under-equipped and hospitals having to cope with poor infrastructure (Wills Kateta, 2021). During the pandemic, an audit by the National Audit Office found that some departments assigned a larger number of officers than the tasks required, and goods were procured without following proper procedures (Wills Kateta, 2021). The scandal led to the arrest of 14 people, and President Chakwera dismissed the Labour Minister for the misuse of Covid-19 funds (Reuters, 2021). Other officers used the Covid-19 emergency response fund for eating in hotels and receiving allowances even for days when they did not work (Wills Kateta, 2021). Chinele (2022) reported that court cases are pending against more than 50 individuals arrested in 2021 for their part in mismanaging US\$6 million of emergency Covid-19 funds.

U4 Anti-Corruption Helpdesk

Access to education in Malawi is reportedly undermined by petty corruption (Nation, 2019). Demanding bribes has detrimental effects beyond the financial burden imposed on already poor families as teachers might only teach certain topics during lessons for which students are compelled to pay additional illicit fees to access (Nation, 2019).

Law enforcement

A fundamental problem is the lack of trust that Malawian citizens have in law enforcement agencies (Chunga and Kayuni, 2022). A recent newspaper exposé that revealed rampant corrupt dealings in the police and the army (MDF) is an example of how corruption undermines public trust in law enforcement (Weekend Nation, 2022).

In principle, public procurement in Malawi should be made through open tendering, but this can be waived subject to approval by the director-general of the Public Procurement and Disposal of Assets Authority (PPDA), provided such deals have been vetted and cleared by the Anti-Corruption Bureau (ACB). The PPDA only allows single-sourcing — in which the procuring entity goes directly to the supplier to buy goods or services or gets them from a single source — in situations of emergencies, if there is only one firm supplying them, or if there is no reasonable alternative or substitute. As security agencies, the MDF and the police qualify for such waivers because the nature of their procured materials (such as weaponry) is sensitive and should not be available in the public domain. The MDF Commander, General Vincent Nundwe, has recently admitted irregularities and pointed to the lack of due diligence on the part of both procurers and suppliers (Nation, 2022d).

Legal and institutional anti-corruption framework

Legal framework

The key legal instrument to fight corruption is the Corrupt Practices Act (ACB, 2020:4). It was adopted in 1995 and amended in 2004. The Act defines corrupt practices as “(a) the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person; (b) influence peddling; (c) the extortion of any advantage”.

According to Kukutschka (2014), other relevant laws include the Public Procurement Act (2003), the Public Audit Act (2003), the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act (2006), and the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act (2014). Under the last of these laws, public officials are required to disclose their assets and any conflict of interest, and to recuse themselves in relation to the latter, but the definition of conflict of interest is not clear (US State Department, 2021).

In recent years, legal developments include the adoption of Public Procurement and Disposal of Assets Act of 2017 and the Access to Information Act of 2017. Successful public assets disposal is related to strategic assets management, planning for assets disposal, and identified disposal mechanisms (Obicci *et al.*, 2021). The new Public Procurement and Disposal of Assets Act requires that all disposal and procurement procedures must be conducted with transparency to promote accountability and fairness, as well as establishing methods to do so (Republic of Malawi, 2017:23-24). The act details the responsibilities of controlling officers and

internal procurement and disposal committees and how the latter are to be established. The committees are to ensure the availability of funds for each procurement, approve the methods of procurement and disposal for each case, approve plans related to those, review bids and any contract amendment, and appoint *ad hoc* evaluation teams for the examination, evaluation, and comparison of bids (Republic of Malawi, 2017:19-20).

The UN scoping commission considered that areas for improvement in the national legal framework include whistle-blower protection, witness protection, strengthened legal and operational independence, stricter penalties for corruption, addressing shortcomings related to illicit self-enrichment, as well as the resolution of issues regarding the admissibility of evidence (ACB, 2021:10). Observers such as Dr Mustapha Hussein, a specialist in public administration at the University of Malawi, likewise point to shortcomings in whistle-blower protection and witness protection (Chinele, 2022).

The ACB has pointed out that the Corrupt Practices Act does not elaborate on asset management, which requires clearer definitions that include favouritism and nepotism (ACB, 2020:15).

Malawian legislation remains inadequate in the area of asset recovery. Under the current Financial Crimes Act, the Financial Intelligence Authority is authorised to link certain properties to crime and put them up for forfeiture. However, some lawyers are calling for specific legislation on forfeiture that would allow the government to unilaterally seize property associated with criminal activity (Daily Times, 2021).

National Anti-Corruption Strategy II

The most recent National Anti-Corruption Strategy 2019-2024 (NACS II) provides an overall framework across all government institutions for tackling corruption and promoting good governance (ACB, 2020:4). It was designed during Peter Mutharika's tenure as president and when Reyneck Matemba was the Director-General of the ACB. NACS II builds on the previous one (2008-2013) and pursues three goals: improving service delivery, strengthening the rule of law, and promoting a culture of integrity (ACB, 2020:5; Republic of Malawi, n.d.).

NACS II consists of 12 pillars that set out various anti-corruption activities expected to guide implementation of the strategy (ACB, 2021:18; Republic of Malawi, n.d.). The development of the strategy involved an extensive consultation phase with stakeholders from all three branches of government, civil society, the private sector, faith-based organisations, as well as representatives of the media, academia and representatives of youth and women's groups (Republic of Malawi, n.d.:3-4).

The situational analysis of the anti-corruption strategy drew on indicators such as the World Bank's Country Policy and Institutional Assessment and public opinion polls, which included a Governance and Corruption Survey that showed that Malawians perceived corruption as worsening (Republic of Malawi, n.d.:7-8). A national corruption perception survey was undertaken in 2019, and extensive research was conducted, including political economy analysis and interviews and focus group discussions with staff of the Anti-Corruption Bureau (Republic of Malawi, n.d.:4). As mentioned above, the latest Afrobarometer survey from 2022 indicates a widespread perception among citizens that corruption is increasing.

U4 Anti-Corruption Helpdesk

Aligned to and taking its cues from NACS II, the ACB elaborated its own strategic plan covering the period 2020-2024, superseding its predecessor for the period 2012-2017. Designed under former ACB Director-General Reyneck Matemba (who incidentally was himself arrested by the ACB in August 2022), the new ACB strategic plan is intended to guide the specific activities of the ACB, in other words an operationalisation of NACS II.

Institutional framework

In terms of overarching institutional strategies, in recent years Malawi has tried to improve its institutional capacity and has worked closely with international donors to enhance the effectiveness of its public financial management system (UNDP, 2018; GIZ, n.d.; Sida, Danida & AfDB, 2012; DAI, n.d.). Its budgetary management seems to be improving, and the government predicts that the deficit of FY2021/2022 will be reduced in FY2022/2023 (World Bank, 2022).

In 2021, the government launched the Law Enforcement Coordination Strategy, aimed at improving coordination between agencies investigating and prosecuting financial crimes (ACB, 2021:10). The relevant agencies include the Anti-Corruption Bureau, the Malawi Revenue Authority, the Reserve Bank of Malawi, and the Financial Intelligence Authority.

A key element of NACS II is the formation of a multi-sectoral National Integrity Committee (NIC) to oversee the implementation of the strategy. The NIC is composed of representatives from the executive, legislative, judiciary, local government, private sector, civil society, faith-based organisations, media, traditional leaders, youth, academia and women (Republic of Malawi, n.d.:30). The Committee is charged with providing policy and strategic guidance, developing annual action plans, monitoring and evaluating activities

and providing quarterly reports (Republic of Malawi, n.d.:30).

In recent years, the judiciary has increased in size from 2,800 officers to about 5,000, though the ACB (2021:11) still considers that the judiciary is lacking sufficient human resources to process the growing number of cases. The ACB considers specialised courts dedicated to handling corruption cases would speed up prosecution (2020:15). The government appears to be of the same opinion, and it recently disclosed plans to establish an Economic and Financial Crime Court, which it is hoped will expedite corruption cases that sometimes drag on for decades (Nyasa Times, 2022a).

Other overarching problems are the limited presence of key agencies outside of the capital city and the fact that cooperation between different institutions is irregular, a problem worsened by the lack of information and communication technology infrastructure and low digitalisation (ACB, 2021:10).

Asset recovery has only recently become a salient topic in the country, and the Basel Institute on Governance recently started work on developing Malawi's capacities to recover stolen assets (Basel Institute on Governance, 2019; 2020). The Ministry of Justice and Constitutional Affairs has also recently established an Asset Forfeiture Unit (ACB, 2020:16).

Recovery of the public resources plundered in the "Cashgate" scandal is still ongoing, but some progress has been made as four out of the 18 suspects have now repaid stolen funds with a 10% interest rate and deposited them in the government's Confiscation Fund (African News Agency, 2022b; Daily Times, 2021).

U4 Anti-Corruption Helpdesk

Anti-Corruption Bureau (ACB)

The Anti-Corruption Bureau commenced full operations in February 1998 as an independent body with a mandate to curb corruption. It has four core functions: prevention, public education, investigation, and prosecution (ACB, 2020:xi). The ACB has highlighted five goals it wants to achieve in line with NACS II (ACB, 2020:28):

- i. to improve public service delivery
- ii. to strengthen enforcement of anti-corruption laws
- iii. to increase intolerance to corruption
- iv. to strengthen institutional capacity
- v. to improve monitoring and evaluation

The appointment of the previous Ombudswoman, Martha Chizuma, to head the ACB was originally rejected by the parliamentary Public Appointments Committee. This rejection was considered by some observers to indicate MPs' resistance to the appointment to this post of a professional with a reputation for personal integrity (Wills Kateta, 2021). This rejection generated an outcry, and Chizuma was eventually confirmed as the first female Director-General of the ACB (ACB, 2021:16).

The Anti-Corruption Bureau has made multiple arrests that have led to convictions in recent years (ACB, 2021), although observers have been quick to point out that only a single former minister is currently behind bars for corruption (Chinele 2022).

The ACB (2021:8) reports that until recently it was tasked with investigating more than a thousand cases with a staff of only 20 investigators and 15 prosecutors, though the government has recently approved a significant increase in human resources. However, although the ACB's budget was increased, it fell short of the ACB's request. The ACB considers its infrastructure, facilities, and

equipment to be poor, and it lacks a purpose-built office (The Independent Digest, 2022; ACB, 2020:14).

In terms of legislation, the National Assembly recently passed an amendment to the Corrupt Practices Act to give the ACB authority to prosecute suspects of corruption without prior consent from the Director of Public Prosecutions (Daily Times, 2022b; Malawi 24a, 2022a). This move was intended to strengthen the independence of the ACB and reduce potential undue influence in highly politicised cases.

Additionally, the Public Procurement and Disposal of Assets Act has given the ACB powers to vet single-source method of procurement and high-value procurement (Republic of Malawi, 2017), though the recent case of fraud involving the importation of fertiliser by the Ministry of Agriculture mentioned above suggests this is not always adhered to in practice.

The new public procurement procedures are intended to complement the Corrupt Practices Act section 23(1), which enables the ACB to issue restriction notices to ministries to stop them from proceeding with negotiations and contracts (ACB, 2021:35). Again, however, this has not always been observed. In a recent incident, the ACB was investigating an ambulance contract awarded by the previous government's Ministry of Health without following proper procurement procedures despite the fact it should have been vetted by the ACB (Atlas Malawi, 2020).

In the past few years, the ACB has made progress in significant cases involving the National Oil Company of Malawi (NOCMA), the Malawi Rural Electrification Program (MAREP) and MARKA Bangula Railway line (ACB, 2021:8). Additionally, it established an anti-corruption clinic in Mchinji to look more closely at the qualitative side of the problem, and implemented an anti-corruption

U4 Anti-Corruption Helpdesk

awareness month, during which the ACB launched an initiative to bring ACB services closer to the people (ACB, 2021:8, 17).

The ACB maintains close links with different stakeholders in society. For example, it conducted a women's consultative meeting, where women from different backgrounds and careers came together to discuss how women can become involved in countering corruption (ACB, 2021:18). The Minister of Gender acknowledged the importance of women's involvement since they are disproportionately affected by corruption because their financial situation is often more precarious than that of men (ACB, 2021:19).

The ACB also promoted the creation of the National Youth Anti-Corruption Network (NYACN) by the Minister of Youth Development and Sports, which is intended to help report corruption (ACB, 2021:12-13). The network is considered a key element in the implementation of the National Anti-Corruption Strategy, since one of its pillars involves encouraging youth to demand accountability, raise awareness and implement social accountability activities (ACB, 2021:14). To assist reporting on corruption the ACB has established a toll-free line and a WhatsApp communication channel (ACB, 2021:32).

Office of the Ombudsman

The Office of the Ombudsman is an independent institution with powers to determine the nature and extent of an investigation, summon people involved in the investigation, require the disclosure of information, request the investigation of any public office with suspected maladministration, question any person from any public office in connection with an investigation and recommend corrective action (Office of the Ombudsman, n.d.). Since its mandate is to investigate cases in which any person has allegedly suffered an injustice, it has investigated potential instances of corruption

since its establishment (Martínez B. Kukutschka, 2014:8). The relevance of the work of the Office of the Ombudsman to anti-corruption efforts is further reflected in the fact that the current ACB director was previously the head of the Office of the Ombudsman.

One of the main challenges facing the Ombudsman arises from the fact the office can recommend corrective action, but these recommendations are not binding. In a recent case, the Ombudsman recommended the annulment of the recruitment of the Deputy Chief Executive Officer for the Board of Directors of the National Oil Company of Malawi (Nocma) because her recruitment had been unlawful, irregular and unprocedural (Daily Times, 2022e). But Nocma's board did not comply with the Ombudsman's determination. This noncompliance was in breach of the rule that such disagreements must be brought before a court of law (Daily Times, 2022f). Eventually, however, the Ombudsman's determination did have an impact as the person in question resigned from her post after immense pressure (Daily Times, 2022h and Nation, 2022e).

Something comparable happened in the Malawi Energy Regulatory Authority (MERA) when the Ombudsman ruled that the appointment of its CEO was irregular and had to be cancelled (Nyasa Times, 2022c). Initially, MERA took an injunction against the publication of the Ombudsman's investigation report but following an investigation by a parliamentary committee that also found irregularities in the recruitment process, the government fired MERA's entire Board of Directors (Nyasa Times, 2022c).

Evidently, there are multiple cases of the government flouting proper procedures, which taken together suggest a pattern of government departments deliberately sidestepping procurement and appointment procedures (Malawi News, 2022). Admittedly, such cutting of corners

U4 Anti-Corruption Helpdesk

may be motivated by legitimate concerns of enhancing efficiency but could equally well provide ample opportunities for corruption, favouritism, and nepotism.

Public Procurement and Disposal of Assets Authority (PPDA)

The Public Procurement and Disposal of Assets Authority (PPDA) was established in 2017 in terms of the Public Procurement and Disposal of Assets Act to replace the Office of the Director of Public Procurement and to oversee public sector procurement. The authority's powers include (Republic of Malawi, 2017):

- i. setting and enforcing monetary thresholds for procurement and disposal
- ii. suspending and debarring bidders, suppliers, contractors, consultants, and other service providers for breaching the Public Procurement and Disposal of Assets Act
- iii. investigating and sanctioning entities or individuals suspected of having been involved in mis-procurement or other misconduct

As mentioned above, the PPDA Act stipulates that high-value procurements must be vetted by the ACB, and the PDDA must publicly disclose information about large procurement contracts in infrastructure. However, in practice, these conditions are sometimes flouted.

The Authority's Director General is appointed in consultation with the Minister through a competitive selection process for a term of four years (Republic of Malawi, 2017:14).

Currently, former diplomats are being investigated for allegedly selling state assets without following the disposal of public assets procedures and not accounting for the money (RFI, 2022b). The

investigation is part of a larger effort by the government to recover stolen assets (RFI, 2022b).

National Audit Office

The National Audit Office (NAO) is an independent supreme audit institution (Oxfam & Integrity Platform, 2018:4). The NAO conducts quality audits to ensure accountability and transparency in public resources management (Oxfam & Integrity Platform, 2018:4). The Auditor General reports to parliament on the public accounts of the country at least once a year (Malawi Constitution, 184(2)). The NAO's auditing standards comply with the Auditing Standards of the International Organisation of Supreme Audit Institutions (INTOSAI) (Oxfam & Integrity Platform, 2018:10).

However, there is an important information gap between the public and National Audit Office as not even civil society can access crucial information (Oxfam & Integrity Platform, 2018:2). Additionally, the parliamentary Public Accounts Committee takes too long to attend to the reports submitted by NAO and does not always act on its contents, while the NAO has in the past also failed to deliver its mandatory report to parliament on time (Oxfam & Integrity Platform, 2018:2). Chinele (2022) argues that, by the time the government eventually responds to the report of the Public Accounts Committee, "the issues it addresses are often long in the past and hard to prosecute".

The Auditor General position has been vacant since 2018, with the current Auditor General being in an acting capacity (Daily Times, 2022c; African News Agency, 2022a). The prolonged vacancy has been criticised by the Public Appointments Committee of Parliament, which considers the vacant position detrimental to NAO operations since some decisions cannot be made by an acting official (Daily Times, 2022d).

U4 Anti-Corruption Helpdesk

Part of the problem appears to stem from the application requirements for the position, which include possessing a valid Malawi Accountants Board (MAB) practising certificate, a master's degree in finance, commerce or accountancy and 10 years post-qualification experience (Nation, 2022b). The certificate is considered particularly restrictive because most accountants that have a MAB practising licence are in the private sector, which pays much better (Nation, 2022b). The requirement was inserted by parliament in 2018, and the government has failed to appoint a permanent Auditor General since then (Nation, 2022b).

Office of the Director of Public Officers Declaration (ODPOD)

The Office of the Director of Public Officers Declarations was created in response to the “Cashgate” scandal to ensure that public officials declare their assets (Martínez B. Kukutschka 2014:8). This office is responsible for receiving and verifying those declarations. The declarations can be requested by the public (US State Department, 2021).

Although all 48 categories of public officers, from the highest level such as the president to street-level bureaucrats such as traffic police, are required to declare their assets and business interests, the law does not apply to family members nor to political parties (US State Department, 2021).

Recently, the ODPOD was called “useless” for not being able to enforce the law (Nation, 2022c). Beyond receiving and verifying the declarations, the office has a duty to publicise public officers' declarations but has failed to publish a summary on a regular basis (Nation, 2022c). At present, the law reportedly does not specify disciplinary measures to be taken for failure to comply with the duty to declare accurate information. Although ODPOD's spokesperson claims the office has

occasionally recommended dismissing certain officials (Chinele, 2022), to date no offender has been punished for not abiding by the provisions (Nation, 2022c).

ODPOD has responded to these allegations by saying that their failure to publish the declarations was due to limited human resource capacity and the fact that the declaration system is manual and thus cumbersome (Nation, 2022c). Furthermore, ODPOD lamented that not all information provided by officials is accurate and that they need to cross-reference it with information from other agencies, for which they lack the staff and financial resources (Daily Times, 2021; Daily Times, 2022g). The ODPOD is reportedly expected to verify 46,000 documents with only 21 staff to do so (Daily Times, 2022g).

Eight years after ODPOD was established in 2014, the first asset declarations from 18,000 public officers were finally published in the Government Gazette in June 2022, with the organisation's spokesperson complaining that “most heads of Ministries, Departments and Agencies (MDAs) are unenthusiastic and apathetic” about cooperating with the agency (Chinele, 2022).

While the first batch of data has now been published, there is little indication that attempts are being made to verify and vet the accuracy of the declarations. Moreover, ODPOD's lack of formal legal powers to sanction public officials who fail to comply with the requirement to declare their assets is a persistent weakness in the legal framework.

U4 Anti-Corruption Helpdesk

Other stakeholders

The media

Freedom of speech and freedom of the press is enshrined in the Malawian constitution. Malawi has several independent newspapers but Reporters Without Borders considers that the information these outlets publish is not easily accessible to the general public, because many Malawians cannot read English, which is the dominant language of the written press (RSF, n.d.). The creation of the Communications Regulatory Authority of Malawi is considered a step in the right direction (RSF, n.d.).

The new Access to Information Act took effect in September 2020, and the Malawi Human Rights Commission is responsible for its enforcement.

However, there is a lack of public awareness on how to request information, and public officials can refuse to disclose information based on spurious grounds of “national security”.¹ There is insufficient public interest in the law to ensure that the public can access important information, and requests for information are reportedly passed from one agency to another, so that by the time the information is received by the requestor, it is often outdated.²

Journalism can also be restricted by other laws. Insulting the president is, for instance, punishable, and one of the most important shortcomings is the absence of protection for whistle-blowers, which exposes journalists to threats (RSF, n.d.).

Despite these shortcomings, the media plays an important role in countering corruption, investigating and exposing cases (US State

Department, 2021). A 2019 corruption survey showed that Malawians thought the media had been effective in curbing corruption (ACB, 2020:9). The Malawi Platform of Investigative Journalism was instrumental in breaking the story on alleged bribery involving companies linked to Zuneth Sattar (Chinele, 2022).

Established in 1996 and registered as an NGO in 2020, MISA Malawi is a chapter of the Media Institute of Southern Africa, which promotes and defends media freedom and freedom of expression. As a membership-based advocacy organisation, MISA Malawi works with different stakeholders to improve the skills base and professionalism of media workers, promote and facilitate effective use and access to the media by all sections of society and maintain an environment conducive to relevant and effective advocacy campaigns on media freedom and freedom of expression, including the right and duty to expose corrupt behaviour (MISA Malawi, 2022).

Civil Society

Civil society organisations (CSOs) have played an important role in curbing corruption and have mobilised citizens to protest against corruption and demand change (US State Department, 2021; Civicus, 2018; Agenzia FIDES, 2022). In 2018, the protests demanding transparency and accountability from the government of the erstwhile Democratic Progressive Party (DPP) were led by CSOs, including the Centre for Human Rights and Rehabilitation (CHRR) (Civicus, 2018). Civil society also played a pivotal role in the nationwide protests in the aftermath of the botched 2019 elections, led by the Human Rights Defenders

¹ Information gathered through conversations with an in-country expert.

² Information gathered through conversations with an in-country expert.

Coalition (IDEA, 2020). Recent protests against corruption have been championed by Action Against Impunity, a network of civil rights organisations (VOA News, 2022b).

CSOs have long been committed actors in the fight against corruption and have joined forces in the Civil Society Action Against Corruption and the National Anti-Corruption Alliance (NACA) that mobilise and amplify efforts against corruption (Republic of Malawi, n.d.:17). Due to their prominent role in denouncing and fighting corruption, the current national strategy against corruption has called on civil society to develop an action plan and to engage in monitoring in areas susceptible to corruption as well as to implement education and awareness programmes (Republic of Malawi, n.d.:41).

Faith-based organisations

Faith-based organisations (FBOs) are deeply involved in society, and the current NACS II has asked them to help promote a culture of integrity and moral conduct by raising awareness and promoting values (Republic of Malawi, n.d.:42). FBOs are organised across faiths and denominations in the Public Affairs Committee (PAC), which plays a key role in a deeply religious society such as Malawi (Chunga and Tostensen, 2020). From time to time, PAC and individual FBOs publish pastoral letters and statements about salient governance issues, including corruption. Recently, the Catholic Bishops' Conference made a statement asking the incumbent government to design and implement new anti-corruption laws (Agenzia FIDES, 2022).

Private sector

The Infrastructure Transparency Initiative Malawi (CoST), which was set up in 2008, has been a

prominent example of collective action in the private sector (Wannenwetsch, 2019). The initiative has engaged the local media and citizens, and in recent years it took over the role of representing the private sector in discussions surrounding public procurement (Wannenwetsch, 2019).

Recent anti-corruption efforts by the private sector include participation in the discussions of the formulations of the National Anti-Corruption Strategy II, in which CoST played a role in designing initiatives to curb corruption in procurement (Republic of Malawi, n.d.:40).

The Malawi Confederation of Chambers of Commerce and Industry (MCCCI) has acknowledged that corruption represents an important obstacle to doing business. The MCCCI and the ACB organised a business symposium in 2021 to discuss these issues (ACB, 2021:19).

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