



# COMBATING CORRUPTION IN MALAWI

## *An assessment of the enforcing mechanisms*

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In recent years, institutions and forums have raised themes relating to the control of corruption, and various initiatives have stressed the importance of combating corruption in order to attain sustainable socio-economic development. Since the advent of multiparty democracy in Malawi in 1994, the fight against corruption has taken centre-stage. The purpose of this article is to assess the enforcing structural and institutional mechanisms that have been put in place to combat corruption in Malawi. However, specific attention is placed on the operations of constitutional bodies and, in particular, the Anti-Corruption Bureau (ACB). The central theme of the article is that the political-legal and institutional bottlenecks that constrain the established mechanisms and institutions need to be pragmatically addressed to ensure effectiveness in the fight against corruption.

### **Introduction**

In recent years African institutions and forums such as Transparency International (TI), the Africa Leadership Forum (ALF) and the Southern Africa Universities Social Science Conference (SAUSSC) have raised themes relating to good governance, including corruption. For instance, the ALF organised a seminar in September 1995 in Johannesburg on Corruption, Democracy and Human Rights, and SAUSSC held a conference in Lusaka on December 1997 on the theme 'Towards Democratic Governance, Ethical Behaviour, Public Accountability and the Control of

Corruption'.<sup>1</sup> Similarly, a conference on 'Fraud and the African Renaissance' was held on 8–10 April 1999 at Uganda Martyrs University.<sup>2</sup>

The promotion of principles of good governance such as accountability and transparency has assumed greater significance in most developing countries. Thus, the fight against corruption is a central theme in the current theory and practice of a democratic government. Scholars credit the World Bank with being the first institution to use the term 'governance' in the context of sub-Saharan Africa.<sup>3</sup> In its report titled 'Sub-Saharan Africa: From Crisis to Sustainable Growth' (1989), governance was defined as

‘the manner in which power is exercised in the management of a country’s economic and social resources for development’.<sup>4</sup> This technocratic perspective stresses the importance of civil society as a ‘countervailing power’ to curb authoritarian practices and corruption, and keeping government accountable.

Among the most recent initiatives that have stressed the importance of adhering to the basic elements of good governance is the African Union’s (AU) Constitutive Act and its launch in July 2002. The focus on the notion of good governance by some African leaders has translated into the AU’s development programme, NEPAD (New Partnership for Africa’s Development). NEPAD highlights the significance of political good governance, and economic and corporate governance initiatives, and in particular, the African Peer Review Mechanisms (APRM) that Malawi has voluntarily accepted.<sup>5</sup> These initiatives underline the need for policymakers and public employees to urgently address issues of good governance, including combating corruption.

The dawn of multi-partyism in Malawi has resulted in greater awareness of the need to combat corruption, particularly in the public service. Furthermore, the conditionalities attached to donor aid have heightened the fight against corruption. In most developing countries, policymakers attribute the problems or ills of underdevelopment to corruption. Among the culprits are top politicians and public officials who use public resources to promote their personal gains. In other words, corruption is considered a major factor in the frustration of Africa’s efforts towards economic transformation and the consolidation of good governance.

After 31 years of autocratic rule in Malawi, in which corruption prevailed unchecked, and it was almost taboo to refer to it, combating corruption took centre-stage after the advent of multiparty democracy in June 1994. Malawi has declared total war on corruption, and a number of mechanisms and institutions have been established to address issues relating to it. Government’s willingness to decisively combat corruption has been manifested in the president’s speeches. Recently, he stated:

“I will not relent until the roots of corruption have been pulled out from our nation. I will not relent until those who plundered our economy with impunity have been brought to book”.<sup>6</sup> However, ten years after establishing the enforcing mechanisms to combat corruption, critics question the effectiveness of these mechanisms.

This article is divided into four parts. The first describes conceptual underpinnings related to the nature and meaning of corruption. Second, the causes and impact of corruption on social and economic development are presented. Specific attention in this part is placed on the context of Malawi. With its focus on the constitutional bodies and in particular the role of the Anti-Corruption Bureau (ACB), the third part evaluates the major structures and measures put in place in Malawi to combat corruption and to promote accountability. Finally, recommendations that can be established to ensure an effective fight against corruption are presented.

### **Conceptual underpinnings**

Like many concepts, especially in the social sciences, corruption has been interpreted differently and accorded various meanings by scholars. Despite differences in the definitions and interpretations, in essence corruption entails the abuse or misuse of public office for selfish and personal gain. Corruption is manifested by demands for bribes by public officials from members of the public in search of services, payment of commissions by business people to public officials as facilitation fees, distortion in dispensing of justice, nepotism and patronage.<sup>7</sup>

Broadly, corruption may be categorised into petty or greasy corruption and systemic corruption. Petty corruption refers to small or isolated corruption and dishonourable conduct by public servants. It involves soliciting and accepting small bribes, cash or favours in return for service provision. Systemic corruption involves a network of public officials, the private sector and citizens who use public resources and institutions to obtain private benefits.<sup>8</sup> Systemic corruption

is the worst type of corruption since it affects the whole bureaucracy and corruption is then regarded as norm among public officials. In these circumstances corrupt behaviour becomes institutionalised – it involves acts such as nepotism, extortion, transferring of public funds to foreign countries, patronage, and speed money, payments to ‘ghost’ workers, ‘ghost’ projects and ‘ghost’ inspections, duty evasion, embezzlement, illegal diversion of relief and aid items, over-invoicing and under-invoicing.

Despite inherent weakness in the methodology of deriving indices such as the Corruption Perception Index (CPI), the indices have nonetheless been used to measure the incidence of corruption in various countries.<sup>9</sup> According to TI, corruption tends to be rampant worldwide. For example, according to the 2004 Corruption Perception indices of 146 countries, 106 countries scored less than half of the desired score of 10; six countries scored less than 3 out of 10. The seven countries that are perceived to be less corrupt (with a score of 9) are rich, namely Finland, Switzerland, New Zealand, Denmark, Iceland, Singapore and Sweden. In the poor countries, the corruption rankings of undemocratic and unstable countries are worst. In addition, the International Country Risk Guide, which measures corruption in the political system, indicates that corruption is a threat to foreign investment, and the Country Risk Review (CRR), which is concerned with corruption among public officials, also shows that anti-corruption initiatives have not been effective in combating global corruption.<sup>10</sup>

Thus, although there are individual and institutional levels of corruption, and variation in operations and degree rather than in kind, corruption ultimately constitutes abuse of power, position or situation in political and civil life for personal or organisational benefit, albeit immorally. It involves the transfer of public resources, services and assets from public to private use. It is behaviour that deviates from the formal duties of a public role because of private inclination regarding (personal, close family, private clique) pecuniary gains or gains in status. Corruption takes place in all spheres of human endeavour:

in government offices, corporate bodies, and private institutions. Neither petty nor systemic corruption is confined to the holders of public office.

### **The prevalence of corruption in Malawi**

The AU estimated in August 2004 that Africa loses US\$148 billion to corruption annually, or 25 per cent of the continent’s gross domestic product (GDP). Scholars confirm that corruption is endemic in Southern Africa and has led to the loss of huge sums of money.<sup>11</sup> Under Banda’s despotism and autocratic rule in Malawi (below), corruption prevailed unchecked, and referring to it was almost taboo. In sharp contrast, since the advent of a multiparty system, a number of cases of corruption have been reported. For example, hundreds of cases accumulated at the ACB within six months of its establishment in March 1997, and so far it has received a total of 3,100 written reports. Currently Malawi is said to be losing MK 22 million each year through corruption, payments to ghost teachers, rentals for ghost houses and funding for ghost projects.<sup>12</sup> The rating on Malawi between 1994 and 2005 shows that the country has progressively become more corrupt.<sup>13</sup> In the 2002 country studies conducted by TI in more than 30 countries in Africa, Malawi was ranked 11th on the corruption ladder. Furthermore, in worldwide studies in the same year and involving 102 countries, Malawi was ranked 35th on the corruption ladder. This implies that worldwide, Malawi is ranked high on corruption. In 2004 Malawi was among the most corrupt countries in the world and was ranked 87th, scoring 2.8, compared with 83rd in 2003; corruption has been exposed at all levels. It is estimated that Malawi loses one third of its annual revenue through waste, fraud, bribery and corruption and in the past ten years the country has lost more than MK10 billion. In fact, in 2002 Malawi was ranked fifth of the nine most corrupt African countries.<sup>14</sup>

Since corruption involves use of public resources that could have been utilised for social welfare services, it robs a country of

its capital for investment, which is necessary for economic development. Furthermore, corruption victimises the poor, since it perpetuates poverty in developing countries. In the political arena, corruption promotes patron-clientelism and political party interests, and electoral malpractices. Therefore, corruption erodes democracy and principles of good governance. In other words, corruption poisons the springs of democracy and socio-economic development. In the context of Malawi, corruption is regarded as the disease that is devouring the flesh of the nation and needs to be prevented or eliminated. If corruption is not checked, it grips the whole of society and eats into every fabric; it becomes a way of life, a culture. The entire society becomes encapsulated in corruption.<sup>15</sup>

### **The major causes of corruption in Malawi**

While there is consensus among policymakers and informed members of the public that corruption involves the use of public office for private motives or gains, there is a lack of agreement on its causes. A range of propositions are advanced, including greed, immorality and unethical conduct by leaders and centralised power. Overall, conditions that promote its growth and advancement include unethical individual behaviour, structural and administrative deficiencies in the management of public affairs, chronic shortages, high inflation and low salaries in the public services, lack of supervision, uncontrolled and unaccountable centres of power, long and cumbersome procedures, insecurity of tenure of office, and meagre pensions. The causes, extent and degree of corruption differ from country to country. In Southern Africa the primary cause of corruption is greed.<sup>16</sup>

However, despite the variations, in Malawi economic, social, political and administrative factors tend to provide an environment that is conducive to corrupt practices. Revelations, especially through media reports, show a sordid picture of rampant corruption in the country.<sup>17</sup> In addition to high-level systemic corruption, petty corrupt practices and extortion by public officials in the procurement of goods and

services tend to be widespread in sectors of public service in urban areas and at local level. The director of the ACB confirmed instances of petty corruption relating to the distribution of free seeds and fertiliser at village level.<sup>18</sup> In addition, unsafe vehicles on Malawi's roads, which threaten many lives, are allowed through traffic police roadblocks if the culprits pay small bribes. Citizens obtain their passports in time only after giving bribes that almost equal the stipulated cost. Medicines disappear in hospitals, goods are smuggled into the country, evading custom duties, teachers wait for years for annual leave grants, and ghost teachers drain millions of kwacha from government coffers.<sup>19</sup>

Certain major factors contribute to corrupt practices. First, economic factors related to high poverty levels and great differentials between the rich and the poor seem to contribute to indulgence in corrupt practices by public officials.<sup>20</sup> Malawi is one of the least developed countries and its economy is based largely on subsistence farming. Over the years prices of goods and services have risen, but without comparable rises in public officials' wages and salaries. Malawi is said to be poorer in 2005 than it was ten years ago. On the one hand, there is an imbalance between basic needs and the material resources available to public officials, especially those in the lower strata (junior officers). These officers tend to indulge in corrupt practices to cater for the basic necessities of life, which they cannot otherwise manage from their meagre salaries. On the other hand, top-level officials seek to maintain their status and expensive mode of life by indulging in corruption. A related economic factor is the dearth of public goods and services. For example, the scarcity of foreign exchange, strict regulations for imports, and economic values attached to items such as passports, import permits and licences have led to corrupt practices among those that urgently need them.

Second, political and economic liberalisation has perpetuated 'personal rule', which has promoted patronage-clientelist practices and provided opportunities for corruption in the bureaucracy and in political circles. A number of cases revealed by the media

show the existence of systemic corruption. On the one hand, over the past ten years the bureaucracy has been characterised by patronage through appointment, offers of lucrative contracts, and enticement of party loyalists and opposition MPs with cash. On the other hand, the political circles were characterised by according protection and benefits to close allies of the presidency and ruling elite, and violation of the norms of the democratic system that covered practices such as use of public resources and government authority for political and personal gains. For example, in February 2003 four Cabinet Ministers led the campaign 'Moving with a Bag of Money' to buy off opposition MPs. Twenty two MPs were abducted. Over the past ten years (1994–2004) the regime has distributed patronage to its agents. For example, more than 40 MPs were allegedly bribed by the regime to support the Third Term Bill. One MP, Mponda Mkandawire, refused the MK100,000 bribe and exposed the scam.<sup>21</sup>

Furthermore, some foreign investors have promoted corruption by bribing political and bureaucratic officials in order to win contracts, or to have business deals executed expeditiously. For example, the Petroleum Control Commission scam of 1998, which involved ruling party politicians and parastatal bosses, led to the loss of US\$14 million through inappropriate awards of fuel contracts.<sup>22</sup> In short, multinational cooperations give rise to corrupt practices in bids to win contracts or to overcome obstacles in their quest for investment in Malawi. Thus, over the past ten years laxity in ethical conduct and general lack of political will or commitment by the political leaders to fight corruption has accounted, in large part, for its proliferation.

Third, sociological factors such as cultural norms and practices contribute to the growth of corruption. In Malawi, like most African countries, the social structure hinges on ethnicity and communal and traditional values, such as rendering assistance to relatives or members of the clan. Public officials who are influenced by traditional values tend to indulge in nepotism and abuse cultural institutions of gift giving as an expression of goodwill and respect to partners and

leaders. Thus, traditional values and customs contribute towards flouting regulations and provide opportunities for nepotism and selectivity in the performance of public duties. Formal procedures, regulations and principles of merit-based recruitment, anonymity and impartiality in the public service are subverted. In short, where public officers give in to traditional values, opportunities for corruption are immense.

Lastly, administrative factors, and in particular inefficient and ineffective public service delivery and rigidity in the bureaucracy, promote corruption. Owing to lack of automation in most government departments in Malawi, operations are slow and inefficient. Almost every transaction has to be supported by official stamps, signatures and copious documentation. In some instances, public officials develop rules and norms different from those that are expected by the public and intentionally slow down the process so that potential clients offer speed-up money.<sup>23</sup> Busy clients readily offer bribes to public officials to speed up the process and the movement of files and communication. This has given rise to opportunities for public officials to apply rules and regulations selectively and discriminatorily, thus perpetuating corruption.

## **The fight against corruption in Malawi**

Since the advent of multiparty democracy, the Malawian government has established various structures and mechanisms to combat corruption and promote public accountability. In this analysis of these structures and mechanisms, specific attention will be paid to the role of the ACB, the Office of the Ombudsman and the National Audit Office.<sup>24</sup>

### ***The Anti-Corruption Bureau***

The ACB was established to investigate corrupt practices and prosecute suspects, to sensitise the public to the evils of corruption, and to carry out corruption prevention activities in public and private organisations. This three-pronged approach is considered potentially

effective to shake the foundations of corruption. The detailed powers and functions of the ACB include measures to prevent corruption in public bodies and private bodies by examining their practices and procedures, revising methods of work or procedures prone or conducive to corrupt practices, advising public and private bodies on ways of preventing corrupt practices and on changes in work methods or procedures, disseminating information on the evil and dangerous effects of corrupt practices on society, enlisting and fostering public support against corrupt practices, and receiving complaints, reports or other information of any alleged or suspected corrupt practice or offence.<sup>25</sup>

The ACB became operational after the appointment of the director and his deputy in 1997. It has three regional offices in the southern, central and northern regions of the country. These offices have four key divisions, namely Civic Education, Investigations and Prosecutions, Prevention, and Support Services. The ACB possesses a team of advocates and policemen and utilises outside auditing firms. However, the effectiveness of the ACB tends to be affected by a number of constraints, including legal, institutional and resources. One of the major problems affecting the performance of the ACB, and particularly its prosecution function, relates to the law governing its operations. Legal constraints contribute to the failure by the ACB to prove corruption cases against government or private sector employees accused of corruption in court.

Although the ACB is involved in the investigation of criminal offences and has powers to prosecute, it requires the consent of the Director of Public Prosecution (DPP) to send a case for prosecution.<sup>26</sup> Over the past ten years the ACB has been unable to proceed with certain cases despite full investigation owing to the DPP's reluctance to give his consent. Section 95 of the Penal Code (2003) states that public prosecution relating to abuse of public office shall not be instituted except by or with the sanction of the DPP. For example, in a case involving the misappropriation of many millions of kwachas

by officials in the Ministry of Education, consent was given to prosecute the accused, but excluding a Minister from the ruling party who was among them.<sup>27</sup> Similarly, the 1999 case of embezzlement of US\$7.6 million (MK807 million) by the former Attorney General was cancelled by the DPP. Thus, despite the ACB's full investigations and recommendations to the DPP for prosecution, the case could not proceed. In addition, the DPP ignored applications by the ACB to prosecute a former Minister of Local Government who was involved in a national identity card scam in which over US\$32 million was misappropriated. Furthermore, the law does not adequately cover whistleblowers, and as a result, people do not readily reveal corrupt acts in their organisations. This means that known corrupt practices are not reported.

In short, the requirement that the ACB must seek the consent of the DPP before prosecution not only contributes to institutional bottlenecks that limit its operations at national and local government levels, but it leads to bias in prosecutions. This has created the impression that the ACB is used by government for witch-hunting and undermining the opposition. The Malawi Law Commission has recommended to the government that to avoid delays and ensure effectiveness, the prosecution of corruption cases should take place without the DPP's consent, since the DPP has been reluctant to give consent in cases involving high-profile personalities.<sup>28</sup> These incidents tend to reinforce public perceptions that the ACB is selective, favours the rich and the ruling party, and is quick to penalise the poor.

Over the years, a number of civic education activities have been implemented by the ACB to raise awareness of the evils of corruption and to encourage local people to report, resist and reject corruption. These include billboards in strategic places in urban areas, radio programmes, workshops and anti-corruption clubs in schools and universities. However, the shortage of finances and personnel have an impact on the availability of physical resources and limit the effectiveness of its preventive

measures and civic education, which require frequent travelling outside the duty station. For example, the vehicles that are available are inadequate for its country-wide operations and as result, most often investigators travel by bus. This limits the destinations.<sup>29</sup>

Another factor that negatively affects the performance of the ACB is inadequate and inappropriately trained personnel. As part of the process of combating corruption, the ACB is required to implement civic education programmes country-wide. According to the Public Relations Officer of the ACB, “the ACB has grown hoarse singing the song of insufficient resources, and particular the availability of human resources, and between May and June 2004, it lost all the lawyers because of insufficient funding, a development that has greatly compromised its operations, especially the massive resignation of the prosecutors which has created problems in terms of the availability of legal advice to other officers and the local people”.<sup>30</sup> The ACB caseload is so heavy that it takes months before issues are investigated. In addition, the lack of offices at the local (district) level constrains the ACB’s operation, since it limits accessibility by the public to its offices.

The ACB director confirmed that “the Anti-Corruption Bureau has not lived up to people’s expectations; to many ordinary Malawians, at local level, the perception is that the bureau is only serious in prosecuting petty corruption cases and leaves out serious ones and that the ACB appears to favour the rich and penalise the poor”.<sup>31</sup> Therefore, despite the existence of the ACB, public officials tend to indulge in corrupt practices not only in higher echelons of government but also at local level. Corruption cases are also rampant among traditional leaders and District Assembly officials involved in land issues. The Minister of Local Government and Rural Development, George Chaponda, stated that “indigenous Malawians find difficulties to acquire land even in rural areas while rich foreigners easily acquire land anywhere in the country because of corrupt local government officials and traditional leaders who accept bribes”.<sup>32</sup>

### ***The Office of the Ombudsman***

Another institution that promotes accountability and checking maladministration, including corruption, is the Office of the Ombudsman. The office investigates any suspected practice of maladministration and makes its findings known to the public. Because any form of maladministration is subject to investigation, this serves to alert officials to accountable and responsible behaviour. The office, which operates independently and is answerable only to parliament, has been operational since 1995.

Over the past ten years public officials have been investigated on charges of corruption, maladministration and tender irregularities. The general public, especially those in urban areas, have high regard for the Office of the Ombudsman as an institution that promotes accountability and transparency and checks corruption in government institutions, despite its inadequate resource capacity (discussed below). The institution was described by one interviewee as the ‘darling of the people’ because it provides redress for issues of maladministration, especially at a time that other institutions are politically manipulated.<sup>33</sup>

However, the major challenges facing the Office of the Ombudsman include ambiguity in its jurisdiction and lack of resources. The office has been accused by the legal fraternity of encroaching into the jurisdiction of other institutions. Apparently there is an overlap of jurisdiction between the Office of the Ombudsman and institutions such as the judiciary, and the Legal Affairs Committee of parliament.<sup>34</sup> The Legal Affairs Committee regards the Ombudsman Act as clumsy and not in line with the constitution on matters relating to the jurisdiction, tenure of office and appointment of the ombudsman.

Furthermore, the Office of the Ombudsman is poorly funded and the human resource capacity is not adequate. Over the past ten years the office has only received approximately 40 per cent of its total budget requirements. The Speaker of Parliament confirmed that “there was need to review the Ombudsman’s annual

budget against its increasing workload".<sup>35</sup> In the 2004/05 budget, the office was allocated only US\$74,584, which is one fifth of the US\$374,964 that the office received in 1996/97. The present ombudsman stated that "funds allocated to the office have been decreasing over the past ten years, and that the lack of adequate funds is the major factor which stifles the operations of the office".<sup>36</sup>

As a result of the budgetary constraints and the limited human resource capacity, there is a serious backlog of cases to be heard – it takes on average eight months to conclude a case. At the time of writing, the office had a total of 55 officers, of whom 13 were investigators, and 9 were complaint in-take clerks. The investigators and complaint in-takers are not mobile, because vehicles and finances are inadequate. The capacity of the office to investigate injustices of maladministration is therefore severely constrained. Furthermore, the office has only three regional offices: in Blantyre, Lilongwe and Mzuzu. Consequently, accessibility to and communication with the local people tend to be limited owing to the unavailability of structures at local level. Its effectiveness at local level is further hampered by high levels of illiteracy, widespread ignorance of the existence of the office, and poor communication systems. Therefore, the impact of the Office of the Ombudsman is not felt in the rural areas.

A further problem is that although the Office of the Ombudsman makes investigations and reports the findings publicly, it does not have adjudicative powers and statutory authority to enforce its findings. The executive and some lawyers who seek to influence the operations of the Ombudsman undermine its independence. The implication is that enforcement and compliance with its recommendations are limited.

### ***The National Audit Office***

An important mechanism for checking corruption and enhancing accountability is the National Audit Office. It is a public office which is required to report on the public accounts and resource utilisation of public authorities and bodies.<sup>37</sup> The National

Audit Office is an independent institution that operates free from influence of any person or political authority. Therefore, it enjoys a degree of independence in carrying out its responsibilities. It has a mandate to carry out surprise audits, investigations in local government institutions or sub-contract services to private firms when the office does not have the capacity.

The National Audit Office is required to reveal the strengths and weaknesses of the financial and management operations of government institutions. It also has to bring the performance of public officials and the administration and management to the attention of the public and stakeholders. Therefore, in principle the National Audit Office is a viable mechanism for the enhancement of accountability and transparency and a powerful deterrent of unaccountable behaviour, including corruption. Its functions cover investigations into any matter, including the efficiency and effectiveness of internal control and management measures, as well as expenditure and revenue at the various levels of government.

However, the National Audit Office's promotion of political accountability in government institutions faces a number of challenges. Senior government officers stated that the office is unable to audit all institutions timeously owing to human resource constraints and delays by the accounting officers in completing the financial records. Failure to audit financial accounts in time seriously hampers financial accountability and the effective prevention of malpractices. Another problem is the lack of political will to deal decisively with issues of accountability. Misuse of public funds has been raised over the years in audit reports, but no action has been taken against the perpetrators. In many instances, audit reports are not given sufficient attention. Scholars argue that politics in Malawi is pursued not as a vocation but as a means to enrich oneself.<sup>38</sup> Issues raised in audit reports against politicians tend to be ignored. The National Audit Office therefore does not adequately act as a safeguard against unaccountable behaviour.

### ***The role of the judiciary in corruption control***

The judiciary is independent in Malawi and is the important institution, since it adjudicates on cases of corruption and thus serves as an important deterrent in corruption. But this depends on the efficiency of the judicial system. Section 9 of the constitution vests the judicial authority in the courts. The performance of the judicial system in general is severely hampered by a number of problems, including poor infrastructure, inadequate funding, delays in the delivery of judgments, non-user friendly procedures, inadequate habitable courts, and interference by the executive and the legislature.<sup>39</sup> At local level, the magistrate's courts are further constrained by lack of resources such as law books and finances. As a result, service delivery in the remote areas is severely limited. Owing to the huge backlog of cases and the slow process of the justice delivery system, the judiciary is unable to deal with cases effectively. For example, in 2001 the High Court managed to complete only half of the case load and one third of people were on remand for a long period owing to the system's inability to clear the backlog and insufficient manpower.

The budgeted finance for the judiciary is inadequate, and the situation has translated into deficient and poorly trained personnel. The courts lack reporters and court clerks, secretaries and interpreters. In addition, there is a lack of court space and the buildings are not habitable, especially magistrate's courts at local level. The judiciary is plagued by a lack of sufficient resources and personnel to process cases effectively and its role as a tool against corruption is limited. Therefore, the weak institutional capacity of the judiciary and resource inadequacies, poor communication facilities, inefficient information management technologies, and shortage of human resources skills within the justice delivery system affect its performance.

### ***The role of the media***

The mass media act as a watchdog, publicise acts of corruption, enhance democratic values such as accountability, and influence the ethics

of public life by monitoring the conduct of government officials and politicians.<sup>40</sup> The basic freedoms, including freedom of expression, freedom of the press and freedom of access to information, are clearly covered in Chapter IV of the constitution. The independence of the press in Malawi is fairly evident.

The print media have been in the forefront in exposing corruption cases. In fact, most cases of corruption are brought to the attention of the public via the media, especially systemic corruption.<sup>41</sup> For example, the media were the first to expose the case of the former Minister of Education, Yusuf Mwawa, which involved paying for a wedding reception with government money.<sup>42</sup>

Currently there are daily, weekly and bi-weekly privately owned newspapers, ten radio stations, of which two are state-owned, and one television station, which is also state-owned.<sup>43</sup> They all criticise the government and publicise cases of corruption.

However, at local level the effectiveness of newspapers and TV as a means of disseminating information tends to be limited owing to the high illiteracy rate among the rural masses (over 60 per cent of the population cannot read). Furthermore, the circulation and distribution of newspapers in rural areas is ineffective. Many people cannot afford to buy a newspaper. Similarly, TV broadcasts are restricted to the audience in urban and semi-urban areas.

### **Conclusion**

Clearly, combating corruption requires a holistic approach, since corruption in its various forms takes place at all levels of government and society. Contrary to the common view that combating corruption is the responsibility of the ACB, all mechanisms and institutions, including constitutional bodies, independent bodies such as the media, and civil society, have important roles to play. The circumstances that provide fertile ground for corruption tend to be poverty, bureaucratic inefficiencies and rigidity, and weaknesses in ethical conduct among public officials. Corruption in the form of bribery

and general personal gratification cannot be eradicated easily in Malawi because of the moral decadence, promoted by poverty, that affects even the enforcing personnel. In an environment in which corruption has taken root, any successful onslaught must involve the stakeholders. However, the government should be in the forefront in the fight against corruption.

Since it is difficult to expose corruption, efficient and effective performance by established institutions is required. Thus government should strengthen the capacity of these institutions. Of greater significance are capacity-building measures and provision of adequate funds. With inadequate funds, the institutions can neither attract nor retain qualified personnel who are needed to effectively undertake activities such as prosecution, investigation and civic education programmes. In addition, adequate or sufficient funds should be allocated to the institutions to enable them to acquire equipment and vehicles. Successful performance will raise public awareness of the dangers of indulging in corruption.

Finally, the anti-corruption drive should be manifested in unqualified support and commitment by political leaders. Political leaders should let the law take its course and avoid using the anti-corruption drive as a means of political witch-hunting. Nonetheless, emphasis should be placed on corruption prevention through civic education and creation of an environment that protects whistle blowers who expose corrupt practices.

## Notes

- 1 K Frimpong, Some pitfalls in Africa's democratic rule and good governance, Paper presented at the 20th Southern African Universities Conference, Lusaka, 30 November – 5 December 1997.
- 2 N Alant and T Uys, Whistle-blowing fighting fraud in organisations, Paper presented at the Conference on Fraud and the African Renaissance, Uganda Martyrs University, Uganda, 8–10 April 1999.
- 3 K C Sharma, Good governance in Africa: Critical dimensions and challenges for public bureaucracy, Paper presented at the XVIII World Congress of

- International Political Science, Quebec, Canada, 1–5 August 2000.
- 4 The World Bank's interpretation of governance based on administrative and managerial terms is the first major dimension of governance, which is termed 'technocratic interpretation' (see O Cranenburgh, Increasing state capacity: What role for the World Bank? *IDS Bulletin* 29(2), 1998, p 77; P Hoebink, *Good governance as condition and objective for some European donors*, Scientific Council for Government Policy, London, 2001, p 188. The technocratic interpretation focuses on the way in which the public sector is managed and the main areas of concern are accountability, legality, availability of information about economic conditions and government policies, and transparency (World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Growth, Along Term Perspective*, Washington, D.C., 1989, p 60).
- 5 African Union, Constitutive Act, 2001.
- 6 Speech delivered at Anti-Corruption Day, quoted in *The Nation*, 8 February 2005.
- 7 Corruption is also defined as "an act of omission perpetrated by an individual or group of individuals which goes against the legitimate expectation and hence the interests of society. Such acts of omission takes place in all spheres of human endeavour; in government offices, corporate bodies, private institutions" (see K Kibwana, *Initiatives against corruption in Kenya: Legal and policy interventions*, Clari Press, Nairobi, 2001, p 14).
- 8 See World Bank Institute, *Workbook – governing municipalities without corruption, municipal development partnership for Eastern and Southern Africa*, 2004, p 22.
- 9 D Lederman, Accountability and corruption: Political institutions matter, World Bank, University of Chicago, 2001.
- 10 See N Khembo, Scratch my back and I scratch yours: Institutional analysis of democratic accountability and the anti-corruption agenda in Malawi (1994–2005), Unpublished paper, Centre for Social Research, Zomba, 2005.
- 11 P Matcheza and C Kunaka, *Anti-corruption mechanisms and strategies in Southern Africa*, Human Rights Research and Documentation Trust of Southern Africa (HRRD TSA), Oxford, University Press, 2000, P 26
- 12 See Khembo, op cit, p 4
- 13 Transparency International, 2005.
- 14 Transparency International, *Independent Anti-Corruption Agencies, TI Source Book*, 2002; TICPI, 2004; TICPI, 2005; See also G Munthali, Malawi drops on corruption rank, *The Nation*, 22 October 2004.
- 15 Kibwana, op cit, p 14
- 16 Matcheza and Kunaka, op cit.p 26
- 17 A number of high-profile political figures, including ministers, have been charged, for example the former Minister of Finance, the mayor of the City of Blantyre, and recently the Minister of Education, who was dismissed as cabinet minister on allegations of corruption (see media reports below).

- 18 Kaliwo says petty corruption a symptom, *The Nation*, 5 September 2005.
- 19 See also I Lamba, Controlling corruption in Africa: The case of Malawi, in K Frimpong and G Dacques (eds), *Essays on accountability and ethical behaviour*, Botswana Pvt., Gaborone, 1999.
- 20 See Malawi Poverty Reduction Strategy Paper (MPSRSP), 2002. With a nominal per capita income of \$160, Malawi is one of the poorest countries in the world, with dire poverty that is pervasive and deeply rooted. The poverty analysis and profile indicates that 65% of the population live below the poverty line, subsisting on less than US\$0.40 per day, compared to the general poverty limit of US\$1 per day.
- 21 Ministers with allegations of corruption against them were reappointed to various positions (for example Chilumpha remains vice-president of the country despite allegations of corruption that remain unresolved); Mpinganjira gave contracts and favours to 11 MPs from the UDF; Friday Jumbe was removed from Agriculture Development and Marketing Corporation when the parastatal incurred huge losses and was also involved in a maize scam involving MK2.9 billion, but he was later appointed as Finance Minister - he is now facing corruption charges, but is still director of Economic Planning in the UDF; Former Attorney General Peter Fatch was mentioned in the controversial (Landrover Scam) award of a contract to supply 110 Landrovers to government. See Khembo, op cit, pp 1-5 for details of these cases.
- 22 In 1999 the Minister of Finance fraudulently terminated the pre-shipment inspection contract of SGS Society. The awarding of a contract to Le Meridian, a France-based hotel chain, to manage eight hotels in Malawi was described as 'unfair and fraudulent'. In addition, the award of an MK1.2 billion 'national identity document' contract to a Swiss firm, SECUCOMA Holdings International, instead of the recommended British firm was described as 'dubious' (*Malawi News*, 8-15 January 2000).
- 23 Interview, R Tambulasi, deputy head of Department of Political and Administrative Studies, 30 July 2005, Zomba.
- 24 The constitutional bodies refer to institutions whose existence is stated in the constitution.
- 25 See Corrupt Practices Act, Section 10(1).
- 26 See Corrupt Practices Act, Section 42.
- 27 See *The Nation*, 22 September 2004.
- 28 See *The Nation*, 8 February 2005.
- 29 See D Nungu et al, *A social audit into the role and performance of state institutions*, Church and Society Programme, Mzuzu, 2002, p 10.
- 30 Quoted in *The Nation*, 25 January 2005.
- 31 Quoted in *The Nation*, 8 February 2005.
- 32 Quoted in *The Daily Times*, 1 December 2004.
- 33 *The Daily Times*, 20 October 2002.
- 34 See *The Nation*, 27 January 2003.
- 35 Quoted in *The Nation*, 27 January 2003.
- 36 Quoted in *The Daily Times*, 4 March 2005.
- 37 See The Republic of Malawi Constitution, SectionS 184(1), 184(5).
- 38 See G Kamchedzera, Parliamentary strike and public trust, *The Lamp*, Vol. 9 No. 1, 1997, p 7; and W Breytenbach and C Peter-Berries, Malawi: Has the struggle for economic endurance begun? *Africa Insight* Vol. 33 No. 4, 2003, p 74.
- 39 See H Meinhardt and N Patel, *Malawi's process of democratic transition*, KAS, Lilongwe, 2003, p 31.
- 40 See W Francke, The evolving watchdog: The media's role in government ethics, *The Annals* Vol. 1 No.3, 1995, p 109.
- 41 The following media reports show the extent of coverage in the leading newspapers: Denis Kazembe, Government, Anti-Corruption Bureau react to corruption survey, *The Weekend Nation*, 28-29 September 2002; G Munthali, ACB wants DPP's consent removed, *The Nation*, 25 November 2004; 187 million scam: Mpinganjira exposed, *The Weekly Chronicle*, 18 October 2004; P S Banda, Apex Landrover case resurfaces, *The Nation*, 1 November 2002; C Somanje, Probe Jumbe and OPC, *Malawi News*, 26 October - November 2002; M Banda, Possible passport racket at immigration under Bingu administration, *The Nation*, 15 September 2004; D Nyirenda, Escom finance director nabbed, *The Daily Times*, 15 September 2004; B Ligomeka, Bingu has corrupt aides, *The Sunday Times*, 7 November 2004.
- 42 *The Weekend Nation*, 16-17 April 2005, first reported the case of former Education Minister Yusuf Mwawa, who used government funds to pay for his wedding; he was later dropped as minister.
- 43 See Meinhardt, H, and Patel, N, 2003, *Malawi's process of democratic transition*, KAS, Lilongwe, p31
- 44 See Meinhardt and Patel, op cit, p 31.