



**ACB** Anti-Corruption  
Bureau, Malawi



# **Accountability Institutions in Malawi**

## **An Institutional Audit**

### **Summary Report**

2015

**Submitted by Wilkinson & Associates**  
to  
**Citizens for Justice, Anti-Corruption Bureau and GIZ Malawi**

## FOREWORD

Citizens For Justice (CFJ) with support from GIZ is implementing an 'Advocacy for a Corrupt Free Society through the Strengthening of Accountability Institutions in Malawi' programme. The project's primary objective is to conduct an in depth study that informs the capacity development plans with the aim of improving the capacity and mandate of Malawi's main Accountability Institutions thus fulfilling the project's overall objective of contributing to the creation of a corrupt-free Malawian society.

Assessing the capacity and functionality of Accountability Institutions is not only central to Malawi's Growth Development Strategy (II) but is also integral to CFJ's theme of promoting good governance in Malawi. CFJ recognizes that improving accountability mechanisms in the democratic governance sector promotes accountability and transparency as community based organisations and marginalized populations are empowered to lobby for and demand a corrupt-free society. Section 12 (1) (c) of the Constitution states that 'the authority to exercise power of State is conditional upon the sustained trust of the people of Malawi and that trust can only be maintained through open, accountable and transparent Government and informed democratic choice.' Additionally under section 12 (1) (d) 'the inherent dignity and worth of each human being requires that the State and all persons shall recognize and protect fundamental human rights and afford the fullest protection to the rights and views of all individuals, groups and minorities whether or not they are entitled to vote.' It is evident that the Constitution provides for a strong legal and institutional framework that not only protects the rights of citizens but also creates elaborate accountability institutions to govern those enshrined rights. However, the accountability institutions suffer their own weaknesses that have affected their capacity and implementation policies. This is why CFJ recognising its role as a Civil Society Organisation (CSO) supports the strengthening of accountability institutions as a way of fulfilling the obligations laid out under section 12 and also as a way of building trust in the democratic governance sector and holding public officials to account for the sake of the universal enjoyment of rights as Malawian citizens.



It is hoped that this report shall lead to the development of a comprehensive capacity development plan that shall be shared and used by the accountability institutions.

Lastly, CFJ acknowledges GIZ's role in the materialisation of this report.

A handwritten signature in black ink, appearing to read 'Reinford Mwangonde', written over a light blue horizontal line.

**REINFORD MWANGONDE**  
**EXECUTIVE DIRECTOR FOR CITIZENS FOR JUSTICE**

## FOREWORD

The Project “Strengthening Public and Economic Management (PFEM) in Malawi”, implemented by the Deutsche Gesellschaft fuer Internationale Zusammenarbeit (GIZ) GmbH, aims to strengthen accountability and transparency of key actors involved in the management of public funds.

In this vein, we are committed to working with those institutions whose mandate it is to contribute to accountability and transparency. This is not an easy job, not even under ideal circumstances. To review actions of others, to point out shortcomings and mistakes, to recommend alternative solutions, to audit, investigate and prosecute in a fair and evidence-based manner is a demanding task at any point in time.

However, the situation appears particularly dire in Malawi. It is common knowledge that accountability institutions are underfunded, understaffed, underequipped, and undercapacitated. Their effectiveness to fulfil their respective mandates is severely constrained, oftentimes to such an extent that instead of holding the executive accountable, the executive is left unchecked.

This, in any democratic system, is a devastating conclusion, as power is only temporarily delegated by the people to those governing, and its exercise is subject to constant review in a system of checks and balances. For a developing country like Malawi, the absence of accountability is even more severe, as funds that are misused through corruption are desperately needed for economic development. And if there is no response from the accountability institutions, other actors will follow the bad example, eroding and abusing the public system further.

Just to give one example: Had the National Assembly thoroughly followed up on the National Audit Office’s 2012 Investigative Audit on IFMIS – Central Payment System report, had the government been required to take immediate action, we may argue that the dramatic increase of fraud and misuse of public funds witnessed between April and October 2013, the Cashgate period, would never have happened.

It is high time that attention is drawn to this situation and its consequences. With this report, we intend to give a comprehensive picture of the difficult situation in which the accountability institutions find themselves, and of the effects the day-to-day constraints have on the ability of these institutions to serve the people. By sharing the report with a wider audience, we not only hope to raise awareness, but also we would like to give a voice and a platform to the accountability institutions to constructively engage with each other and find new ways forward, by combining their powers rather than remaining weak and in isolation.

We would like to thank all those who contributed to this report by openly sharing their experience and knowledge. We appreciate the courage and determination to not accept the status quo.

**DR. BARBARA DUTZLER, MPA**  
**TEAM LEADER GIZ-PFEM Project**

## **LIST OF ACRONYMS AND ABBREVIATIONS**

ACB:	Anti-Corruption Bureau
AFROSAI:	African Organisation of Supreme Audit Institutions
AG:	Auditor General
AIs:	Accountability Institutions
APNAC:	African Parliamentarians Network against Corruption
CPA:	Corrupt Practices Act
CSO:	Civil Society Organisations
DHRMD:	Department of Human Resources and Management and Development
DPOD:	Office of the Director of Public Officers' Declarations
DPP:	Director of Public Prosecutions
FIU:	Financial Intelligence Unit
GOPAC:	Global Organisation of Parliamentarians against Corruption
IICs:	Internal Integrity Committees
INTOSAI:	International Organisation of the Supreme Audit Institutions
IPU:	Inter-Parliamentary Union
MDGS II:	Malawi Development and Growth Strategy II
MEJN:	Malawi Economic Justice Network
MHRC:	Malawi Human Rights Commission
MoJ:	Ministry of Justice
MPS:	Malawi Police Service
NACS:	National Anti-Corruption Strategy
NAO:	National Audit Office;
NIA:	National Integrity System
NIC:	National integrity Committee
NICE:	National Initiative for Civic Education
ODPP:	Office of the Director of Public Procurements
OoO:	Office of the Ombudsman
PAC:	Public Accounts Committee of Parliament
PFMA:	The Public Finance Management Act
SAIs:	Supreme Audit Institutions
SWAp:	Sector Wide Approach
UNCAC:	United Nations Convention against Corruption
UNDP:	United Nations Development Program

# INTRODUCTION AND METHODOLOGY

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## Background

In 1994 Malawi adopted a new constitutional order whose fundamental principles are prescribed in Section 12 of the Republican Constitution. Section 12(1)(c) provides that the authority to exercise powers of State is conditional upon sustained trust of the people of Malawi which trust can only be maintained through open, accountable and transparent Government and informed democratic choice. Further, under the Principles of National Policy in Section 13(O), the State is compelled to introduce measures, which will guarantee accountability, transparency, personal integrity and financial probity and which by virtue of their effectiveness and visibility will strengthen confidence in public institutions.

To this end, various Accountability Institutions (AIs) were established to ensure adherence to the principles stated above. The Constitution envisages a situation where these AIs are effective and visible in the discharge of their mandates. However recent developments have cast doubt on the effectiveness and visibility of these AIs. Assessments of the AIs show capacity constraints, which affects the AIs' ability to fully discharge their legal obligations. The challenges highlighted were: low citizen participation; lack of coordination among AIs; insufficient human resources; out-dated infrastructure and weak policy and legal framework<sup>1</sup>. The "Cashgate Scandal", for instance, has laid bare these challenges.

To be effective in their operations, AIs are required to have: financial, functional as well as organisational independence<sup>2</sup>. Financial independence entails protection of AIs activities from interference by the Executive through reduction or withholding of funding. Functional independence refers to AI's ability to carry out its functions without undue interference of any third party or the Executive. Organisational independence refers to the limitation of the role of the Executive in the appointment of the head of the AI and decision making of the AI. This therefore requires a robust legal and policy framework that guarantees both *de jure* and *de facto* independence.

Apart from independence, collaboration and networking of AIs is central to their overall contribution in the fight against corruption. Barcham<sup>3</sup> notes "the fight against corruption requires the work of different agencies with each bringing a different skill on the table." Thus, successful anti-corruption efforts, according to Barcham, are dependent on effective coordination and cooperation. He adds: "Without good coordination and cooperation between a country's accountability institutions, there exist a number of risks which may decrease the effectiveness of corruption investigations and prosecution." Further, the participation of ordinary citizens in governance processes provides a sustainable platform for improving transparency and accountability.

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<sup>1</sup> UNDP, 2011.

<sup>2</sup> UNDP, 2011

<sup>3</sup> Barcham 2011

The AIs assessed in this study are:

- a. 1. Anti-Corruption Bureau;
- b. 2. Malawi Human Rights Commission;
- c. 3. The Judiciary;
- d. 4. Office of the Ombudsman;
- e. 5. National Audit Office;
- f. 6. Malawi Fiscal and Fraud Police Unit;
- g. 7. The Office of the Director of Public Officers  
Declaration of Assets;
- h. 8. The Malawi National Assembly and,
9. The Financial Intelligence Unit.

### **Aim of the Study**

The aim of the study was “to carry out an institutional policy and legal audit for accountability institutions to identify key gaps, challenges and opportunities” by assessing whether: (1) the AIs are operating within their legal mandates; (2) the mechanism and procedures of institutions ensure independence, and (3) the AIs are able to relate and complement each other in their work and efforts.

### **Specific Objectives of the study**

The specific objectives of the assignment were to:

- Conduct an institutional audit of the given accountability institutions
- Review and identify gaps in the policy, legal, management frameworks currently in place
- Explore, identify and recommend strategies for effective coordination networking among accountability institutions and collaboration with other stakeholders
- Review mechanisms for citizen’s participation in accountability interventions
- Contribute to the development of a comprehensive capacity development plan at a later stage.

## Methodology

The study was conducted using the UNDP Capacity Assessment Tool that was modified to mirror the specific requirements of the assignment. The modifications were guided by international standards and best practices applicable to relevant institutions.

In the process of identifying and reviewing key gaps, the following activities were undertaken:

- Critical Literature Review
- Key Informant Interviews
- Questionnaires
- Case study

### Critical Literature Review

A critical review of literature was undertaken to inform the study of the scope and nature of the AIs mandate; policy and management framework; and the international standards and best practices applicable to the AIs. The following are some of the standards, which have been used to benchmark the AIs:

1. United Nations Convention Against Corruption (UNCAC) (2000)
2. Jakarta Statement of Principles for Anti-Corruption Agencies (2012)
3. International Standards of Supreme Audit Institutions (ISSAI) issued by International Organisation of Supreme Audit Institutions (INTOSAI), AFROSAI-E Standards
4. Financial Action Task Force (FATF) 40 +8 Recommendations
5. The Bangalore Principles of Judicial Conduct (2002)

For institutions without particular international standards, country specific standards (as stated by various legislations and policy statements) have been invoked. Further, the study used the Cashgate scandal as a case study.

### Key Informant Interviews

Face to face interviews were conducted with senior officials within and outside of the AIs. The interviews were conducted using guiding questions to inform the ratings for the institutions. The questions were framed along six thematic areas of policy and legal framework, operational effectiveness, financial and physical resources, leadership and human resource management, mechanisms for citizen participation, and collaboration and networking.

### Questionnaire/Assessment Instrument

A questionnaire, which comprised a capacity assessment tool, was used to capture data along the chosen thematic areas stated above. The assessment tool had an itemised 5-point interval rating scale with anchors. The rating scale provided for five possible development stages in

terms of capacity of the chosen thematic areas, with the rating of one (1) being indicative of very low capacity, while five (5) reflected a highly developed state in terms of capacity. For each of the thematic areas, the desired capacity was assumed to be five (5). The questionnaire was administered to top and middle level management, which was complemented by in-depth follow up questions to explore qualitative issues and any evidence for the ratings that were indicated on the questionnaires.

### **Data Analysis and Interpretation**

This stage involved preparation of the key deliverables for the study. The key activities entailed the following:

i. Analysing and interpreting results

This involved conducting a comprehensive analysis and interpreting capacity assessment results. This process started with establishing the average score for each thematic area at individual level. This was achieved by adding the scores for each rating statement and dividing the total by the number of rating statements. The next stage was getting the institutional rating for each thematic area. This was arrived at by adding all individual rating averages for each thematic area and dividing the result by the number of individuals that rated the thematic area. The thematic rating scores at institutional level were further interpreted by the qualitative data that was obtained during the individual interviews.

ii. Preparation of detailed individual institutional audit reports for all AIs.

iii. Case study.

The study used a case study approach to understand the interactions and capacities of each of the accountability institutions. The case study used was the Cashgate Scandal. In considering the Cash Gate scandal, the study assessed the following aspects: The institution's role in detection, investigation, prosecution and prevention of Cashgate; The levels of collaborations that existed during the Cashgate; The sufficiency of human and financial resources of the AIs and how that impacted on its role during the scandal.

# STUDY FINDINGS AND THEIR IMPLICATIONS

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## Legal, Policy, and Management Framework

### Key Findings: Legal, Policy and Management Frameworks of AIS

- Removal and appointment of heads affects independence of AIs
- Removal and appointments do not comply with international standards
- Dysfunctional accountability cycle due to capacity constraints at National Assembly
- Legal framework provides little enforcement powers
- Poor usage of enforcement powers by AIs
- Complex processes are affecting internal accountability of AIs
- Lack of financial independence contrary to international standards
- Executive linkage compromises independence of some AIs
- Some AIs have no complete mandate

1. There is a gap between the law and practice in the appointment and the removal of the heads of most of the AIs. Whereas the law requires the appointment and the removal to be confirmed by the National Assembly, in practice the decision by the President takes immediate effect and thus makes the confirmation process redundant and a mere formality. For instance, at time of the study, an appointed Inspector General of Police had acted for 3 months and proceeded to resign before the National Assembly had had a say on his appointment<sup>4</sup>.
2. Almost all heads of AIs are appointed through a process that is initiated by the Executive and confirmed by the National Assembly. However, such a process is not a competitive way of filling of a vacancy in that the scrutiny by the Legislature is limited to the individual that the Executive in its absolute discretion has deemed fit and proper to head the relevant AI.
3. Whilst the accountability and governance model envisages that the role of the National Assembly to hold the Executive to Account will be done through and with the AIs, the National Assembly has not been robust in using the AIs. For instance, the National Assembly neither fully debates nor follows through annual reports filed by AIs. The National Assembly lacks the capacities to effectively carry out this mandate. This has also affected the AIs drive to submit reports before the National Assembly.

There is little use of enforcement powers available to the AIs to effectively carry out their mandate. For instance, whilst NAO has powers to subpoena any public officer to supply information and makes it an offence to obstruct the Auditor General in any way in the course of his duties. It was however found in the study that NAO has

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<sup>4</sup> <http://www.nyasatimes.com/2015/02/06/kanyama-resigns-as-malawi-police-ig-mps-trash-his-appointment/>

challenges in accessing information to the extent that some government agencies are no *go zones*<sup>5</sup>. These ‘no gone zones’ agencies have the temerity to ignore NAO requests for information and usually give no room for any audits through non-cooperation. The no gone zone areas include the Military and the OPC. Some of these offices cite sensitivity of the nature of their transactions as an alibi.

4. Section 119 of the Malawi Constitution provides for the removal of judges for incompetence or misbehaviour. In a bid to ensure security of tenure, the process for such removal is complex and tedious as it essentially amounts to impeachment proceedings before the National Assembly. This has had an undesired effect of dissuading the duty bearers from initiating the process even in cases where it is necessary to do so. For instance, there have been cases where a Judge has continued to discharge his duties even where he was under criminal investigation and a warrant of his arrest on corruption allegations had been issued by the ACB. In practice therefore, once a person is appointed judge he/she is likely to be one until they retire. Perception being important in the fight against corruption, this reduces the confidence of the society in the institution. The study observed that there is no law that regulates the institution of the judiciary especially judicial officers. The Constitution envisages in section 118 (b) that there would be an Act of Parliament, which would operationalise the Judicial Service Commission. Such law would regulate and lay down detailed procedures for appointment, discipline, removal as well as remuneration of judicial officers.
5. All AIs have no financial independence. Funding to the AIs is below requirement and the approved budget is in most cases reduced and disbursements delayed and erratic. An official from one AI summarised their funding predicament as follows: “Funding has been a problem. Your plans are MK 2 Million. If you are funded MK 1 Million. It means your plans are up to a million...” This has resulted in inability to implement planned activities. The low funding to the AIs has gravely constrained their ability to play their anti-corruption role effectively. For example the National Audit Office, which is a Supreme Audit Institution, is heavily underfunded by the Government such that it has failed to annually audit government ministries and departments as is required. This funding pattern is in sharp contrast with INTOSAI/AFROSAI/ISSAI standards. The funding cuts are also aggravated by disbursement delays from the Treasury. For example, at the time of the interview, around mid-January, 2015, the ACB had not yet received funding for its January request and that was not an isolated incident. The fact that funds can be withheld from the institution bureau means that it cannot act according to its plan; its survival is dependent on its financiers who can delay payments anyhow, making the very notion of independence obsolescent.

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<sup>5</sup> Sections 8 (2) of the Public Audit Act states: “The Auditor General may issue a subpoena within a reasonable time requiring the production of books of accounts, records, documents, or other relevant financial papers or objects necessary for the performance of his duties.

The figure below as an instance shows the ideal funding proposed by Malawi Human Rights Commission, approved budgets and actual funding was actually made to the institution.

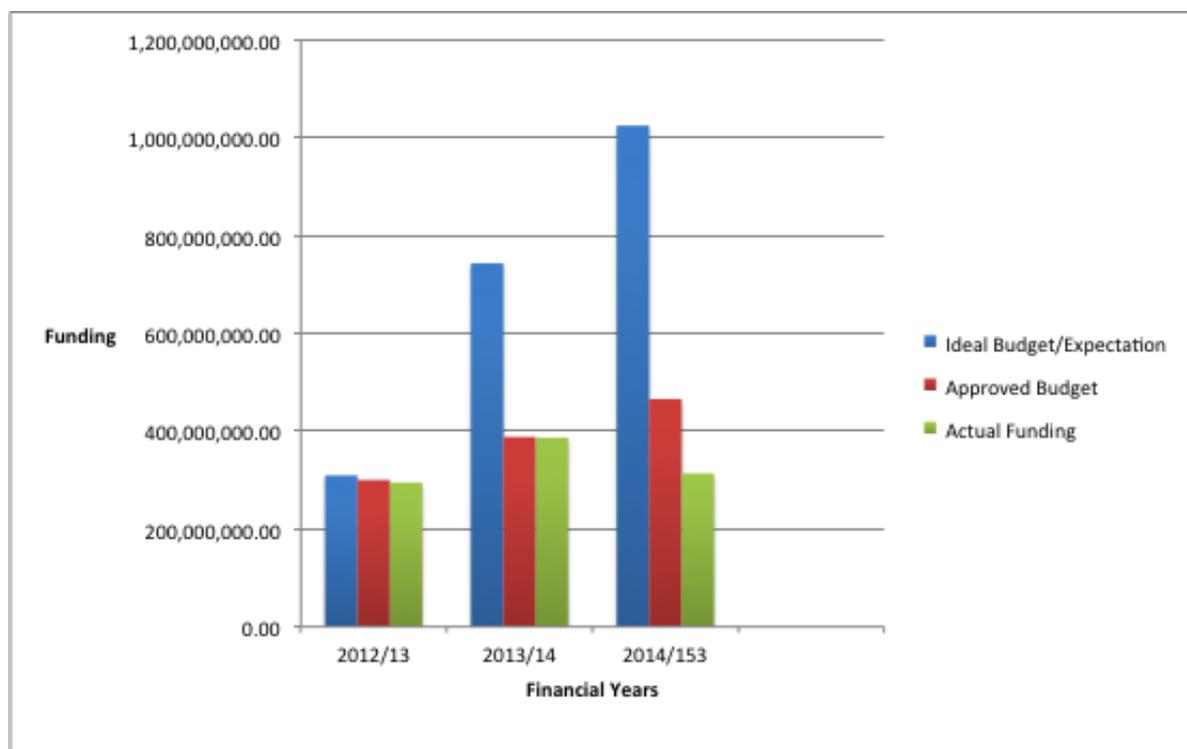


Figure 1: Funding to MHRC. Source MHRC

6. AIs are not entirely in control of their human resource issues such as recruitment and implementation of conditions of services. They cannot recruit as and when the need arises and they cannot implement the conditions of services that they agreed with their employees. The DHRMD, a department in the Office of the President and Cabinet, retains considerable control over AIs organogram, recruitment, promotion and implementation of conditions of services. For example, AIs cannot make decisions regarding recruitments and conditions of services without approvals from OPC and involvement of DHRMD. This situation has made them uncompetitive leading to high staff turnover, low staffing and industrial actions over condition of services. For instance during the study there were industrial actions at the ACB, Judiciary and National Assembly, all of which were related to implementation of Conditions of Services over remuneration.
7. The independence of some of the AIs is compromised by the institutional set up as departments within the Executive. Examples include the DPP, Fiscal and Fraud Police and ODPP. The ODPP is a department within the Office of the President and Cabinet while Fiscal and Fraud Unit is a department within the Criminal Investigations Division (CID) of the Malawi Police Service. In case of the DPP, the study noted that while the Constitution creates the office of the DPP, there is no law that operationalises it. It is therefore a department within the Ministry of Justice. The setup

of these institutions compromises their functional independence.

8. Lack of complete mandate for some institutions. The ODPP and DPOD have limited mandate to effectively carry out their roles in the prevention of corruption. Whilst public procurement is regulated, public disposal is not regulated. This has created a situation where public assets that are duly acquired are arbitrarily disposed at ridiculous low prices. For instance, lately, houses belonging to Malawi Housing Corporation and Lilongwe City Council were sold to officials of the then ruling party at prices lower than the prices of undeveloped plots in the same locations. It is a weakness in the law that the mandate of the DPOD does not extend to lifestyle audits. This means that a public officer may use proceeds of corruption to finance a higher lifestyle thereby freeing up the lawfully acquired resources to procure assets.

### Mechanism for Citizen Engagement

#### Key Findings: Mechanisms for Citizen engagement

- Inadequate mechanisms to engage citizens
- Less prioritization of citizen engagement initiatives
- One way communication strategies without feedback platforms
- Poor funding for citizen engagement initiatives

1. Most AIs engage citizens merely to inform them about activities that the AIs undertake, this is done through the use of the media (both traditional and ‘new’ media); toll free lines, clubs; neighbourhood committees, special events and awareness campaigns. Through these communication channels, the AIs sensitize citizens on the evils of corruption and how to report corrupt practices. The study found that these efforts have been successful in that they have generated considerable reports about corruption from the citizens. However, there appears to be little understanding on the part of the citizens on what needs to be reported as corruption. This means that there is still need to sensitise the public on what really constitutes to corruption as the agencies like ACB could substantially benefit from public information. In case of the neighbourhood committees, the study found that communities that have instituted these committees have violent crimes as their main focus. In addition, support towards community policing where neighbourhood committees are active, has been limited to identification of criminals involved in larceny and other heinous crimes, without due regard to corrupt practices. The study observed that neighbourhood committees have been left out in anti-corruption efforts although building their capacity would have the potential to detect manifestations of corrupt acts such as changes in lifestyle of public officials.
2. Most of the AIs do not consider citizen engagement as being core to their mandate. With limited resources, activities aimed at engaging citizens drop even further on the priority list of the AIs.

## Mechanism for Collaboration and Networking

### KEY FINDINGS: Mechanism for Collaboration and Networking

- There is no single all-encompassing platform for coordination and collaboration
- There is generally slow and poor implementation of the National Anti-Corruption Strategy
- There is no framework for collaboration and coordination
- There is mistrust among the AIs
- Collaboration and networking have been viewed as peripheral leading to unsustainable collaborative efforts.

1. There is poor or little implementation of the overarching National Anticorruption Strategy (NACS). This has meant that there is no single all-encompassing platform for coordination and networking in the fight against corruption.
2. Coordination and collaboration is undefined and ad-hoc. Apart from DPOD, FIU, DPP and ACB where the law clearly provides for collaboration, the other AIs have no legal compulsion to collaborate in their respective legal frameworks. Even in instances where the legal framework for collaboration exists, there is a lack of a policy framework to guide the collaboration leaving the collaboration to the whims of heads of the AIs. Elsewhere, coordination and collaboration among AIs is enhanced through permanent networks, where the institutions are affiliated and have personnel actively involved in the activities of the network. Such networks work as they have support from both the government and civil society institutions and are able to meet at regular intervals.
3. Further, for AIs with related mandates, collaboration and networking is affected by lack of trust. The study found that there was an air of mistrust among the AIs during Cashgate investigations where the ACB felt that the Police and FIU thwarted the ACB's effective execution of investigations and prosecution of cases.
4. AIs view collaboration and networking as an event in terms of meetings instead of viewing it as an on-going process. The meetings are reactive, often driven by specific events and there is no incentive among the AIs to carry forward such collaborative efforts. This has resulted in a situation where previous collaborative platforms could not be sustained once donor funding had stopped.

The following summarises the Jakarta Principles and the AIs adherence to the same.

Jakarta Statement of Principles for Anti-Corruption Agencies	
Provisions	Practice in Malawi
Collaboration: Agencies to work in collaboration with other players in the country.	Collaboration is ad-hoc, unregulated and undefined. Collaborative efforts suffer from lack of trust between and among agencies.
Appointment: Appointment of the heads to be through a process that ensures his or her apolitical stance, impartiality, integrity and competence.	Appointment process does not guarantee impartiality, apolitical stance and competence of the appointee.
Continuity of Office: Continuity in cases of retirement, dismissal, resignation; vacancies shall be filled within reasonable time.	No continuity due to untimely dismissals and delays in filling vacancies.
Security of Tenure: Removal to be done only through legally established procedures similar to that of the Chief Justice.	Removal of the AIs does not mirror the process for the removal of the Chief Justice.
Provision of sufficient financial resources to enable the agency to carry out its tasks	Financial resources not sufficient to enable agencies execute their mandate.
Provision of timely, planned, reliable and adequate resources for gradual capacity development and improvement of the Agency's operations and fulfilment of its mandate.	Provision of resources is inadequate, untimely and unreliable thereby affecting agencies operations.
Financial Autonomy: AI should have full management and control over its budgetary allocations without prejudice to accounting standards and auditing requirements	The executive through treasury decides when and how to disburse funds to the agencies.
Agencies shall communicate and engage with the public regularly in order to ensure public confidence in its independence, fairness and effectiveness	There is no regular engagement with the public and the little engagement is one way by means of informing the public.

*Figure 2: Comparison of Jakarta Principles and Practice in Malawi, Source: Author Comparisons*

# RECOMMENDATIONS

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## Appointment and Removal of Heads of AIs

1. The current process where the President in his absolute discretion nominates appointees for confirmation by the National Assembly does not guarantee the apolitical, impartiality and competence of the individuals concerned. This can be resolved by either having a competitive recruitment process where individuals have a chance to apply for a position and are interviewed and then appointed or by having the appointee confirmed by the National Assembly by a majority of two thirds of members present and voting as is the case with the Chief Justice.
2. To address the current anomaly where the President's decision on appointment and removal of the heads of AIs takes immediate effect before conformation by the national Assembly, the National Assembly recommends it there be strict adherence to the law and that no prospective appointee should take up office before the necessary confirmation. The unilateral removal of heads of AIs by the President undermines not only the National Assembly but also the AI in issue.
3. Where the law provides that the President acting alone can remove the head of an AI as is the case with the DPP, the study recommends that such laws be amended and that the removal process should at very least mirror the appointment process which involves the National Assembly. The situation, which makes the president, the absolute authority on dismissal, affects security of tenure of the head of the AI and affects the apolitical and impartiality stance of not only the individual concerned but also the entire AI.
4. On removal of the head of the ACB, the study calls for the full compliance with the *Jakarta Statement on Principles for Anti-Corruption Agencies*, which prescribes that the removal process, be similar to that of the Chief Justice of the Country. A full implementation of this would ensure that the Executive has no control over the removal of the head of ACB and this would enhance independence of the ACB. We recommend full application of the Jakarta statement for the ACB as the institution is at the centre of the fight against corruption and should therefore be as independent as possible from the Executive.

## Dysfunctional Accountability Circle

The Malawi Constitutional set up makes the National Assembly core to the accountability and governance circle in Malawi. The National Assembly is at the centre of the work done by AIs. The law envisages a more direct and functional relationship between the National Assembly and AIs. Apart from laying annual reports to the National Assembly, AIs can be called upon from time to time to account

to relevant Committees of the National Assembly<sup>6</sup>. As observed by the study, there is a very weak relationship between the National Assembly and AIs. In fact AIs are more leaning towards Executive than they are towards National Assembly as is envisaged. This has led to failure of the whole accountability and governance circle. The study recommends that measures be taken to sensitise AIs and the National Assembly on the need for closer working relationship as envisaged by the law. The study further recommends that deliberate measures be taken to provide the National Assembly with sufficient resources to enable it to hold regular meetings with and deliberate over reports from AIs.

### Poor Utilisation of existing enforcement mechanisms

There is little or no use of enforcement powers available to the AIs to effectively carry out their mandate. For instance, whilst NAO has powers to *subpoena* any public officer to supply information and makes it an offence to obstruct the Auditor General in any way in the course of his duties, it was still reported that the NAO has challenges in accessing information to the extent that some government agencies are *no go zones*<sup>7</sup>. It is recommended that AIs should fully utilise the enforcement powers as provided by relevant legislation. This is critical in checking the culture of impunity and would enhance the reputation and respect towards the institution.

### Incomplete Mandate

The study recommends that mandate of the Office of the Director of Public Procurement and the office of the Director of Public Officer's Declarations be extended to include disposal of public assets and lifestyle audit respectively, as is the case in other countries<sup>8</sup>.

### Operationalising Act for the Judicial Service Commission

The study recommends immediate promulgation of the Judicial Service Act to give effect to section 118(b) of the Constitution. The Act would resolve issues surrounding the appointment, discipline, removal and remuneration of judicial officers. The Act would also provide an opportunity for Malawi to domesticate the Bangalore Principles on Judicial Conduct (2002). A similar Act was passed in Kenya in 2011.

### Separation of Accountability Institutions from the Executive

The institutional establishment of the DPP and the ODPP robs the institutions of functional independence from the executive by being departments of the Executive. The study recommends establishment of these AI as separate institutions from the Executive. For the ODPP it is further recommended that the office be established as a separate authority as is the case in Tanzania and Uganda. For the DPP, it is recommended that there be a law operationalizing the office and that the entity so established be an independent prosecution agency as is the case in South Africa. This

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<sup>6</sup> NAO is accountable to the Public Accounts Committee; the DPP is accountable to the Legal Affairs Committee; the Inspector General of Police, the OoO and Police to the Public Appointments Committee etc.

<sup>7</sup> Sections 8 and 25 of the Public Audit Act. See page 8

<sup>8</sup> Uganda and Tanzania

would enhance the DPP's control, direction and supervision over all prosecutorial matters, which are currently scattered across different agencies.

### Financial Independence

International standards compel Malawi to provide sufficient funding to AIs to progressively capacitate and improve their operations. Further, the country is compelled to ensure that AIs have full control and management of its resources. The current situation in Malawi is an affront to these prescriptions. Lack of financial independence has made AIs subservient to the Executive and ineffective in delivery of their mandates. The study recommends that there be devised a clear plan on progressive increments of funding to AIs to enable them plan on activities and capacitation. Further, disbursements of funds to AIs should be at such intervals as would allow AIs to plan and have control over their budgets.

### Control over Human Resources

Human resources are critical to the implementation of the AIs' mandates. As observed during the study, AIs do not have full control over recruitment, promotion and implementation of conditions of services. The DHMRD still exercises considerable control over the recruitment and promotion of employees in the AIs. This is further compounded by the lack of financial independence which entails that the AIs cannot fund the conditions of service they agree with employees. This ultimately affects the AIs functional independence. The study recommends that AIs have full control of its Human Resources and there should be no need for approval from DHMRD on establishment of positions, promotion and indeed disciplining of officers as is the case in some AIs and implementation of conditions of service.

### Citizen Engagement

Citizen engagement is critical in ensuring public confidence in the independence, fairness and effectiveness of the AIs; the current mechanisms deployed by AIs to engage citizens are not sufficient to achieve the same. There is a lack of understanding on the part of AIs that the roles they have are done on behalf of the public. It is therefore imperative that AIs first realise that they perform their mandate on behalf of the citizenry and as a result they need to engage them regularly in a "conversation" and not necessary just to "inform" them.

### Collaboration and Networking

1. The study observes that collaboration and networking between AIs is critical in the fight against corruption and creation of the corrupt free Malawi. However meaningful collaboration and networking must be defined for it to achieve the desired results. Undefined collaboration and networking is unsustainable and is capable of abuse. The study therefore recommends two forms for collaboration and networking; (1) a national all-encompassing platform, and (2) specialised platforms for AIs with related mandates. The study observes that full implementation of the National Anti-Corruption Strategy (NACS) and the National Integrity System (NIS) that the NACS

establishes, would satisfy the need for a national platform for collaboration and networking. The study therefore recommends creation of a legal mandate for the NACS under the CPA. It is further recommended that the institutionalization of the IICs be expedited. For the specialised platforms, the study recommends that such platforms must at the very least have a defined policy framework. For example the DPP, ACB, Fiscal Police, DPOD and FIU can be put under one platform. Such framework should strike a balance between independence of the individual AIs and collaboration and networking to improve service delivery. Issues of mistrust would accordingly be taken care of.

2. Closer collaboration would reduce the need for calls to expand mandate as made by some AIs. Increased mandate by some AIs would lead to duplicity of roles and lack of accountability and as such closer collaborative efforts would cure the perceived lack of mandate that some of the AIs seem to have. For example the complaints by the OoO on noncompliance by public organs with its determinations would be addressed by improved coordination with the DPP, Judiciary and National Assembly<sup>9</sup>. These are entities that the law has already provided under the Ombudsman Act to ensure compliance. It is therefore recommended that collaboration be given enhanced attention by AIs.

#### Need for Political Party Financing Legislation

In the absence of laws on political party financing<sup>10</sup>, it is of utmost importance to have a very robust system of ensuring that public procurement and disposal is done in a transparent manner that ensures that there is value for money to the public. Public entities procure billions and billions worth of goods and services each year and it is generally understood that political financiers are rewarded by being offered contracts to supply the public with goods and services which do not offer value for money. The recent Cashgate events have shown that procurement is very vulnerable to fraud and that the fraud leads to loss of huge sums of public resources. The study recommends that legislation regulating political party financing be passed without delay.

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<sup>9</sup> Section 8 of the Ombudsman Act

<sup>10</sup> In reality, UNCAC, 2000, recommends clear legislation on political party financing. At the time of this study, this legislation was non-existent although stakeholders were pushing for its enactment.