

Overall Score:

73 - Moderate

Legal Framework Score:

88 - Strong

Actual Implementation Score:

60 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷²Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Section 32 (2) of the Constitution also stipulates that no person may be compelled to belong to an association.

References:

Section 32 (1) of the Constitution of the Republic of Malawi states that every person shall have the right to freedom of association, which shall include the freedom to form associations. Section 32 (2) of the Constitution stipulates that no person may be compelled to belong to an association.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

There is no law banning the CSOs from accepting any foreign or domestic funding.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

In practice, the non-governmental organizations do not disclose their sources of funding. The provision is not enforced.

Interview, Happy Kayuni, Senior Lecturer, University of Malawi, September, 1 2009.

References:

The NGO Act 2000, Section 22 (i) a (iv) requires all registered NGOs to report on their sources of funding.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

67

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

Comments:

CSOs need to register under the Non-Governmental Organizations (NGO) Act, which sets the legal framework for the NGOs. Most NGOs lack independence based on the fact that they are not financially stable and technically handicapped.

The line between CSOs and government becomes thin when CSOs work in committees of government. For example, recently, three prominent CSO leaders (Boniface Tamani, Rafik Hajat and Seodi White) claimed that the incumbent (the President) appointed them to a development advisory council; however there are concerns that the appointments will make the line between CSOs and government very thin.

References:

The Nation, Brigit Sonani, 20 December 2009, 'Tamani, White, Hajat in Bingu's Council?-Activists, government differ on advisory body', www.nationmw.net

Meinherdt H. & Patel, 2003, Malawi's Process of Democratic Transition," Lilongwe, KAS

Happy Kayuni, Senior Lecturer, University of Malawi, September 1, 2009, Zomba

Mavuto Bamusi, Director, HRCC, September 20, Lilongwe

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

Comments:

CSOs operate on the periphery of the government. In many cases where they need to give their input, they squeeze themselves into the decision making process. Government is yet to have an open door policy on issues of public interest.

Depending on the issue, the government chooses whether to consult or ignore the CSOs. The Kayerekera Uranium Mine saga is a good example where the CSOs had to push to be able to participate in the decision making process other than receiving an automatic invitation as is expected in a democratic society.

Partly, the CSOs are to blame themselves for not being inside the circles of public policy making because they are disorganized among themselves, regard each other as competitors, play games with each other, and lack a united voice. The government sees no point in working with organizations that do not have their house in order.

Some of the CSOs that have effectively engaged the government in the political and policy making process include the Institute for Policy Interaction, Church and Society, and the Catholic Commission for Justice and Peace.

References:

Happy Kayuni, Senior Lecturer, University of Malawi, 30 September 2009

Mavuto Bamusi, Director, HRCC, 20 September, 2009

Jacob Jimu, Journalist, The Nation, 30 September 2009

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

There is no document indicating that any CSO was shut down because of its work on corruption or good governance.

References:

H. Kayuni, Senior Lecturer, 20 September 2008, University of Malawi

Mavuto Bamusi, Director, Human Rights Consultative Committee, 30 September, 2008, Lilongwe

Jacob Jimu, Journalist, 20 September, 2009, Blantyre.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

No activists were imprisoned for working on corruption issues.

References:

Happy Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

Mavuto Bamusi, Director, HRCC, 20 September, 2009, Lilongwe

Jacob Jimu, Journalist, The Nation Newspaper, 30 September 2009, Blantyre

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

No activist was physically harmed for working on corruption issues.

References:

Happy Kayuni, Senior Lecturer, University of Malawi, 30 September, 2009

Bamusi, Director, HRCC, 20 September 2009

Jacob Jimu, Journalist, The Nation, 30 September, 2009

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Happy Kayuni, Senior Lecturer, University of Malawi, 30 September 2009

Bamusi, Director, HRCC, 20 September 2009

Jacob Jimu, Journalist, The Nation, 30 September 2009

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

The Constitution of the Republic of Malawi Section 31 (2) stipulates that all persons shall have the right to form and join trade unions or not to form or join trade unions.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

Comments:

Trade unions exist, but their operations are affected by intimidation, neo-patrimonialistic politics, the politics of divide and rule, technical capacity, weak financial base, and legal framework. Due to these challenges, they are not necessarily a major force in the policy making process.

References:

The Nation, 20 September 2009, Minister of Labour Warns Trade Unions.”

Dr L.B. Dzimbiri, Associate Professor, Industrial Relations, University of Malawi, 13 September 2009.

Mr. Isaac Kambirinya, Industrial relations Specialist, 12 September 2009, Lilongwe.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Section 36 of the Constitution of the Republic of Malawi stipulates that the press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Section 35 of the Constitution of the Republic of Malawi holds that every person shall have the right to freedom of expression. This freedom of expression is cemented with the right of access to information stipulated in the Section 37 of the Constitution of the Republic of Malawi.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

50

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Bureaucratic procedures are prohibitive in some cases. One has to go through a number of steps to get establish the print media. Bureaucratic procedures and red tape are prohibitive.

Section 18 (4) says: Before issuing any telecommunications license, the Authority shall publish in the Gazette a completed draft of the proposal license and consider any representations made to it concerning draft.

Section 18 (5) says: Any telecommunications license issued by the Authority shall come into effect when published in the Gazette (Note: Gazettes are published annually and this means people have to wait for a year)

Section 19 (2) says: The Authority may, after due inquiry has been made, refuse to recognise the registration of any person even if made in accordance with the published procedure if so directed by the president in the interest of national security.

Section 20 (3a) of the Communications Act states that license is given or refused considering the applicant's capability.

(The Authority uses this article to deny other people for example, a broadcasting license. A 21-year-old, Standard Seven drop out, Gabriel Kondesi, tried in vain to get a license for his community radio station Pachikweza from the Malawi Communications Regulatory Authority (MACRA). He started his station without the license anyway.)

The license fee and annual fee can be protective since its expensive. The danger is that the Act gives much power to the president who might declare anything he wants to be a threat to national security although the same Act gives a person who is dissatisfied with the decision recourse to appeal to the High Court.

References:

Kankuzi, Coordinator, Media Studies, 14 September 2009, University of Malawi

Mavuto Bamusi Director, HRCC, 20 September 2009, Lilongwe

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

References:

Under the Communications Act and the Constitution of the Republic of Malawi, appeals can be made if a license is denied or revoked.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Getting a print media license takes time, as much as a year or more.

References:

Michael Chasukwa, Lecturer, 13 September 2009, University of Malawi

Mavuto Bamusi Director, HRCC, 20 September 2009, Lilongwe

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The fee for getting the print media license is high for an average Malawian. The cost even increases while an individual makes visits to the offices to check on the progress of his or her license application. By the time one gets the license, the overhead costs could be even more than the fee for the license itself.

References:

Sydney Kankuzi Coordinator, Media Studies, 14 September 2009, University of Malawi

Mavuto Bamusi Director, HRCC, 20 September 2009, Lilongwe

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

50

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | **50** | 25 | 0

Comments:

The government has created some barriers to the formation of the broadcast media entity in the sense that its Malawi Communications Regulatory Authority (MACRA) places an advertisement seeking applications for the license based on coverage. Thus, the ad could be placed in either a community, district, a region, or the nation. MACRA awards the license to a firm that has shown the ability to operate the broadcast entity. The arrangement is more or less like that of tender.

Section 20(4) of the Communications Act 1998, provides the authority (MACRA) shall communicate its decision on an application for a license within six months of receipt of the application. However, in practice it takes longer, for instance, Joy TV submitted applications for a license in February 2009 but no communication has been received from MACRA by December 2009.

In essence, individuals who want to operate a TV and radio broadcast stations have to wait for a long period to before they are granted the license from MACRA.

In the case of Joy TV, it is perceived that MACRA is reluctant to issue the license because Joy TV would hold unfavourable opinions against the government since it is associated with the UNnited Democratic Front (UDF) and owned by the former President Dr Bakili Muluzi who is also the chaiperson of the opposition UDF. The relationship between the former president and the iincumbent (president Bingu wa Mutharika) has soured since 2005. The incumbent broke away from the UDF, a party which sponsored him during the 2004 Presidential Elections, to form his Democratic Progressive Party (DPP) which is currently ruling. He alleged that the UDF leadership was corrupt.

References:

Sydney Kankuzi Coordinator, Media Studies, 14 September 2009, University of Malawi

Mavuto Bamusi Director,HRCC, 20 September 2009, Lilongwe

Jacob Jimu, Journalist,The Nation, 30 September, 2009, Blantyre

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

Comments:

In the run up to the 19 May 2009 Presidential and Parliamentary Elections, Joy Radio was besieged by police and forced to close down. It was alleged that the radio continued to broadcast campaign materila for UDF and other opposition political parties such as the Malawi Congress party (MCP) which were against the incumbent and his DPP after the offical campaign period was over. The license was withdrawn by MACRA, however, the matter was refered to the High Court where it was held that MACRA should allow Joy radio to resume its operations; it was also ruled that MACRA should pay close to USD 1.4 million (Malawi Kwacha 14 million) as damages.

References:

Section 19 (2) of the Communications Act 1998 stipulates that any person dissatisfied with the decision may have recourse to the High Court. The case of JOY Radio and Malawi Communications Regulatory Authority (MACRA) illustrates this point.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Communications Act of 1998 provides for a period of three months as the time for which a broadcast media license should be issued to an applicant.

References:

Sydney Kankuzi Coordinator Media Studies, 14 September, University of Malawi

Hassan Nkata, Producer, Malawi Broadcasting Cooperation (MBC), 11 September 2009, Blantyre

Tailos Bakili, Programme Manager, Joy Radio 11 September, 2009, Blantyre.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Broadcast licenses are expensive for an average Malawian. For example, for a TV license one is required to pay US\$ 5230.00 annually, and US\$ 720.00 per frequency. The application for licenses are only done after MACRA request for application through an advert. MACRA scrutinises the applications and assesses the capacity in terms of finances, personnel, skills and equipment etc to determine whether the applicant should be granted the license or not. Ideally, unsuccessful applicants are supposed to be informed within six months but in practice, MACRA takes longer.

References:

Tailosi Bakili, Programme Manager, Joy radio, 11 September 2009, Blantyre

Hassan Nkata, Producer, MBC, 11 September 2009, Blantyre.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

75

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government is liberal regarding the access to Internet in the sense that it does not prevent people from accessing websites.

References:

Michael Sibale, IT Officer, 17 September 2009, University of Malawi.

Jaco Jimu, Journalist, The Nation, 30 September, 2009, Blantyre.

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | **50** | 25 | 0

Comments:

People can upload stories that reflect their interests, including those that are anti-government. Instead of blocking the website servers of the sites, the government intimidates e-newspaper editors and journalists.

For example, during the 2009 campaign, the government expressed concern over the conduct of Nyasatimes and pointed it out that it has the capacity to hit back even to the extent of crippling the operations of the website. However, government did not take action apart from the verbal warnings and intimidatory speech by officials regarding the reporters. The Nyasatimes continues to be accessible to date.

References:

Blessings Khungwa, Senior Local Government Officer, 10 September 2009, Lilongwe

Michael Sibale, IT Officer, 17 September, 2009, University of Malawi

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Section 36 of The Constitution of the Republic of Malawi stipulates that the press shall have the right to report and publish freely, within Malawi and abroad, and to be accorded the fullest possible facilities for access to public information.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Stories of corruption are reported accurately. The public has been updated frequently on the high-profile cases involving ex-ministers and a former head of state.

References:

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

Treaser Kasawla, Journalist, Blantyre Newspapers, 30 September 2009, Blantyre

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk

to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The government generally does not intervene with newsroom issues. However, in cases where it has a strong stake, it indirectly withdraws or threatens to withdraw the advertising that the media companies rely on for survival.

The news papers such as The Nation and The Daily Times carry articles including those very critical of government policy, for example, reporters have analysed the composition of the cabinet and raised concerns about the incumbent's tendency to appoint many of his tribesmen or kinsmen into ministerial positions and top offices in the public service. It was established that about 38% of cabinet ministers are from the incumbent's home area. The papers have also carried reports that are against government policy and revealing the rampant corrupt practices in some government agencies such as the Immigration Offices and Road Traffic Commission. However, government has not censored such publications.

References:

Michael Chasukwa, Lecturer, Media Studies, 14 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

15

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Section 48(7) of the Malawi Communications Act of 1998 provides that no broadcasting license shall be issued to any association, party, movement, organisation, body or alliance which is of a party-political nature.

References:

The print media companies are not required to publicly disclose their ownership. However, politicians are barred from owning print media companies by law (Jacob Jimu, Journalist, 30 September 2009).

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

References:

The broadcast media companies are not required to publicly disclose their ownership. However, politicians are barred from owning broadcast media companies by law (Jacob Jimu, September 2009).

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

Comments:

The public, including politicians, has complained that journalists are sometimes biased and write stories aimed at character assassination, as directed by their paymasters. The ruling party has complained a number of times that journalists on the payroll of the opposition political parties have written negative stories about them. The government has criticized journalists for poor coverage of positive stories relating to development projects.

Some reporters are checkbook journalists who will readily cover any story if the source is ready to bribe” or pay them money. At times, inaccurate stories are published in order to sell newspapers. There have been cases where journalists or reporters have been sued for neglecting their professional ethics.

References:

Sydney Kankuzi Coordinator, Media Studies, 30 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | **25** | 0

Comments:

During the most recent election, media companies were biased toward their political masters; public media companies reported favorably on the ruling party (government) but reported nothing on opposition leaders; private media houses reported negatively on their political masters' rivals.

In the May 2009 elections, three institutions, namely, the Media Council of Malawi, the Electoral Commission, and the Malawi Communications Regulatory Authority (MACRA), a government agency, monitored the campaign coverage and they all indicated that MBC and TVM gave 100% favourable coverage to the incumbent and the DPP and reported negatively about the other parties particular the UDF and MCP. Similarly, the private media houses specifically Joy Radio gave 100% favourable coverage for the opposition UDF and MCP parties and reported negatively about the incumbent party -the DPP.

References:

Michael Chasukwa, Lecturer, Media Studies, 17 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 30 September 2009,,Blantyre.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

It is an open secret that government uses the state media to their advantage. Despite being urged a number of times by both domestic and international actors to open up the airwaves, it has not done so.

The government has said that the state media exists to promote the government's development agenda and not for the opposition to campaign against it. In the 2009 elections, the Media Monitoring Unit of the EU stated that the state-owned media (Malawi Broadcasting Corporation [MBC] and Malawi Television) spent about 98 percent of its news coverage on events relating to the Democratic People Party's (the ruling party). The other 2 percent of airtime focused on negative news relating to opposition political parties.

References:

Happy Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There is no documentation of journalists being imprisoned for investigating corruption.

References:

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

Treaser Kasawala, Blantyre newspapers, 30 September, 2009, Blantyre

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There is no documentation of journalists being physically harmed for investigating corruption.

References:

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

Michae Chasukwa, Lecturer, Media Studies, 30 September 2009, University of Malawi

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

No journalists were killed for investigating corruption.

References:

Happy Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

Mavuto Bamusi Director, HRCC, 20 September, 2009, Lilongwe

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

69 I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Section 37 of the Constitution of the Republic of Malawi states that subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

References:

There is no law providing the right of appeal if access to a basic government record is denied.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

However, some government records can be obtained on the government website without following formalities. For instance, records such as presidential speeches, statistics, policies, legislation and information regarding governance institutions and government ministries and departments.

References:

Ministry of Information, Central Information Office, provide formal mechanisms through which citizens can request government records.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

42

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Provision of information is at the discretion of the government officials most of the time. Getting government records may take two months or even more.

References:

Manyetera, District Commissioner, 10 September, 2009, Balaka

Happy Kayuni, Senior Lecturer, 30 September, 2009, University of Malawi

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The access to information mechanism is inexpensive.

References:

Charles Thombozi, District Commissioner, 10 September 2009, Salima

Happy Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Information requests regarding sensitive issues do not result in clear and sufficient information. The replies are vague. If the information is deemed to have the potential of discrediting the image of government, it is not easily released by government officials.

References:

Happy Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

Treaser Kasawala, Blantyre Newspapers, 30 September 2009, Blantyre

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Because of bureaucracy, it takes time to appeal access to information requests. This is because of a constitutional provision and is not based on an act of Parliament or other statutes. The Access to Information Bill is yet to be tabled in Parliament.

References:

Sydney Kankuzi Lecturer, Media Studies, 17 September 2009, University of Malawi

Michael Chasukwa, Lecturer Media Studies, 17 September 2009, University of Malawi

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Lawyers are so expensive that even middle-class people cannot get access to appeals to information requests.

However, people have the option of using the government lawyers through the Legal Aid Department, which is free of charge. But the high demand for Legal Aid lawyers means the appeals are delayed. And although it is said that Legal Aid services are free, the indirect costs (e.g., transport, lunch allowances) are met by the client.

References:

Chunga, Political Science Lecturer, 11 September, 2009, University of Malawi, Zomba.

Mussa Chimbende, Executive Officer, Muslim Association in Malawi (NGO), 9 September 2009, Zomba.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

Reasons for denying an information request are usually given. It all depends on the officer who is providing the information. In some cases, an individual is made to go from office to office so, by the end of the day, he or she gives up on trying to find a reason why their request was denied.

References:

Michael Chasukwa, Lecturer, Media Studies, 17 September 2009, University of Malawi.

Jacob Jim, Journalist, The Nation, 30 September 2009, Blantyre.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁸Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Universal and equal adult suffrage is guaranteed to all citizens. Section 40 (3) of the Constitution of the Republic of Malawi states that save as otherwise provided in this Constitution, every person shall have the right to vote, to do so in secret and to stand for election for public office.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Section 67 (1) of the Constitution of the Republic of Malawi states: The National Assembly shall stand dissolved on the 20th of March in the fifth year after its election, and the polling day for the general elections for the next National Assembly shall be the

Tuesday in the third week of May that year. Provided that where it is not practicable for the polling to be held on the Tuesday in the third week of May, the polling shall be held on a day, within seven days from that Tuesday, appointed by the Electoral Commission. And provided further that, in the case of the elections to be held in 1999, the polling shall be held on a day, not later than 15th June, 1999, appointed by the Electoral Commission.”

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

All adult citizens who have attained the age of 18 can vote as it is the law.

Happy Kayuni, Senior Lecturer, University of Malawi, 30 September 2009

References:

Republic of Malawi Constitution, Chapter 14

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are protected before and after the polling. Rumors about tampering with the ballot boxes before and after the elections

have circulated in almost every election, but they have not been substantiated.

References:

The Nation, Reporter, 16 May 2009

The Daily Times, 16 May 2009

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | **50** | 25 | 0

Comments:

The Presidential and Parliamentary elections, which are held on the same day, have followed their schedule. Where there have been changes, the laws have been followed.

However, the Local Government elections have not followed their schedule. The last local government elections were held in 2000. These elections were due to be held in 2005 but, as of now, have not been conducted. Right now, it seems that uncertainty will remain regarding when these elections will be held.

References:

The Nation, Reporters, May 2009

The Daily Times, May 2009

H. Kayuni, Senior Lecture, University of Malawi, 30 September 2009, Zomba

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

75

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Section 40 (1) (a) of the Constitution of the Republic of Malawi stipulates that, subject to this Constitution, every person shall have the right to form, to join, to participate in the activities of, and to recruit members for, a political party.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Section 40 (1) (c) of the Constitution of the Republic of Malawi stipulates that: Subject to this Constitution, every person shall have the right to participate in peaceful political activity intended to influence the composition and policies of the Government.”

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Any citizen can form a political party, but problems come with registering them. An applicant needs 100 signatures from supporters and money for the registration. The Registrar of Political Parties makes a final decision on whether or not to register the party.

References:

A. Mussa, Programme Manager, Democracy Consolidation, 20 September, 2009, Lilongwe

P. Chunga, Lecturer in Politics, University of Malawi, 30 September, 2009

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

A number of forces exclude some people from running for a political office. Political parties (in particular, those practicing neo-patrimonialism) do not permit everyone to run for office in an election but prefer to impose their own favorite candidates

Also, the cost of running a campaign is so high as it is politics of the belly that the electorate wants.

The registration fee for the parliamentary and presidential candidates is also high by Malawian standards.

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | **50** | 25 | 0

Comments:

The opposition parties have some influence in the discussion or policies of government. The influence of the opposition is limited considering that the ruling party has 114 seats in the National Assembly of 193 candidates. The ruling party wins on decisions decided by a simple majority and two-thirds as it have the support of almost all independent Ministers of Parliament.

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 20 September, 2009, Blantyre

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

80

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Section 76 (4) of the Constitution of the Republic of Malawi stipulates that: The Electoral Commission shall exercise its powers, functions and duties under this section independent of any direction or interference by other authority or any person.”

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Appointments to the Electoral Commission are based on professional standards, especially for the technical personnel. The Electoral Commission is chaired by an individual who is a judge nominated by the Judicial Service Commission (Section 75 (1) of the Constitution of the Republic of Malawi).

Appointments for the other Commissioners, who are not supposed to number less than six, are appointed by the president in principle after consultation with other political parties. This is where political loyalty affects the independence of the Electoral Commission. The court case was heard in which opposition political parties questioned why they were not consulted regarding commissioners for the 2009 Elections. This lack of consultation undermined the credibility of those who were appointed to a certain extent, although eventually the opposition acknowledged them.

References:

P. Chunga, Lecturer (Politics), 2 September, 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 20 September, 2009, Blantyre

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Commission has a full-time staff that is well qualified and trained. Temporary employees are hired during election season.

References:

A. Mussa, Programme Manager, Democracy Consolidation Programme (DCP), 2 September 2009, Lilongwe

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Reports following an election cycle are produced and published, although there is some delay.

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Electoral Commission imposes penalties on offenders but it is dormant on state-owned media outlets that are biased toward the government.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

83

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There is enough time to register voters and check the accuracy of their information. However, some problems that often occur include delay in the delivery of registration materials and shortage of personnel in some polling centers.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Section 76 (3) of the Constitution of the Republic of Malawi stipulates that: Any person who has petitioned or complained to the Electoral Commission shall have a right to appeal to the High Court against determination made under subsections (2) (c) and (2) (d)."

Again Section 75 (5) (a): "Without prejudice to subsection 75 (3), the High Court shall have jurisdiction to entertain applications for judicial review of the exercise by the Electoral Commission of its powers and functions to ensure that such powers and functions were duly exercised in accordance with this Constitution or any Act of Parliament."

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

The 1999, 2004, and 2009 election results were contested in courts. The courts in all of these cases confirmed the results announced by the Electoral Commission. Some appeals and injunctions were aimed at delaying the electoral process. The courts have thrown out a number of the cases due to lack of merit.

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

There are no reports that indicate that military and security forces interfered with the electoral process to the advantage of one party.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or

candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Journalists for The Nation and Daily Times have reported on the presence and activities of international election observers and monitors from European Union, Africa Union and the South African Development Community regional body although there is no explicit law regarding them.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Election observers operate in a free environment. Malawi has hosted the Commonwealth, the South African Development Community, the European Union and United Nations observers among others.

References:

A. Mussa, Programme Manager, Democracy Consolidation Programme (DCP), 2 September, 2009, Lilongwe

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

Section 75 (1) of the Constitution of the Republic of Malawi stipulates that: There shall be an Electoral Commission which shall consist of a Chairman who shall be a judge nominated in that behalf by the Judicial Service Commission and such other members, not being less than six, as may be appointed in accordance with an Act of Parliament."

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

88 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

There are no limits on on individual donations to political parties.

References:

H Kayuni, Senior Lecturer, 30 September 2009; there no limits stated.

Constitution and Statutes are silent on individual donations to political parties.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | **NO**

References:

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi: The constitution and Statutes are silent on individual donations to political parties.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | **NO**

References:

M Chasukwa, Lecturer

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi, indicated that the law is silent on individual donations to political parties.

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

References:

H Kayuni, Senior Lecturer, 30 September, 2009, indicated that there are no requirements for the disclosure of donations to political parties.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | **NO**

References:

M Chasukwa, Lecturer, 15 September 2009;

W Chkalimba, former UDF MP, 12 September 2009: The independent auditing of the finances and expenditures of political parties are initiated by the parties themselves but not enforced by any law.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | **NO**

References:

W Chikalimba, former UDF MP 12 September 2009, corroborated by M Chasukwa, Lecturer, University of Malawi on 15

September 2009: There is no any auditing agency for political parties.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

W Chikalimba, former UDF MP, 12 September 2009, Zomba, stated that there is no law governing the financing of individual political candidates.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

References:

W Chikalimba, former UDF MP, 12 September 2009, Zomba: No law exists limiting corporate donations to individual political candidates.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi: No law exists that requires the disclosure of donations to individual political candidates.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | **NO**

References:

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi: No law demands the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

WC Chirwa, Professor, University of Malawi, 30 September 2009: There is currently no agency that monitors the financing of individual political candidates' campaigns.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

4

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no limitations individual donations to political parties.

References:

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi, Zomba

S Jambo, Executive Director, MAM, 2 September 2009, Balntyre.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Many corporate donations to political parties are made informally, as such there is no limit on them.

References:

A Mussa Programme Manager, DCP, 2 September 2009

WC Chirwa, Professor, 30 September 2009, University of Malawi, Zomba

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

No limits are placed on the expenditures of political party.

References:

A Mussa, Programme Manager, DCP, 2 September 2009, Lilongwe

WC Chirwa, Professor, 30 September 2009, University of Malawi-Zomba

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Parliament rarely does the auditing of the financing of political parties. The view is that audits target opposition political parties in an effort to cripple them financially by withholding funding when malpractices is discovered.

Investigations are conducted by fiscal police and the Anti-Corruption Bureau, since they are the only entities entrusted by the law to look into financial corrupt practices.

References:

A Mussa, Programme Manager, DCP, 2 September 2009

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no monitoring agency that can impose penalties regarding offenses relating to the financing of political parties.

References:

A Mussa, Programme Manager, DCP, 2 September, 2009, Lilongwe

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi-Zomba

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

Audits of contributions to political parties are not carried out. However, the Anti-Corruption Bureau may move in if there are allegations of corruption.

References:

H Kayuni, Senior lecturer, 30 September 2009, University of Malawi

S Jambo, Executive Director, MAM 2 September 2009, Blantyre.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits on individual donations to political candidates.

References:

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi

S Jambo, Executive Director, 2 September 2009, Blantyre

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

There are no limits on corporate donations to individual candidates.

References:

H Kayuni, Senior Lecturer, 30 September 2009, University of Malawi-Zomba

S Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual

candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no agency for monitoring the financing of individual candidates' campaigns.

References:

M Chasukwa, Lecturer, 15 September 2009, University of Malawi-Zomba

S Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no agency that can impose penalties on offenders regarding the financing of individual candidates' campaigns.

References:

M Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S Jambo, Executive Director, MAM, 2 September, 2009, Blantyre

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There are no reported audits of the finances of individual candidates' campaigns. The media have only carried articles question sources of funds for some parties. For instance, they questioned the source of funds for incumbent Bingu wa Mutharika's DPP in view of the lavish campaign that was mounted in the run up to 19 May 2009. The campaign involved a display of the expensive Hummers; buses, t-shirts, caps etc. However, no reported audit was carried out.

References:

W Chikalimba, former UDF MP, 14 September 2009, Zomba

H Kayuni, Senior lecturer, 30 September 2009, University of Malawi (UNIMA) Zomba

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Parties do not disclose their financial reports at all.

References:

H Kayuni, Senior Lecturer, 30 September 2009

J Jimu, Journalist, The Nation, 30 September 2009

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Parties do not disclose their financial reports at all.

References:

H Kayuni, Senior Lecturer, 30 September, 2009, UNIMA-Zomba

S Jambo, Executive Director, 2 September 2009, Blantyre

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of political parties are not available to public.

References:

S Jambo, Executive Director, MAM, 2 September 2009

J Jambo, Journalist, The Nation, 30 September 2009

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

No records of political parties' finances have been made public.

References:

S Jambo, Executive Director, MAM, 2 September 2009

J Jimu, Journalist, The Nation, 30 September 2009

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Individual political candidates do not disclose their expenditures.

References:

M Chasukwa, Lecturer, 15 September 2009, UNIMA-Zomba

S Jambo, Executive Director, MAM, 2 September 2009, Blantyre

J Jimu, Journalist, The Nation, 30 September, Blantyre

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regularly withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Candidates are always suspicious when someone asks to access their financial records.

References:

W Chikalimba, former UDF MP, 12 September, 2009, Zomba

S Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no records of the finances of individual candidates.

References:

H Kayuni, Senior lecturer, 30 September 2009, UNIMA-Zomba

S Jambo, Executive Director, MAM, 2 September 2009

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

No records political candidates' campaign finances are available.

References:

M Chasukwa, Lecturer, 15 September 2009, UNIMA- Zomba

S Jambo, Executive Director, MAM, 2 September, 2009, Blantyre

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ~~66~~ Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

69

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

From my interviews: The president and his cabinet members hold press conferences where they respond to the queries from the media. They also issue ministerial statements on issues of interest to the public.

However, the media has often been accused of focusing on the negative acts of the government.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi

Jaco Jimu, Journalist, The Nation 30 September 2009

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Two sections in the Republic Constitution of Malawi are important here: Section 9 which states that The judiciary shall have the responsibility of interpreting, protecting, and enforcing this Constitution and all laws and in accordance with this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.”

Section 108 (2) points out that “The High Court shall have original jurisdiction to review any law, and any action or decision of the Government, for conformity with this Constitution, save as otherwise provided by this Constitution and shall have such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.”

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

From my interviews: After firing the Principal Secretaries and Malawi Revenue Authority, the court ordered the government to compensate them. The Section 65 case indicates the level of autonomy that the judiciary has. Generally, the judiciary undertakes the reviews objectively. In isolated cases, some judges were perceived to be influenced by the chief executive.

References:

H.Kayuni, Senior Lecturer, UNIMA, Zomba 30 September 2009

S. Jambo, Executive Director, 2 September 2009, Blantyre

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

The chief executive sometimes uses executive powers to make new regulations and policies. This is especially where the he or she faces resistance from the opposition parties.

For instance, the president used his powers to enforce the fertilizer subsidy that was targeted to benefit a selected group, while the opposition called for a universal fertilizer subsidy where all would benefit.

References:

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

M. Chaukwa, Lecturer, 15 September 2009

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

The head of state can be prosecuted for the crimes they commit. This power is limited as shown in Section 91 (1) (2) of the Constitution of the Republic of Malawi.

Section 21 (1) stipulates that: No person holding the office of President or performing the functions of President may be sued in any civil proceedings but the office of President shall not be immune to orders of the courts concerning rights and duties under this Constitution.

In Section 91 (2), the law states that, "No person holding the office of President shall be charged with any criminal offence in any court during his (or her) term of office."

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Section 91 of the Constitution of the Republic of Malawi only provides immunity for the president and there is no law that provides immunity to ministers. They are only protected when they are going to parliament or they are in parliament premises.

J. Jimu, Journalist, The Nation, 30 September 2009

M Chasukwa, Lecturer, University of Malawi-Zomba, 15 September 2009: Ministers can be prosecuted for crimes they commit. For example, the Honorable Mwawa, who was a minister and an MP, was convicted for abuse of office.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

50

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

The Constitution of the Republic of Malawi Section 88 A (1) stipulates that the President and members of the Cabinet shall not hold any public office and shall not perform remunerative work outside the duties of their offices and shall, within three months from the date of election or appointment, as the case may be, fully disclose all of their assets, liabilities and business interests, and those of their spouses, held by them or on their behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing orders of Parliament.”

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

The Constitution of the Republic of Malawi Section 88 A (1) stipulates that the President and members of the Cabinet shall not hold any public office and shall not perform remunerative work outside the duties of their offices and shall, within three months from the date of election or appointment, as the case may be, fully disclose all of their assets, liabilities and business interests, and those of their spouses, held by them or on their behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing orders of Parliament.”

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

The Corruption Practices Act regulates the gifts and hospitality offered to members of the executive branch.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

The Constitution of the Republic of Malawi Section 88 A (1) stipulates that There shall be a Committee of Parliament appointed by the National Assembly which shall have the function of monitoring the compliance with the requirement on the disclosure of assets under section 88 (A) and under this section and the Committee shall have all powers necessary to perform its function.”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

M Chasukwa, Lecturer, 15 September 2009, UNIMA-Zomba: No law exists on barring the heads of state and government and

ministers from entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, 30 September 2009, UNIMA-Zomba

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre: The former heads of state and government are not restricted regarding post-government private sector employment and the law is silent on this issue.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, 30 September 2009, UNIMA-Zomba

S. Jambo, Executive Director, MAM, 2 September 2009: Perceptions are that no law governing gifts and hospitality offered to members of the executive branch would effective.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, 15 September 2009, UNIMA-Zomba

J. Jimu, Journalist, The Nation, 30 September 2009, Blantyre: There are no reported cases of auditing of executive branch asset disclosures.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

25

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

A general law exists under Section 37 of the Constitution of the Republic of Malawi which stipulates that Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.”

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, Lecturer, 15 September 2009

J. Jimu, Journalist, The Nation, 30 September 2009: Accessing the asset disclosure records of the heads of state and government takes much time (more than two months in some cases) due to the bureaucracy and a lack of trust.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, 15 September 2009, UNIMA-Zomba

S. Jambo, Executive Director, 2 September 2009, Blantyre

The asset disclosure records of the heads of state and government are difficult to access due to financial and travel costs.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

S. Jambo, Executive Director, 2 September 2009,

J. Jimu, Journalist, The Nation, 30 September 2009: The asset disclosure records of the heads of state and government have not been made available for public analysis.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Section 41 (3) of the Constitution of the Republic of Malawi: Every person shall have the right to an effective remedy by a court of law or tribunal for acts violating the rights and freedoms granted to him by this Constitution or any other law.”

Section 46 (2) (a) (b) of the Constitution of the Republic of Malawi: “Any person who claims that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to make application to a competent court to enforce or protect such a right or freedom and to make application to the Ombudsman or the Human Rights Commission in order to secure such assistance or advice as he or she may reasonably require.”

Section 46 (4) of the Republic Constitution: “A court referred to in subsection (2) (a) shall have the power to award compensation to any person whose rights or freedoms have been unlawfully denied or violated where it considers it to be appropriate in the circumstances of a particular case.”

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

There is strong linkage or interaction between the political party and the government to the extent that the line that demarcates the two is blurred. The government uses the para-state resources for political party activities.

A number of times, the government has been accused of using government vehicles and public media outlets for partisan activities — for example, to take people to political events and for political party propaganda.

References:

Reporters for Daily Times and The Nation

J. Jimu, Journalist, 30 September 2009;

M Chasukwa, Lecturer, UNIMA-Zomba, 15 September 2009

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

In the Constitution of the Republic of Malawi under Section 108 (2), it is stipulated that: The High Court shall have the original jurisdiction to review any law, and any action or decision of the Government for conformity with this Constitution, save as otherwise provided by this Constitution and shall have such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.”

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

References:

Reports in the Daily Times, The Nation, 2008.

J. Jimu, Journalist, 30 September 2009: The judiciary does an effective job of reviewing the laws. For example, Section 65 of the Constitution was declared valid after the president queried it on the pretext that it contradicted the spirit of of the constitution of freedom of assembly.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Members of the Parliament are subject to criminal proceedings. In terms of immunity, Section 60 (1) has it that The Speaker, every Deputy Speaker and every member of the National Assembly shall, except in cases of treason, be privileged from arrest while going to, returning from or while in the precincts of the National Assembly and shall not, in respect of any utterance that forms part of the proceedings in the National Assembly, be amenable to any other action or proceedings in any court, tribunal or body other than Parliament.”

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Section 213 (1) (a) of the Constitution of the Republic of Malawi stipulates that: In addition to the President and members of the Cabinet as provided by section 88 (A) , the holders of the following offices, that is to say, a member of the National Assembly, shall, within three months from the date of his or her election, nomination or appointment, as the case may be, fully disclose all or his or her assets, liabilities and business interests and those of his or her spouse held by him or her or on his or her behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing Orders of Parliament.”

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

W Chikalimba, former United Democratic Front (UDF) Member of Parliament (MP), 14 September 2009: There are no restrictions for national legislators entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

The Corruption Practices Act restricts gifts and hospitality offered to members of the national legislature.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

Section 213 (1) (a) of the Constitution of the Republic of Malawi stipulates that: There shall be a Committee of Parliament appointed by the National Assembly which shall have the function of monitoring the compliance with the requirement on the disclosure of assets under section 88 (A) and under this section and the Committee shall have all the powers necessary to perform its function. Again, Anti-Corruption Bureau can move in when the case on assets is bordering on corruption.”

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

W. Chikalimba, former MP, 14 September 2009

S. Jambo, Executive Director, MAM, 2 September 2009: There are no restrictions on post-government private sector employment for national legislators.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, UNIMA, 30 September 2009

S. Jambo, Executive Director, MAM, 2 September 2009: There are no regulations governing gifts and hospitality offered to national legislators.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Section 213 (4) of the Constitution of the Republic of Malawi stipulates that there shall be a committee of parliament appointed by the National Assembly which shall have the function of monitoring the compliance with the requirement on the disclosure of assets and the committee shall have all the powers necessary to perform its function.

Most legislators have not disclosed their assets and, in practice, audits are incomplete.

References:

H. Kayuni, Senior Lecturer, 30 September 2009, UNIMA-Zomba.

S. Jambo, Executive Director, MAM, 2 September 2009.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

25

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Under the Section 37 of the Constitution of the Republic of Malawi, it is possible for the public to access the asset disclosure records of members of the national assembly. The relevant section 37 states that: Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.”

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Legislators do not submit their asset disclosure forms on time. It takes time to access them because they are not on-line. There is complacency on the part of officials in regards to giving out information to the public. They are not in hardcopy form and it is hard to locate any copies. Delays occur due to the rigidity and bureaucratic tendencies of the responsible institutions.

For this reason, Section 19(1) of the Special Law Commission has recommended that any listed public officer (this includes legislators) who without reasonable cause, fails to submit the required declaration be dismissed from public office.”

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi

S. Jambo, Executive Director, MAM, 2 September 2009

MPs Lose Seats for not Declaring Assets," The Nation, 30 October 2009.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, Lecturer, UNIMA-Zomba.

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre: It takes time to access legislative asset disclosure records and the indirect costs are high and prohibitive.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Members of the legislature tend to have less interest in disclosing their complete asset disclosure records. They choose what to disclose and what to hold in secret.

References:

M. Chasukwa, Lecturer, UNIMA, 15 September, Zomba;

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

50

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Section 56 (4) of the Constitution of the Republic of Malawi holds that: The National Assembly shall provide access to the press and members of the public, except where a motion is passed with reasons prohibiting public access in the national interest.

Section 37 of the Constitution of the Republic of Malawi can also be used by the public to access the records of legislative processes and documents. Section 37 states that: "Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights."

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior lecturer, UNIMA, 30 September 2009 Zomba

J. Jimu, Journalist, The Nation, 30 September, 2009: It takes much time to get the records of legislative processes and documents because of the bureaucracy and suspicious bureaucrats. They are of the view that the information given will be used against them.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The records are mostly centralized in the Parliamentary Building in the capital city. To get to them involves traveling long distances, incurring your own travel costs, meeting accommodation expenses, photocopying, food. There are also time-consuming appointments with relevant officials who have particular records and these meetings are often postponed on the pretext of busy schedules.

References:

M. Chasukwa, lecturer, UNIMA, 15 September 2009, Zomba

S. Jambo, Executive Director, MAM 2 September 2009, Blantyre,

J. Jimu, Journalist, The Nation, 30 September 2009, Blantyre: The indirect costs of accessing records of legislative processes and documents make the whole process expensive.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55
III-3. Judicial Accountability

36. Are judges appointed fairly?

100

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Section 111 (1) (2) of the Constitution of the Republic of Malawi states that The Chief Justice shall be appointed by the President and confirmed by the National Assembly by a majority of two-thirds of the members present and voting. All other judges shall be appointed by the President on the recommendation of the Judicial Service Commission.”

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Procedures for selecting national-level judges are followed. The National Assembly, in particular, pays attention to the details of professional experience and training and even goes beyond these dimensions in their scrutiny.

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Section 111 (1) (2) of the Constitution of the Republic of Malawi highlights that The Chief Justice shall be appointed by the President and confirmed by the National Assembly by a majority of two-thirds of the members present and voting. All other judges shall be appointed by the President on the recommendation of the Judicial Service Commission.”

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

92

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Supreme Court of Appeal Act Section 27 (a) and 28 (2) provides for giving a certified copy of decisions and not a specific reason

or rationale behind the decision.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

They always formally provide explanations and sign judgments with corresponding penalties found in the laws. All court judgments and proceedings are in writing.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Section 116 of the Constitution of the Republic of Malawi establishes the Judicial Service Commission which stipulates that There shall be a Judicial Service Commission for the regulation of judicial officers and which shall have such jurisdiction and powers as may be conferred on it by this Constitution or, subject to this Constitution, by any Act of Parliament. Under Section 118 (b) (c), the Judicial Service Commission has the authority to “exercise such disciplinary powers in relation to persons in judicial office as shall be prescribed by an Act of Parliament, subject to this Constitution; (c) recommend, subject to section 119, the removal of a person from judicial office.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Section 103 of the Constitution of the Republic of Malawi states that All courts and all persons presiding over those courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority.”

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi

Jacob Jimu, Journalist, The Nation, 30 September, 2009, Blantyre

Pressure from the external sectors, in particular, Civil Society Organizations, makes the Judicial Service Commission act on the alleged malpractices.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or

equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Penalties are imposed only that in recent times there have not been cases warranting penalties.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

50

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Section 213 (1b) of the Constitution of the Republic of Malawi requires members of the national-level judiciary to file an asset

disclosure form.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

The Corrupt Practices Act section 24 (1) regulates gifts and hospitality of the judiciary.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

P Chunga, Lecturer, UNIMA 18 September 2009:

The law is silent on requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

M. Chasukwa, Lecturer, UNIMA, 15 September 2009, Zomba:

Laws are silent on restrictions for national-level judges entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

No reports regarding enforcement of regulations restricting post-government private sector employment for national-level judges.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Reporters, Daily Times, The Nation 2008

J. Jimu , Journalist, The Nation, 30 September, 2009, Blantyre

Judge Mkandawire denied an offer by a businessman to build him a house when he was handling his case. Justice Twea returned the money that former president Bakili Muluzi sent him as part of good will message when he was sick in the hospital.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

There are national-level judiciary asset disclosures audits only if there is a suspicion of corrupt practices. Recently there hasn't been such a case.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent

or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

38

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Section 37 of the Constitution of the Republic of Malawi states that Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.”

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

A. Mussa, Programme Manager, Democracy Consolidation Programme (DCP), 20 September, 2009, Lilongwe]

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Rigidity and bureaucracy means getting access to judicial asset disclosure records takes a long time.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

The indirect costs of accessing judicial asset disclosure records make the whole process expensive.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | **0**

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

The national-level judiciary is not under pressure to disclose everything. Some property may still be owned in secret.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

100

40a. In law, the legislature can amend the budget.

YES | NO

References:

Section 179(1) of the Constitution provides that the legislature may make provisions such for such an amendment and authorization.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Section 178 highlights that government spending requires the approval by the National Assembly.

W. Chikalimba, ex-UDF MP, 14 September 2009, Zomba confirmed this.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, UNIMA, .30 September 2009

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

Legislators have the capacity to monitor the budget process. The Finance and Budget Committee has qualified and experienced legislators who follow the budget process.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

83

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The budget sessions are adequately covered in the Daily Papers and live on the radio.

References:

J. Jimu, Journalist, The Nation, 30 September 2009

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

The government engages the citizens through the CSOs. The CSOs include professional bodies and academics. They are called on for pre-budget meetings and post-budget meetings to provide input.

References:

M. Chasukwa, Lecturer, UNIMA, 15 September 2009, Zomba

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

It is possible to access the itemized budget, but only after making a great effort. The procedures are frustrating, as an individual is pushed from one office to another.

References:

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

M. Chasukwa, Lecturer, UNIMA, 15 September 2009, Zomba.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

50

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, UNIMA, 30 September 2009, Zomba

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

The controlling officers most often do not observe the due dates for submitting reports. There have been cases where the financial returns have not been presented, and in cases where they are, the information is scanty and inconsistent.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | **50** | 25 | 0

References:

The opposition in parliament is in the minority. Most of the parliament members are from the ruling party. The key positions, chairperson and vice-chairperson, are filled by the members from the ruling party. This compromises the discussion and the checks-and-balances role of the committee.

M. Chasukwa, Lecturer, UNIMA, 15 September 2009

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | **50** | 25 | 0

Comments:

Investigations into financial irregularities have been carried out. The problem is that they take too long to be conclusive. The results are not usually readily made public. Investigative journalism by the Nation and Daily Times (newspapers) have, however, often made revelations.

References:

M. Chasukwa, Lecturer, UNIMA, 15 September 2009

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Section 56 (7) of the Constitution of the Republic of Malawi stipulates that: In addition to any committee appointed under subsection (6), there shall be a Public Appointments Committee, a Budget Committee and a Legal Affairs Committee of the National Assembly.”

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

IV-1. Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

The Malawi Public Service Act requires the civil service to be impartial and independent.

Section 193 (4) of the Constitution of the Republic of Malawi establishes independence of the civil service.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Section 123 (1) empowers the Ombudsman to investigate all cases of maladministration and injustice.

The Corruption Practices Act and the Malawi Public Service Act also proscribe against these acts.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

Section 123 (1) of the Constitution of the Republic of Malawi: The office of the Ombudsman may investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy.”

Section 188 (2) (b) (i) (ii) of the Constitution of Malawi states that “Where any person or body may from time to time exercise powers under this section on behalf of the Civil Service Commission, in accordance with subsection (1), the Civil Service Commission shall hear such complaints or appeals from persons with sufficient interest relating to the exercise of powers under this section and shall have the authority to quash such disciplinary powers in relation to such person or body, subject to the conditions laid down by an Act of Parliament.”

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism’s decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Section 34 of the Corruption Practices Act: The law is not clear regarding the prohibition against civil servants convicted of corruption gaining future government employment. It only mentions a term of 12 years imprisonment but is silent on whether, after serving the sentence, the individual can still get a job in the civil service.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

61

45a. In practice, civil servants are protected from political interference.

References:

Politics is involved in the work of the civil service. Civil servants are directed by operations on how to implement some public policies. Politicians want to influence the bureaucrats for the sake of winning popularity in the government popularity.

This is contrary to Section 193 (4) of the Constitution of the Republic of Malawi, which establishes the independence of the civil service: No government or political party shall cause any civil servant, acting in that behalf to deploy resources, whether they be financial, material or human resources, for the purposes of promoting or undermining any political party or member of a political party or interest group, nor shall any civil servant acting in that behalf cause such deployment, save as prescribed by this Constitution or an Act of Parliament consistent with the provisions of subsection (1).

H. Twabi, District Commissioner, 17 September 2009, Balaka

M. Chasukwa, Lecturer, UNIMA, 15 September 2009, Zomba

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

References:

For the technical positions at the lower and middle level of civil service, recruitment is more based on professionalism and an applicant's possession of required skills. However, for the top positions, it is more than technical expertise because politics also plays a major role.

H. Twalibu, District Commissioner, 17 September 2009, Balaka

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

References:

Nepotism, cronyism, and patronage play a role in human resources procedures. Factors not related to merit obviously play a part in the decision making processes on labor matters.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

There are clear job descriptions for civil servants, though some of them are not followed due to political influences.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

There are no bonuses for civil servants.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

The government itself keeps the number of authorized civil service positions along with the number of positions actually filled secret. This information is provided by independent researchers.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

Civil servants have benefited from the redress mechanisms that have been put into place, but executive bodies can exert some control. Nonetheless, the Industrial court and the Ombudsman have been effective in helping with the redress mechanism.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward

on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Except for a few teachers who, at times, receive their salaries a few days after the actual payday, most civil servants are paid on time.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Once junior officers become blacklisted, they tend to be denied future government employment, while senior officials may be transferred or deployed elsewhere.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

61

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

Section 213 (1) (b) of the Constitution of the Republic of Malawi stipulates that In addition to the President and members of the Cabinet as provided by section 88 (A) , the holders of the following offices, that is to say a public officer of such senior grade or position, within three months from the date of his or her election, nomination or appointment, as the case may be, fully disclose all or his or her assets, liabilities and business interests and those of his or her spouse held by him or her or on his or her behalf as at that date; and, unless Parliament otherwise prescribes by an Act of Parliament, such disclosure shall be made in a written document delivered to the Speaker of the National Assembly who shall immediately upon receipt deposit the document with such public office as may be specified in the Standing Orders of Parliament.”

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

The Malawi Public Service Act requires the civil servants to recuse themselves from the operations and activities in which they have personal interests.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

References:

No law exists that prevents civil servants from entering the private sector after they leave the government.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Section 24 (1) of the Corruption Practices Act regulates the gifts and hospitality offered to civil servants.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

Requirements for the independent auditing of the asset disclosure forms of senior members of the civil service are mentioned under the Malawi Public Service Act and Corruption Practices Act.

H. Twabi, District Commissioner, 17 September 2009, Balaka

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

There are no laws that restrict the employment of former civil servants in the private sector.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Laws that govern the gifts and hospitality offered to civil servants tend to be applied selectively. The victims are mostly the low-

ranked civil servants. If a case involves a senior servant who is receiving gifts and hospitality, then the case may have political connotations.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

References:

Some civil servants continue to participate in decision making processes in which they are pretty aware that they have vested interests.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

References:

The audits of civil service asset disclosures are rarely done and are limited due to the shortage of staff and the influence of the senior civil servants themselves.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

31

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Under Section 37 of the Constitution of the Republic of Malawi, Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information..."

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

It is difficult to get information on the assets of the civil servants in a reasonable period of time due to bureaucratic procedures. It is even more difficult and complicated to acquire information on assets for the civil servants who are politically connected.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Red tape and the need to travel several times to specific offices make the efforts to access the asset disclosure records of senior civil servants costly.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

The tendency to hide some important details or disguise some specific information regarding the asset disclosure records of senior civil servants exists.

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Section 51 (A) of the Corruption Practices Act provides protection to the people who report corruption cases.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

References:

In some cases whistle-blowers are vulnerable and are punished for disclosing information regarding corruption, graft, abuse of power, or abuse of resources. Their identity is disclosed, which angers the implicated individuals.

H. Twabi, District Commissioner, 17 September 2009, Balaka

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Section 51 A (2) of the Corruption Practices Act protects those private employees who report cases of corruption, graft, abuse of power, or abuse of resources from recrimination or other negative consequences.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

References:

In some cases where the identity of whistle-blowers become known, they tend to be vulnerable to attacks.

H. Kayuni, Senior Lecture, University of Malawi, 30 September 2009, Zomba;

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

References:

The Anti-Corruption Bureau has a full-time staff but complains of a shortage of lawyers and investigators.

H. Twabi, District Commissioner, 17 September 2009, Balaka

H. Kayuni, Senior Lecture, University of Malawi, 30 September 2009, Zomba

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | **50** | 25 | 0

References:

The funds for the Anti-Corruption Bureau are provided on a regular schedule, but they are insufficient. The prosecution, investigation, and the civic awareness activities of the bureau suffer because of a lack of sufficient funds.

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

H. Kayuni, Senior Lecture, University of Malawi, 30 September 2009, Zomba

J. Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

It takes time for the Anti-Corruption Bureau to act on cases, in particular those that involve big politicians in the Malawi society. Some cases have taken more than four years to be concluded. The public has always complained that the Anti-Corruption

Bureau targets the opposition political party members and low-ranked civil servants. The bureau is seen to be a means to weaken or silence the critics of government, specifically the opposition. The other concern is that the bureau bothers itself with low-profile cases that involve less money while it ignores high-profile cases that have involved more money.

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

H. Kayuni, Senior Lecture, University of Malawi, 30 September 2009, Zomba

J. Jimu, Journalist, The Nation, 30 September 2009, Blantyre.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | **50** | 25 | 0

References:

Investigations into corruption commence once tips are received.

S. Jambo, Executive Director, MAM, 2 September 2009, Blantyre

H. Kayuni, Senior Lecture, University of Malawi, 30 September 2009, Zomba

J. Jimu, Journalist, The Nation, 30 September 2009, Blantyre

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

The Corruption Practices Act allows people to report corruption cases to the offices of the Anti-Corruption Bureau.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

75
IV-3. Procurement

51. Is the public procurement process effective?

75

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Public Procurement Act sec 19 (1): 'If a public official or member of an Internal Procurement Committee, acquires any pecuniary interest, direct or indirect shall not take part in the consideration or discussion of, or vote on any question with respect to the matter...

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Public Procurement Act sec 11 and 12: 11. The specialized procurement units established pursuant to section 10 shall be staffed with personnel trained in public procurement.”

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

Comments:

There is inadequate information regarding whether conflicts of interest regulations for public procurement officials are enforced because this is a new law.

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba, comments:

There has not been any conviction so far according to ACB investigation reports.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba:

No law exists regarding a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

Public Procurement Act, Sections 30 and 31: Public procurement shall be realized by means of open tendering proceedings.”

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Public Procurement Act, Section 30 (10): The requirement regarding sole sourcing is that at least three bidders should be sought.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Public Procurement Act, Section 37 (1): Any bidder that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring entity by this Act or the Regulations, may seek review.”

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Public Procurement Act, Section 38 (13): (13) The High Court shall have jurisdiction over actions pursuant to section 37 and over petitions for judicial review of decisions made by review bodies, or of the failure of those bodies to make a decision within the prescribed time-limit.”

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

However, in practice, all companies who are found guilty of major violations are blacklisted. The law requires the enforcement of the following penalties on such companies:

Section 37 states that the court may order, in addition to any penalty it may pass under section 34, that any money, or other pecuniary resources, wealth, property, profit, asset, business, interest or to other advantage or even value thereof shall be forfeited to the government.

Corrupt Practices Act Section 34 stipulates that Any person who is guilty of major violations of procurement regulations is liable to an imprisonment of 12 years.

References:

Public Procurement Act, Section 20 provides for prohibition for companies guilty of major violations of procurement regulations in regard to current, but not future, procurement processes.

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre:

The law is silent regarding the prohibition against companies guilty of major violations of procurement regulations from participating in future procurement bids. Nevertheless, at the moment, there are no entities who have been reported as having been prohibited from participating in future bids.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

Public Procurement Act, Section 5 (b): To ensure the availability and the accessibility to public officials and the general public of this Act and regulations made here...”

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

However, this section only talks about the opening of procurement bids and not their results.

References:

Public Procurement Act, Section 31 (11): Tenders shall be opened at the time and place indicated in the bidding documents, and the time of opening of the tenders shall coincide with the deadline for submission of tenders.”

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mustafa Mdeza, Procurement Officer, University of Malawi, 11 September 2009, Zomba

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

public procurement regulations can be obtained from the office of the director of public procurement upon request

They can also be downloaded at www.malawi.gov.mw/publicprocurement/Documents.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

: Mustafa Mdeza, Procurement Officer, University of Malawi, 11 September 2009, Zomba

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Public procurement regulations can be obtained at a reasonable cost that covers photocopying.

They can also be downloaded for free from the official website.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

References:

: Mustafa Mdeza, Procurement Officer, University of Malawi, 11 September 2009, Zomba

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Major public procurements are advertised in newspapers and on websites,
www.malawi.gov.mw/publicprocurement/Documents.html

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

References:

: Mustafa Mdeza, Procurement Officer, University of Malawi, 11 September 2009, Zomba

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

The results of major public procurement bids are often published in the newspapers.

They can also be accessed from the official procurement website.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Public Enterprises (Privatisation) Act, Section 3(1)

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Public Enterprises (Privatisation) Act, Section 3(1)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There are perceptions that some officials tend to use their position to undermine such regulations.

References:

P. Chunga; M. Chasukwa, Lecturers, University of Malawi, 15 September 2009, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

There are regulations regarding conflicts of interest for government officials involved in privatization and they are enforced. However, we cannot be certain if these officials cannot use their positions to avoid such regulations.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

90

54a. In law, citizens can access privatization regulations.

YES | NO

References:

Public Enterprises (Privatisation) Act, Section 38(1)

Constitution of Malawi, Sections 37.

These laws gives citizens free access to privatization regulations.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi

Advertisements for privatizations appear in the daily papers, although the deadlines are often too short to allow many to participate. They are often placed in both newspapers and the privatization commission's official website, www.engineeringnews.za/&/saa-named-preffered-bidder-in-air-malawi-sale 2003-02-07

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

The results of privatization decisions are often announced in newspapers as a press release. It includes details of the bidders and those who won. A press conference is often organized so the commission can explain its decision. This is in line with the Privatisation Act and Constitution, Section 36.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba

The Act regarding procurement regulations can be obtained at the government's press office for the cost of photocopying. The Privatization commission gives out the regulations upon request.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

M. Mdeza, Procurement Officer, University of Malawi, 11 September 2009, Zomba

P. Chunga, Lecturer in Politics, University of Malawi, 12 September 2009, Zomba

The cost to access privatization regulations covers photocopying Note that the regulations can also be accessed from the Privatization Commission's official website, www.privatisationcommission.org

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. National Ombudsman

56. Is the national ombudsman effective?

93

56a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Constitution of Malawi, Section 121: In exercise of his or her powers, functions and duties the Ombudsman shall be completely independent of the interference or direction of any other person or Authority.”

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

Most of the cases handled by the ombudsman are less political in nature than they are regarding government structures; hence, there is no political interference. There is very minimal or no interference in the office of the ombudsman.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Section 128(1) of the constitution states that the office of the Ombudsman shall serve a term of not more than five years. However, the Public Appointments Committee may appoint that person for further terms of five years where appropriate.

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

The incumbent ombudsman has been in office for so long, there has not been any such case. So, there has not been any removal without relevant justification in this office.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

www.h-net.org/~africa/sources/malawipt.html

Bard A. Andreassen and Thor Oftedal, "The Office of the Ombudsman: An Appraisal," NORAD Collected Reviews 5/2007:

The ombudsman agency has a professional staff available though it is inadequate.

P. Chunga, Lecturer in Politics, University of Malawi, 12 September 2009, Zomba

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba

There is a thorough procedure for agency appointments that is based on qualifications.

www.h-net.org/~africa/sources/malawipt.html

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies, Dept., 30 September 2009, University of Malawi, Lembani: Funding for the ombudsman agencyis from the national budget.

Bard A. Andreassen and Thor Oftedal, The Office of the Ombudsman: An Appraisal,” NORAD Collected Reviews, 5/2007

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Section 127 of the Constitution of the Republic of Malawi requires the Ombudsman to make a report to the National Assembly yearly on all complaints and applications, remedies afforded to applications in respect of grievances and also general recommendations. Citizens can get reports from Parliament and the Ombudsman’s office upon request.

References:

Bard A. Andreassen and Thor Oftedal, The Office of the Ombudsman: An Appraisal,” NORAD Collected Reviews, 5/2007

www.h-net.org/~africa/sources/malawipt.html

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman's office is mandated to carry out its own investigations. Other agencies also help in the investigations such as providing information as withholding information is considered an obstruction of justice and against the law. It also cooperates with the Anti-Corruption Bureau and the Auditor General.

References:

www.h-net.org/~africa/sources/malawipt.html

Bard A. Andreassen and Thor Oftedal, "The Office of the Ombudsman: An Appraisal," NORAD Collected Reviews, 5/2007

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman has ordered the University of Malawi to pay salary going back 18 years to Mr. Muwalo, who was dismissed from the University of Malawi on political grounds. The office has also ordered fines and reimbursement of funds involving maladministration in public offices.

References:

www.h-net.org/~africa/sources/malawipt.html

Bard A. Andreassen and Thor Oftedal, "The Office of the Ombudsman: An Appraisal," NORAD Collected Reviews, 5/2007

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

In some instance, there are delays in government action on the findings of the ombudsman agency. Reports of follow-ups on the ombudsman's orders are not readily available.

For instance, veteran politician Gwanda Chakuamba was recently ordered by the ombudsman to be compensated by the government for the assets he lost during his imprisonment on political grounds. The government has been reluctant to pay compensation due to his withdrawal from the ruling party as well as his antagonistic attitude toward the government.

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba, Lembani:

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizen complaints to the ombudsman are attended to within a month.

References:

www.h-net.org/~africa/sources/malawipt.html

Bard A. Andreassen and Thor Oftedal, "The Office of the Ombudsman: An Appraisal," NORAD Collected Reviews, 5/2007

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

83

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Constitution of Malawi, Section 127

Ombudsman reports are made available to citizens annually through the National Assembly.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

References:

www.h-net.org/~africa/sources/malawipt.html

Bard A. Andreassen and Thor Oftedal, "The Office of the Ombudsman: An Appraisal," NORAD Collected Reviews, 5/2007

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

Comments:

However, Internet connectivity and access to computers tend to be problematic for the wider public, especially citizens who live in rural areas.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate, 20 September 2009, Zomba; Reports of the ombudsman can be accessible from the internet.

Bard A. Andreassen and Thor Oftedal, "The Office of the Ombudsman: An Appraisal," NORAD Collected Reviews, 5/2007

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Constitution of Malawi Section 120: There shall be a public office known as the office of the Ombudsman which shall have such powers, functions and responsibilities as are conferred upon that office by the constitution and any other law.”

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Constitution of Malawi 184 (7): In the exercise of the duties and powers vested in the office of the Auditor General by this

constitution or any other law, the person holding that office shall not be subject to the direction or control of any other person or Authority.”

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Simeon Mdeza, Court Registrar, Zomba Magistrate Court, 20 September 2009, Zomba: The Auditor General can be ordered to resign by the president.

References:

Tambulasi, R & Kayuni H. Decentralisation Opening a New Window for Corruption,” Journal of Asian and African Studies, Vol. 42, No. 2, 2007

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

Bard A. Andreassen and Thor Oftedal, The Office of the Ombudsman: An Appraisal,” NORAD Collected Reviews, 5/2007

Simeon Mdeza, Court Registrar, Zomba Magistrate Court, 20 September 2009, Zomba
The audit agency has a full-time professional staff.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The perception is that names of the would-be Auditor Generals (AG) were the president's favorites. The deputy acted on behalf of the AG but was vulnerable to manipulations by higher authorities at the time. However, Malawi has now a substantive AG who is a professional and enjoys independence.

References:

P. Chunga, Lecturer in Politics, University of Malawi, 11 September 2009, Zomba: The president appoints the Auditor General with approval of the Parliament. This may entail a political relationship between the appointed and the appointee. The appointment procedure connects appointees to the political leadership.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Simeon Mdeza, Court Registrar, Zomba Magistrate, 20 September 2009, Zomba: The agency receives regular funding including funding from donor agencies.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

Section 184 (2) of the Constitution of the Republic of Malawi requires that the Auditor General (AG) submit at least once a year a report to the National Assembly, through the Minister of Finance, no later than the first meeting of the National Assembly after the completion of the report.

The information is made public. Citizens can access the report through Parliament and AG's office on request.

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Tambulasi, R & Kayuni H. Decentralisation Opening a New Window for Corruption," Journal of Asian and African Studies, Vol. 42, No. 2, 2007

www.bl.uk/reshelp/&/africa/malawi/index.html

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

Comments:

Simeon Mdeza, Court Registrar, Zomba Magistrate Court, 20 September 2009, Zomba: Recently, the audit agency reports were not up to date. The absence of the Auditor General (AG) engendered government inaction on some cases. There is now progress in reporting, although recommendations by AGs tend take very long to implement or enforce.

References:

Tambulasi, R & Kayuni H. Decentralisation Opening a New Window for Corruption,” Journal of Asian and African Studies, Vol. 42, No. 2, 2007

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

Comments:

The Auditor General (AG) initiates investigations independently. However, government departments at times frustrate the AG's efforts by not providing adequate funds to adequately cover its operations.

References:

P. Chunga, Lecturer in Politics; M. Mdeza, Procurement Officer, University of Malawi, 10 September 2009, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Simeon Mdeza, Court Registrar, Zomba Magistrate Court, 20 September 2009, Zomba: Audit agency reports can be accessed from the Auditor General offices and Parliament upon request.

www.nao.mw

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The audit reports are readily available at the agency's offices and can be downloaded from the Internet.

www.nao.mw

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The reports are provided at reasonable cost of photocopying.

Comment: The downloads are for free. They used to distribute the reports for free but increasing demand led them to start to charge the cost of photocopying.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Public Audit Act 6 of 2003

Constitution of Malawi sec 184: There shall be the office of the Auditor General.”

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of

funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

90
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The Malawi Revenue Authority is fully staffed.

www.malawi-tourism-association.org.mw/mra/whatismra.html

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The tax agency gets its funding from the taxes it collects.

www.malawi-tourism-association.org.mw/mra/whatismra.html

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The Malawi Revenue Authority (MRA) is fully staffed

www.malawi-tourism-association.org.mw/mra/whatismra.html

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

www.malawi-tourism-association.org.mw/mra/whatismra.html

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate Court, 20 September 2009, Zomba: The customs and excise agency gets funding from the amount it collects from taxes

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

Malawi Revenue Authority Act, 1998, Section 3

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The president, the vice-president, judges and the cabinet are exempted from the tax on importing goods.

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

Malawi Revenue Authority (MRA) Act, 1998, sec. 3

The MRA deals with both Tax and Customs.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The president, the vice-president and judges are exempted from some custom laws.

Chunga: Senior citizens are exempted from some customs laws.

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

65

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Public Audit Act, Part IV, Section 22 protects state-owned agencies from political interference.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Some have suggested the agencies lack adequate and high-quality staff.

References:

Tambulasi, R. & Kayuni, H. Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi” Journal of Asian and African Studies, Vol 42, No. 2

Jacob Jimu, Nation Newspaper, September 12, 2007, Blantyre.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

www.parliament.gov.mw/&/Challenges%20for%20Parliament.doc

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Investigations are undertaken by the office of the Auditor General and the Anti-Corruption Bureau.

References:

Tambulasi, R. & Kayuni, H. Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi” Journal of Asian and African Studies, Vol 42, No. 2

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba: Parliamentary committees often lack capacity, especially because of inadequate funding.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba: There is some laxity in enforcement regarding the oversight of state-owned companies.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

80

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Public Audit Act, Part IV sec 18(a): . . . to give effect to the principle of the accountability of Government to the public, acting through the Public Accounts Committee (in this Act otherwise referred to as the Committee), by (a) Making available such information as will enable the National Assembly to be informed of the management of public expenditure, public money and public resources; . . .”

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | **50** | 25 | 0

Comments:

It is usually difficult to access the most recent audited financial data. Officers are usually behind schedule in their compilations and auditing on the pretext that they being busy and have inadequate skills in the auditing and accounting fields.

References:

Tambulasi, R. & Kayuni, H. Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi” Journal of Asian and African Studies, Vol 42, No. 2 2007

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

www.parliament.gov.zm/index.php?option=com.docman

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

Records can be accessed from websites. Accessing them directly from the relevant authorities costs the amount of making the photocopy.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

The Constitution, Section 99 provides for a Director of Public Prosecutions

Section 123(1) provides for the Ombudsman; the Public Accountants Committee of Parliament and the Public Enterprises Reform.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

82
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

YES | NO

References:

Business Licensing Act, Chapter 46, Part 1 sec 3 (1)

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Business Licensing Act, Chapter 46, Part 1. sec 17

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

www.doingbusiness.org/ExplorerEconomics/?economyid=118#startingBusiness

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The Doing Business 2010 Malawi report notes that high amount of financial capital needed to start a business is a major burden for potential business owners. The Small Business Entrepreneurs find delays/ red tape at the offices of Registrar of Businesses to be the major constraining factors since it takes more than three to six months to be granted a license after application. To follow up on the license, the applicant spends a lot of money on travels to and from Blantyre, Lilongwe or Mzuzu cities where the offices responsible for issuing the import business licenses are located. However, it is alleged that those who offer bribes to the officers get their licenses in time (but the officers deny this).

References:

Adil Chilungo, Small Business Entrepreneur, 21 December 2009, Zomba.
Ishmail Ali, Ali's Shop and General Dealers, 22 December, Lilongwe.
M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

H. Twabi, District Commissioner, 17 September 2009, Balaka

Doing Business 2010: <http://www.doingbusiness.org/ExploreEconomies/?economyid=118#StartingBusiness>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

67

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Occupational Safety, Health and Welfare Act, Part VIII sec 69

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Although the Occupational Safety, Health and Welfare Act also touches on standards regarding the environment, the business regulatory requirements are not transparent and publicly available.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Occupational Safety, Health and Welfare Act, Part VIII, sec 69

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

58

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The business inspections to enforce public health standards are carried out, but not regularly because of lack of resources (human and financial). The government takes time to act on those who are not complying with the set standards; for instance, an increase in cases of health and safety related cases of cholera and diarrhea outbreaks and occupation-related accidents taking place in some organizations have been given fewer inspections.

References:

www.malawi.gov.mw/story.php?d=159

Lewis Dzimbiri, "The State and Industrial Relations in Malawi," Ph.D Thesis, Keele University, 2004.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The Environment Management Act of 1996 enforces environmental standards, and, in practice, it carries out inspections regularly and has the mandate to impose penalties such as monetary fines, imprisonment and the closing down of operations. There have reports of closures especially of business enterprises that fail to meet standards, especially beer halls, pubs and restaurants.

References:

www.poly.ac.mw/2aaehcongress/index.php?

Moses Michael -Phiri, Counterfeits Flood Markets: Local Industry under Threat" Nation on Sunday, September 2, 2007

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

The business owners often take the minimum standards as being the maximum to protect their profits. There are fewer inspections by the government due to inadequate human and financial resources to do them frequently. Nonetheless, in practice, businesses that are found ignoring the standards have their licenses revoked, or they are fined, or their premises are shut down.

References:

Lewis Dzimbiri, "The State and Industrial Relations in Malawi," Ph.D Thesis, Keele University, 2004.

www.mapsofworld.com/malawi/&business/doing-business.html

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. ⁸⁵Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Corrupt Practices Act, sec 24 (1)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

Corrupt Practices Act, sec 24 (1)

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Corrupt Practices Act, sec 24 (1)

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Corrupt Practices Act, sec 24 (1)

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

Corrupt Practices Act, sec 24 (1)

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Corrupt Practices Ac, sec 25 (1) (2)

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Public Procurement Act, sec 30

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

Money Laundering Act 2008

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Procedure and Evidence Code 2008

Corrupt Practices Act, sec 24-31

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

67

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Corrupt Practices Act, sections 5 (1)(2), 4 (3)

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

Comments:

In law, the anti-corruption agency is protected from political interference but in practice, political interference is manifested, especially in high profile case; for instance, in corrupt practices in which cabinet ministers and government top officials are involved.

The current president is alleged to have ordered the Anti-Corruption Bureau boss to arrest the ex-president in the absence of a thorough investigation. Similarly, cases of those close to the incumbent have not been pursued; for example, Honorable Minister Patricia Kaliati has been alleged to have received bribes and to have used her public office to have ineligible students admitted into secondary schools. It is thought that she has not resigned and her cases have not gone to court due to her closeness to the incumbent.

References:

Dickson Kashoti, Bingu Challenges PAC over ACB Rejection,” Daily Times, Feb 6, 2007, www.dailytimes.bppmw.com

www.chrr.org.mw/resources/Mutharika%20Years%Final%20Analysis%20

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

Comments:

Section 22 of the Corrupt Practices Act provides immunity to the head of Anti-Corruption Bureau (ACB). It stipulates that no action or other proceedings shall be taken against the Director, Deputy Director, or other officers in respect of any act or thing done or omitted to be done in good faith in the exercise of his duties (and protects him from political manipulation).

However, Gustav Kaliwo, head of the ACB and Wadi h, the Director of Public Prosecution who works hand in hand with the ACB were forced to resign due to pressure from the incumbent. The president, who technically cannot fire these officers, mounted a campaign against them through press statements and during political rallies questioning their professionalism, which forced them to resign.

References:

www.chrr.org.mw

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Tumalisye Ndovie, who was qualified to be Director of the Anti-Corruption Bureau, was rejected by the opposition in parliament because of his perceived loyalty to government. The Public Appointments Committee feared Ndovie would not execute his duties independently but would favor the government.

References:

Appointments to the anti-corruption agency are based on professional criteria but also takes into account the political connections of the the appointee.

George Mtonya, PAC Sabotaging Anti-Corruption Efforts-Bingu," The Nation, Feb 6, 2007, www.nationmw.net/

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Hussein M.K., "Combating Corruption in Malawi: An Assesment of the Enforcing Mechanisms" African Security Review, vol 14 No. 4, 2005

Tambulasi, R. & Kayuni, H. "Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi" Journal of Asian and African Studies, Vol 42, No. 2, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Hussein M. Combating Corruption in Malawi: An Assessment of the Enforcing Mechanisms” African Security Review, vol 14 No. 4, 2005

Tambulasi, R. & Kayuni, H. “Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi” Journal of Asian and African Studies, Vol 42, No. 2 2007

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Tambulasi, R. & Kayuni, H. Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi” Journal of Asian and African Studies, Vol 42, No. 2, 2007

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: the Anti-Corruption Bureau receives regular funding from the government.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency’s funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | **50** | 25 | 0

Comments:

Corrupt Practices Act Section 11, 12 gives powers to the Anti-Corruption Bureau (ACB) to do investigations

Section 21 (1) of the Corrupt Practices Act indicates that the Director within three months after the end of every year should submit to the National Assembly and president, the cabinet and minister a report on the activities of the Bureau.

Section 21 (2) of the Corrupt Practices Act indicates the minister should formally lay the report in the National Assembly within 14 days of the date of the report or if the National Assembly is then not sitting, within the first 14 days of the next sitting.

Section 21 (3) of the Corrupt Practices Act indicates that any competent committee of National Assembly may at anytime summon the director to appear before it to answer questions and the contents of the report and give account of the performance of the functions of the Bureau of his duties.

The reports are kept by the ACB and Parliament and, in practice, they are not made public. However, they can be accessed upon approval of the Director of ACB.

References:

Kazembe Kayira, Waging War Against Corruption," The Daily Times, 10th July 2007

Mdeza: The anti-corruption agency does not regularly make reports.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | **50** | 25 | 0

Comments:

Simeon Mdeza, Court Registrar, Zomba Magistrate Court, 20 September 2009, Zomba: The political interference by the government challenges the Anti-Corruption Bureau's (ACB) functions. For instance, when the ACB decided to investigate Dr. Muluzi, the president criticized this decision.

The ACB had no director for over six months in 2006 because parliament's Public Appointments Committee had rejected the president's appointed person and it was impossible to initiate some investigations because they required authorization from both the director and the deputy.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The Corrupt Practices Act, sections 11 and 12, gives power to the Anti-Corruption Bureau (ACB) to initiate investigations after they receive complaints.

The ACB commences investigations on its own and it does not obtain approval from anywhere. For example, it has recently initiated investigations on bodies such Malawi Communications Authority and government Minister Patricia Kaliati over alleged irregularities in the approval of licenses.

References:

Hussein M., "Combating Corruption in Malawi: An Assessment of the Enforcing Mechanisms," African Security Review, vol 14, No. 4, 2005

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba

In most cases, the Anti-Corruption Bureau waits to hear complaints from the people before investigating.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba: Whether or not the agency acts on complaints within a reasonable time period depends on the nature of the case; for instance, cases with political connections are likely to be given priority as was the case with Dr. Bakili Muluzi.

Simeon Mdeza, Court Registrar, Zomba Magistrate, 20 September 2009, Zomba: in most instances, corrupt practices that are political are likely to be resolved quickly than cases that are of a similar nature but are not political; for instance, the case of Yusuf Mwawa (Daily Times, The Nation 2008).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

H. Twabi, District Commissioner, 17 September 2009, Balaka

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba: the Anti-Corruption Bureau (ACB) is confidential about who reports to it.

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: Of late, the ACB is encouraging whistleblowing on corruption cases. It usually does not disclose the names of people involved for the reason that they fear the effect such a practice will have on their investigations.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Corrupt Practices Act, No. 18 of 1995, provides for the Anti-Corruption Bureau.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

81
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

Constitution of Malawi, sec 42

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Kanyongolo, F. E. Malawi: Justice Sector and the Rule of Law," A review by AFRIMAP and the Open Society Initiative for Southern Africa: Cambridge, 2006

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The time period at the moment is a challenge because of the shortage of legal professionals in the judicature

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Kanyongolo, F. E. Malawi: Justice Sector and the Rule of Law," A review by AFRIMAP and the Open Society Initiative for Southern Africa: Cambridge, 2006

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The cost to file an appeal is not reasonable and affordable for most of poor citizens.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

100

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Kanyongolo, F. E. Malawi: Justice Sector and the Rule of Law," A review by AFRIMAP and the Open Society Initiative for Southern Africa: Cambridge, 2006

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba: The criminal system follows written law because the court system dealt away with unwritten laws.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

100

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

Kanyongolo, F. E. Malawi: Justice Sector and the Rule of Law," A review by AFRIMAP and the Open Society Initiative for Southern Africa: Cambridge, 2006

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: Judicial decisions enforced by the state; for instance, former vice-president Cassim Chilumphawas was immediately put under house arrest following judicial decisions

J Jimu, Lecturer, UNIMA, 30 September 2009, Blantyre.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

94

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of Malawi, sec 103: All courts and all persons presiding over those courts shall exercise their functions, powers and duties independent of the influence and direction of any other person or authority."

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: National-level judges are protected from political interference especially since they cannot be fired easily. This requires a majority vote by the National Assembly.

Comment: However, since the President is the ultimate appointing authority, some Judges tend to owe their loyalty to the president.

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The registrar of the courts distributes cases to national-level judges in order of receipt. That is, if a case is received, the registrar signs it; the registry assigns a date to the case and assigns it to a judge in a systematic or logical order.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Constitution of Malawi sec 119 (3) (4) (5): The president may remove from office any judge where a motion of incompetence in the performance of the duties of his office or misbehavior”

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

No judges have been harmed because of adjudicating corruption cases.

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre: No judges have been harmed because of adjudicating corruption cases.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

Jacob Jimu, Journalist, The Nation, 30 September 2009, Blantyre: no judges killed because of adjudicating corruption cases

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

71

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

J Jimu, Journalist, The Nation, 30 September 2009, Blantyre;

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba: The institutional framework has placed judges in such a high place that their decisions are always regarded as being true. Speaking out against them is likely to be regarded as contempt of court. Nevertheless, their decisions have not yet been reported as being racially bias

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

Mdeza: Women are the ones who complain most especially in divorce cases. There are no exceptions against women seeking access to the judicial system..

J Jimu, Journalist, The Nation, 30 September 2009;

P. Chunga, Lecturer in Politics, University of Malawi, 10 September 2009, Zomba: There are no exceptions against women in accessing the judiciary.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Constitution of Malawi, sec 42

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: The legal aid agency is understaffed and so the state does not have adequate capacity to provide legal aid for defendants in criminal cases who cannot afford it.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: Anyone can afford to file a legal suit. For instance, the fee is MK100 (USD\$1) to commence civil cases.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Mdeza: The fee to file a lawsuit is affordable for a typical small business.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: There are courts located in most parts of the nation. So generally, the courts are accessible to most citizens.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Hussein M. Combating Corruption in Malawi: An Assessment of the Enforcing Mechanisms," African Security Review, vol 14, No. 4, 2005

www.uncjin.org/Standards/Conducts/ccl/malawi.pdf

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | **50** | 25 | 0

References:

Hussein M. Combating Corruption in Malawi: An Assessment of the Enforcing Mechanisms,” African Security Review, Vol 14, No. 4, 2005

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: Funds are allocated to the law enforcement agency from the government but they are certainly are not sufficient for it carry out its mandate.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency’s ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

References:

Hussein M. Combating Corruption in Malawi: An Assessment of the Enforcing Mechanisms,” African Security Review, Vol. 14, No. 4, 2005

Tambulasi, R. & Kayuni, H. “Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Decentralised Local Governance in Malawi” Journal of Asian and African Studies, Vol 42, No. 2, 2007

H. Kayuni, Senior Lecturer, Political and Administrative Studies Dept., 30 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Human Rights Commission

Constitution of the Republic of Malawi,

Office of the Ombudsman, Constitution of Malawi, sec 129

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Basically, government agencies such as the Legal Aid and Malawi Human Rights Commission that address abuses perpetrated by government officials, the police etc are constrained by inadequate resources particularly personnel, finances to timely and effectively deal with complaints.

References:

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Kanyongolo, F.E. Malawi: Justice Sector and the Rule of Law,” A review by AFRIMAP and the Open Society Initiative for Southern Africa: Cambridge, 2006

Simeon Mdeza, Court Registrar, Zomba Magistrate , 20 September 2009, Zomba: the time period in which law enforcement agencies can respond to citizen complaints depends on their capacity at that time in terms of funds and staff that is available at the agency. Generally, some delay is experienced.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Anti-Corruption Bureau, Corrupt Practices Act sec 24 (1)

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | **75** | 50 | 25 | 0

Comments:

The agency commences investigations into complaints against law enforcement agencies independently. Law enforcement officers who break the law are equally punished.

For instance, high-ranking Police Commissioner Chalera, who was the head of the Fiscal Investigation Branch, is currently on suspension due to allegations of that he misappropriated forex in his custody that were meant to be tendered in court. He is expected to appear in court. However inadequate capacity in terms of personnel and finances often affect the efficiency of the agency.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

Hussein M. Combating Corruption in Malawi: An Assessment of the Enforcing Mechanisms,” African Security Review, Vol. 14, No. 4, 2005

www.h-net.org/~africa/sources/malawipt.html

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Constitution of Malawi, sec 158 (5): any member of the Malawi police force shall be subject to disciplinary measures as the Police Service commission considers appropriate.”

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

The perception emerging is that the rich are often spared from criminal charges. However, there are cases within the Malawi Police Service involving officers who have been successfully prosecuted and sent to jail. For example, recently a police officer in Lilongwe who in the course of snatching car keys from a lorry driver caused the vehicle to swerve and get involved in an accident and death of the driver has been charged of manslaughter and sentenced to jail. The head of a police department -Fiscal Department, has been suspended from his office and charged of misappropriation of funds. This demonstrates their lack of immunity.

References:

M. Chasukwa, Lecturer, 15 September 2009, University of Malawi, Zomba

S. Jambo, Executive Director, Muslim Association of Malawi, 2 September, 2009, Blantyre

Jacob Jimu, Journalist, The Nation, 30 September 2009

Simeon Mdeza, Court Registrar, Zomba Magistrate, 20 September 2009, Zomba: Law enforcement officials are not immune. Even the police can be summoned in a criminal case.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
