

Independent Reporting Mechanism (IRM): Malawi Progress Report 2016-2017

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Executive Summary:



Malawi Year 1 Report

Action plan: 2016-2018
Period under review 2016-2017
IRM report publication year: 2018

The commitments in Malawi's first action plan mostly included vaguely worded indicators rather than measurable activities, making implementation difficult to determine and limiting potential impact. While a National Steering Committee existed during action plan development, it did not meet during implementation.

HIGHLIGHTS

Commitment	Overview
1. Freedom of Information	This commitment aims to pass the Access to Information (ATI) Bill in Parliament. Passage of the ATI Bill is a major achievement for civil society, and it will improve transparency and accountability in Malawi.
5. Extractives Industries Transparency Initiative	This commitment aims for Malawi to join EITI as a candidate country. The extractives sector is expected to grow significantly in Malawi, thus incentivizing transparency and accountability in this area.

PROCESS

Development of Malawi's first action plan occurred primarily during an October 2014 meeting that involved a limited number of government and civil society stakeholders. A National Steering Committee, consisting of government and civil society representatives, submitted the final action plan for approval, but has not met during implementation.

Who was involved?

Civil society	Beyond "governance" civil society			
	Mostly "governance" civil society		✓	
	No/little civil society involvement			
		Narrow/little	Primarily agencies that	Significant

	governmental consultations	serve other agencies	involvement of line ministries and agencies
Government			

Representatives of 10 civil society organizations and 14 government agencies proposed commitments and jointly prepared the action plan at a plenary meeting in October 2014. However, the role of civil society in shaping the final commitments and monitoring implementation is unclear.

Level of input by stakeholders

Level of Input	During Development
Collaborate: There was iterative dialogue AND the public helped set the agenda	
Involve: The public could give feedback on how commitments were considered	
Consult: The public could give input	✓
Inform: The government provided the public with information on the action plan.	
No Consultation	

OGP co-creation requirements

Timeline Process and Availability Timeline and process available online prior to consultation	No
Advance notice Advance notice of consultation	Yes
Awareness Raising Government carried out awareness-raising activities	No
Multiple Channels Online and in-person consultations were carried out	No
Documentation and Feedback A summary of comments by government was provided	No
Regular Multi-stakeholder Forum Did a forum exist and did it meet regularly?	No
Government Self-Assessment Report	No

Was a self-assessment report published?	
Total	1 of 7

<p>Acting contrary to OGP process?</p> <p>A country is considered to have acted contrary to process if one or more of the following occurs:</p> <ul style="list-style-type: none"> • The National Action Plan was developed with neither online nor offline engagements with citizens and civil society • The government fails to engage with the IRM researchers in charge of the country's Year 1 and Year 2 reports • The IRM report establishes that there was no progress made on implementing any of the commitments in the country's action plan 	No
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COMMITMENT PERFORMANCE

Most commitments in Malawi's first action plan contained vague implementation activities, which lowered their potential impact and made their implementation levels difficult to assess. Future action plans could build on priority areas from the first plan, like access to information and extractives sector transparency, by including measurable and verifiable implementation activities.

Current Action Plan Implementation

2016-2018 Action Plan	
Completed Commitments at the End of Year 1	2 of 5
2016-2018 OGP Average Completion Rate (Year 1)	18%

Potential Impact

2016-2018 Action Plan	
Transformative Commitments	0 of 5
2016-2018 OGP Average for Transformative Commitments	16%

Starred commitments

2016-2018 Action Plan	
Starred Commitments (Year1)	0 of 5
Highest Number of Starred Commitments (All OGP Action Plans)	5

IRM RECOMMENDATIONS

1. Reinvigorate the National OGP Steering Committee
2. Include activities that offer additional value to already planned activities
3. Ensure capacity to implement ATI
4. Improve commitment design
5. Use OGP to advance priorities in Malawi

COMMITMENTS OVERVIEW

Commitment Title	Well-designed (Year 1)*	Starred (Year 1)**	Overview
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1. Freedom of Information	No	No	While the President signed the Access to Information (ATI) Bill into law in February 2017, various obstacles remain to ensuring that citizens can easily exercise their rights.
2. Citizen Participation	No	No	This commitment seeks to improve citizen awareness of consultation opportunities in the decision-making processes. The lack of measurable and verifiable activities makes implementation difficult to assess.
3. National Integrity System and Fight Against Corruption	No	No	Corruption remains widespread in Malawi. While the Anti-Corruption Bureau is expected to receive increased funding in the 2017-2018 budget, reducing corruption will require a more holistic approach beyond this commitment's activities.
4. Public Sector Reforms and Public Service Delivery	No	No	Public sector reform is important in Malawi. The Public Service Sector Reform Commission's mandate expired in January 2017, and it is unclear if the Commission's recommended reforms are being carried out.
5. Extractives Industries Transparency Initiative (EITI)	No	No	Malawi plans to improve transparency in the extractive sector by joining EITI. Malawi submitted its EITI candidacy application and established an EITI multi-stakeholder group and secretariat.

*Commitment is evaluated by the IRM as specific, relevant, and has a transformative potential impact.

** Commitment meets the criteria (above) for well-designed commitment *and* is substantially or fully complete.

ABOUT THE AUTHOR

IRM staff wrote this report.

The Open Government Partnership (OGP) aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP's Independent Reporting Mechanism (IRM) assesses development and implementation of national action plans to foster dialogue among stakeholders and improve accountability.



I. Introduction

The Open Government Partnership (OGP) is an international multi-stakeholder initiative that aims to secure concrete commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. OGP provides an international forum for dialogue and sharing among governments, civil society organizations, and the private sector, all of which contribute to a common pursuit of open government.

Malawi began its formal participation in July 2013, when President Joyce Banda declared her country's intention to participate in the initiative.¹

In order to participate in OGP, governments must exhibit a demonstrated commitment to open government by meeting a set of (minimum) performance criteria. Objective, third-party indicators are used to determine the extent of country progress on each of the criteria: fiscal transparency, public official's asset disclosure, citizen engagement, and access to information. See Section VII: Eligibility Requirements for more details.

All OGP-participating governments develop OGP action plans that elaborate concrete commitments with the aim of changing practice beyond the status quo over a two-year period. The commitments may build on existing efforts, identify new steps to complete ongoing reforms, or initiate action in an entirely new area.

Malawi developed its national action plan from October 2014 to March 2016. The official implementation period for the action plan was 1 September 2016 through 31 August 2018. This year one report covers the action plan development process and first year of implementation, from September 2016 to August 2017. Beginning in 2015, the IRM started publishing end-of-term reports on the final status of progress at the end of the action plan's two-year period. Any activities or progress occurring after the first year of implementation, August 2017, will be assessed in the end-of-term report. At the time of writing this report, the government has not published a self-assessment report.

In order to meet OGP requirements, the Independent Reporting Mechanism (IRM) of OGP carried out this evaluation of the development and implementation of Malawi's first action plan. To gather the voices of multiple stakeholders, the IRM relied on extensive desk research and feedback from civil society representatives to determine the level of implementation of Malawi's commitments. The IRM aims to inform ongoing dialogue around development and implementation of future commitments. Methods and sources are dealt with in Section VI of this report (Methodology and Sources).

¹ See: <https://www.opengovpartnership.org/documents/malawi-letter-of-intent-join-ogp>.

II. Context

Malawi's first action plan focuses on institution building, resource allocation, and passing and implementing laws. The individual commitments are derived from strategic government initiatives pertaining to access to information, anti-corruption, and transparency and accountability. The passing of the Access to Information Bill is a major priority for civil society.

2.1 Background

Malawi is a landlocked southern African country with a population of 18 million people and a nominal gross domestic product (GDP) of approximately USD 5.4 billion.¹ After decades of one-party rule, Malawi held its first multi-party democratic elections in 1994 and adopted a new constitution the following year that delineated the separation of government powers. Malawi is among the least developed countries in the world. It ranked 170 out of 185 in the United Nations Development Programme's 2016 Human Development Index,² while the World Health Organization estimated the country's 2015 life expectancy at 58.3 years, a steady improvement over previous years but still among the lowest in the world.³ According to the World Bank, 70.9 percent of Malawians live below the global poverty line,⁴ and the United Nations Educational, Scientific and Cultural Organization (UNESCO) estimated the literacy rate among the population aged 15 years and older at 62.14 percent in 2015.⁵

Among the most important issues pertaining to transparency and open government in Malawi in recent years is the campaign to adopt an Access to Information (ATI) Bill. While the 1995 constitution enshrines access to information as a right for citizens through Section 37, Malawi lacked the mechanisms to formally guarantee this right through the timely response to information requests. The campaign for an ATI Bill in Malawi started in 2003, but stalled in 2009 when the government indicated that there was a need for a policy on access to information before the bill could go to parliament for debate. In early 2014, the Malawian Cabinet finally adopted an access to information policy, but the legal framework for its application remains unfinished. The ATI Bill would provide Malawi with this legal framework to which citizens can exercise their right to access to information.

Corruption remains endemic in Malawi. Transparency International ranked Malawi 120 out of 176 countries in its 2016 Corruption Perception Index.⁶ Recent high-profile corruption scandals have had major political and economic repercussions for the country. In September 2013, government officials, civil servants, and business people were accused of diverting roughly 24 billion kwachas (USD 33 million) from state funds through fraudulent payments to support local election campaigns, in what became known as "Cashgate".⁷ In response to the Cashgate scandal, foreign donors suspended USD 150 million in pledged aid to Malawi, a decision that had major ramifications for citizens and the government because of the country's significant dependence on foreign assistance.⁸ In November 2016, the national ombudswoman reported on another corruption scandal, known as "Tractorgate", in which the government sold off 100 new tractors purchased through a loan in 2014 that were intended for local farmers.⁹ The ombudswoman reportedly received death threats in connection to the Tractorgate investigation, which implicated top government officials in the scandal.¹⁰ In December 2016, the Attorney General obtained a stay order from the High Court that effectively stopped the implementation of recommendations from the ombudsman report while temporarily shielding the implicated individuals from prosecution.¹¹

Although Malawi's economy depends heavily on agriculture exports and foreign development assistance, current president Arthur Mutharika has expressed a desire to prioritize the extractives sector as a means of contributing to the country's economic growth.¹² Extractive industries currently constitute less than 1 percent of Malawi's GDP, but the government is promoting investment in the extractive industries to reach 20 percent of GDP by 2025.¹³ Malawi has committed to become compliant with the Extractive Industries Transparency Initiative (EITI) to increase transparency in the extractive sector and avoid the "resource curse" that affects many developing countries. EITI-Compliant status is important given the potential oil reserves in and around Lake Malawi. It should be noted, however, that Malawi's third Growth and Development Strategy (2017-2022), does not list the extractives sector as a standalone priority area for future development.¹⁴

2.2 Scope of Action Plan in Relation to National Context

Malawi's first action plan includes five commitments on the Access to Information Bill, civic participation, anti-corruption, public service reform and EITI. The commitments are drawn from recent, existing initiatives that reflect Malawi's long-term strategy towards transparency, democratization and sustainable development. Examples of such initiatives include the National Access to Information Policy,¹⁵ the National Integrity System,¹⁶ the National Anti-Corruption Strategy,¹⁷ the Public Service Reforms,¹⁸ Vision 2020,¹⁹ and the Malawi Growth and Development Strategy (MGDS).²⁰ The commitments in Malawi's action plan directly or indirectly fall under these long-term development strategies, and would likely have been adopted or implemented regardless of their status as OGP commitments. For example, the Access to Information (ATI) Bill is a major stakeholder priority, and civil society has campaigned for its adoption since 2003.

While Commitment 1 of the action plan seeks to pass the ATI Bill in Parliament, it does not include any additional awareness-raising activities to better educate citizens on how to exercise their rights under the bill. Nor does the commitment include training the Malawi Human Rights Commission (MHRC) on how to most effectively perform its duties as the ATI law's chief oversight mechanism. With this in mind, the passage of the ATI Bill is an important first step towards greater transparency and accountability, but not necessarily as an end in itself, considering the practical obstacles for many citizens to exercise this right (discussed in greater detail in Commitment 1). Malawi's anti-corruption commitment (Commitment 3) involves ensuring that anti-corruption bodies, namely the Anti-Corruption Bureau, (ACB) have adequate funding, and fixing deficiencies in the relevant legislation. While insufficient funding hinders the ACB from fulfilling its mandate, there are additional concerns of political interference in the bureau's investigations, particularly with regard to high-profile corruption cases such as "Cashgate". The anticipated significance of extractive industries in Malawi's development has produced a need to promote greater transparency and accountability in this sector. Commitment 5 of the action plan calls for Malawi to adopt the basic principles of EITI Candidacy, namely the establishment of the multi-stakeholder group (MSG) and the EITI Secretariat. Moving from EITI-Candidacy to EITI-Compliance will require Malawi to continue releasing annual EITI reports, publish information on licenses, contracts, and tax payments for extractives companies, and adopt an Open Data Policy, among other reforms. Future OGP action plans could include commitments that ensure implementation of these policies and reforms.

¹ World Bank 2016, <https://data.worldbank.org/country/malawi>.

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- ² United Nations Human Development Report 2016, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf.
- ³ World Health Organization, Life expectancy at birth (years), 2000-2015, http://gamapserver.who.int/gho/interactive_charts/mbd/life_expectancy/atlas.html.
- ⁴ World Bank Poverty & Equity Data Portal, <http://povertydata.worldbank.org/poverty/country/MWI>.
- ⁵ United Nations Educational, Scientific and Cultural Organization, <http://uis.unesco.org/en/country/MWI>.
- ⁶ Transparency International Corruption Perception Index 2016, https://www.transparency.org/news/feature/corruption_perceptions_index_2016.
- ⁷ Smith, David, "Money from Malawi 'Cashgate' scandal allegedly funded electoral campaigns", The Guardian, 13 February 2015, <https://www.theguardian.com/global-development/2015/feb/13/malawi-cashgate-scandal-money-funded-electoral-campaigns>.
- ⁸ Mapondera, Godfrey, "Malawi prepares for \$100m 'cashgate' corruption trial", The Guardian, 14 January 2014, <https://www.theguardian.com/world/2014/jan/14/malawi-prepares-cashgate-corruption-trial>.
- ⁹ Freedom House's Freedom in the World 2017, <https://freedomhouse.org/report/freedom-world/2017/malawi>.
- ¹⁰ Mtika, Collins, "Tractorgate deal ignites death threats for Malawi Ombud", African Independent, 1 August 2016, <https://www.africanindy.com/news/tractorgate-deal-ignites-death-threats-for-malawis-ombud-5420801>.
- ¹¹ Mtika, Collins, "Tractorgate scandal: Malawi govt moves to shield culprits", Nyasa Times, 26 December 2016, <https://www.nyasatimes.com/tractorgate-scandal-malawi-govt-moves-shield-culprits/>.
- ¹² Pres. Arthur Peter Mutharika, State of the Nation Address, <http://www.manaonline.gov.mw/index.php/component/k2/item/2855-full-address-state-of-the-nation-address-by-president-mutharika>.
- ¹³ Malawi's Beneficial Ownership Disclose Roadmap, Pg. 3, https://eiti.org/sites/default/files/documents/malawi_beneficial_ownership_disclosure_roadmap.pdf.
- ¹⁴ See Chapter 6 of the Malawi Growth and Development Strategy (MGDS) III (2017-2022): Building a Productive, Competitive and Resilient Nation, November 2017, available here: <https://mininginmalawi.files.wordpress.com/2018/03/malawi-growth-and-development-strategy-iii-2017-2022.pdf>.
- ¹⁵ National Access to Information Policy, <http://www.macra.org.mw/wp-content/uploads/2014/07/National-Access-to-Information-Policy.pdf>.
- ¹⁶ Malawi Economic Justice Network, National Integrity System (NIS), <http://www.mejnmw.org/index.php/projects/national-integrity-system>.
- ¹⁷ National Anti-Corruption Strategy, http://www.acbmw.org/wp-content/downloads/NATIONAL_ANTI_CORRUPTION_STRATEGY.pdf.
- ¹⁸ Public Service Reforms Commission, [https://info.undp.org/docs/pdc/Documents/MWI/Malawi%20Public%20Service%20Reform%20Report\(1\)%20\(2\).pdf](https://info.undp.org/docs/pdc/Documents/MWI/Malawi%20Public%20Service%20Reform%20Report(1)%20(2).pdf).
- ¹⁹ Malawi Vision 2020, <http://www.sdnw.org.mw/malawi/vision-2020/>.
- ²⁰ Malawi Growth and Development Strategy, <https://cepa.rmportal.net/Library/government-publications/the-malawi-growth-and-development-strategy-mqds-iii>.

III. Leadership and Multi-stakeholder Process

The development involved government and civil society stakeholders, though civil society participation was limited to a handful of CSOs that took part in the initial consultation meeting in October 2014. While the National OGP Steering Committee, consisting of government and civil society representatives, submitted the final action plan for approval, it has not met during implementation. Additionally, the Office of the President and Cabinet has not submitted a self-assessment report.

3.1 Leadership

This subsection describes the OGP leadership and institutional context for OGP in Malawi. Table 3.1 summarizes this structure while the narrative section (below) provides additional detail.

Table 3.1: OGP Leadership

1. Structure	Yes	No
Is there a clearly designated Point of Contact for OGP (individual)?	X	
	Shared	Single
Is there a single lead agency on OGP efforts?		X
	Yes	No
Is the head of government leading the OGP initiative?		X
2. Legal Mandate	Yes	No
Is the government's commitment to OGP established through an official, publicly released mandate?	X	
Is the government's commitment to OGP established through a legally binding mandate?		X
3. Continuity and Instability	Yes	No
Was there a change in the organization(s) leading or involved with the OGP initiatives during the action plan implementation cycle?		X
Was there a change in the executive leader during the duration of the OGP action plan cycle?		X

Malawi is a presidential representative democratic republic where the president and cabinet make all high-level government decisions. The Office of the President and Cabinet (OPC) advises and supports the President and Cabinet, and oversees leadership in Public Service through the Chief Secretary.¹

The Ministry of Foreign Affairs and International Cooperation was originally the lead institution for Malawi's participation in OGP. However, this responsibility was moved to the Office of the President and Cabinet, under the leadership of the Principal Secretary for Good Governance, who reports directly to the OPC's Chief Secretary. Malawi's first action plan was established by a Cabinet decision and followed by an

official circular to all heads of ministries and departments responsible for commitments, and not by a legal mandate.²

The Ministry of Finance does not allocate a dedicated budget to OGP in the main budget lines presented to Parliament. However, the Office of the President and Cabinet has the authority to allocate funds for activities based on the necessary votes, and use the authority of the Chief Secretary to implement these activities even when individual ministries are facing budget cuts from the Treasury. Operationally, only the Principal Secretary for Good Governance and his Personal Assistant are dedicated to working on OGP, but they can draw on staff in the Office of the President and Cabinet to assist in OGP activities whenever necessary.

3.2 Intragovernmental Participation

This subsection describes which government institutions were involved at various stages in OGP. The next section will describe which nongovernmental organizations were involved in OGP.

Table 3.2 Participation in OGP by Government Institutions

How did institutions participate?	Ministries, Departments, and Agencies	Legislative	Judiciary (including quasi-judicial agencies)	Other (including constitutional independent or autonomous bodies)	Subnational Governments
Consult: These institutions observed or were invited to observe the action plan but may not be responsible for commitments in the action plan.	14 ³	0	0	N/A	0
Propose: These institutions proposed commitments for inclusion in the action plan.	7 ⁴	0	1	N/A	0
Implement: These institutions are	6 ⁵	0	1	0	0

responsible for implementing commitments in the action plan whether or not they proposed the commitments.					
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In Malawi, the participation of government ministries and agencies was mainly orchestrated by the Office of the President and Cabinet, following a consultation with civil society representatives in Liwonde in 2014. The Office of the President and Cabinet made a list of targeted ministries to consult for the OGP process, and invited these ministries to participate in the development of the action plan. However, there is no evidence to suggest that these ministries are carrying out additional activities that they would otherwise not have done if they were not involved in the action plan. Furthermore, there is room for further engagement beyond the initial consultations if the OGP principles were to be embedded in the ministries' ways of doing business.

3.3 Civil Society Engagement

Countries participating in OGP follow a set of requirements for consultation during development, implementation, and review of their OGP action plan. Table 3.3 summarizes the performance of Malawi during the 2016-2018 action plan.

Table 3.3: National OGP Process

Key Steps Followed: 1 of 7						
Before	1. Timeline Process & Availability			2. Advance Notice		
	Timeline and process available online prior to consultation	Yes	No	Advance notice of consultation	No	Yes
			X			✓
	3. Awareness Raising			4. Multiple Channels		
	Government carried out awareness-raising activities	Yes	No	4a. Online consultations:	Yes	No
			X	4b. In-person consultations:	Yes	No
					✓	
5. Documentation & Feedback						
Summary of comments provided				Yes	No	
					X	
During	6. Regular Multistakeholder Forum					
	6a. Did a forum exist?	Yes	No	6b. Did it meet regularly?	Yes	No
		✓				X
After	7. Government Self-Assessment Report					

	7a. Annual self-assessment report published?	Yes	No	7b. Report available in English and administrative language?	Yes	No
			X			X
	7c. Two-week public comment period on report?	Yes	No	7d. Report responds to key IRM recommendations?	Yes	No
			X			X

The consultation meeting to develop Malawi’s first action plan occurred in October 2014. Mr. Wezi Kayira, the Principal Secretary for Good Governance Unit in the Office of the President and Cabinet, invited stakeholders to the consultation meeting through emails and phone calls. The Executive Director for Citizen Justice, Mr. Reinford Mwangonde, provided the Office of the President and Cabinet with a list of potential civil society stakeholders for the consultation meeting. In total, invitations were sent to 14 government departments, 10 CSOs, seven private sector representatives, and eight international development donors (i.e. USAID). The consultation meeting itself took place at the Hippo View Hotel in Liwonde from 15-17 October 2014. The meeting involved open plenary discussions around possible key themes to be addressed in the action plan, and participants proposed the government and civil society representatives that would be responsible for implementing the commitments. The civil society and government points of contact jointly prepared a first draft of the action plan, which formed the basis for subsequent thematic discussions.

Development of the action plan involved the establishment of a formal National OGP Steering Committee consisting of government departments, civil society representatives, members of Parliament, and the private sector. The Office of the President and Cabinet also utilized the National Initiative for Civic Education (NICE) as a public trust to help educate the public by organizing meetings and to ease the financial burdens of holding consultations with the public. Notably, there was little participation among Malawi’s large rural population in the development of the action plan. According to the action plan, there are suggestions to hold consultations in public libraries and community centers to help guarantee greater inclusion of the rural population in the development of future action plans.⁶

Following the consultation, the Office of the President and Cabinet presented a draft action plan in September 2015 to the National OGP Steering Committee for review in January 2016.⁷ The Principal Secretary for Good Governance sent memos to the Principal Secretaries of the different government agencies that were responsible for implementing the proposed commitments. The comments from the Principal Secretaries were incorporated into the final version of the action plan. The National OGP Steering Committee was also appointed at the end of this consultation meeting to endorse the action plan’s commitments before its submission to the OGP Secretariat in March 2016. However, the Steering Committee has not met since the submission of the action plan. According to the Office of the President and Cabinet, the delay in submitting the final action plan and the inactivity of the Steering Committee can be attributed to a lack of coordination capacity within the Office of the President and Cabinet. The Office has requested financial and logistical support in the creation of a secretariat within the Office of the President and Cabinet to help convene the Steering Committee during development of the next action plan and to monitor its implementation.

Table 3.4: Level of Public Influence

The IRM has adapted the International Association for Public Participation (IAP2) “Spectrum of Participation” to apply to OGP.⁸ This spectrum shows the potential level of public influence on the contents of the action plan. In the spirit of OGP, most countries should aspire for “collaborative.”

Level of public influence		During development of action plan	During implementation of action plan
Empower	The government handed decision-making power to members of the public.		
Collaborate	There was iterative dialogue AND the public helped set the agenda.		
Involve	The government gave feedback on how public inputs were considered.		
Consult	The public could give inputs.	X	
Inform	The government provided the public with information on the action plan.		
No Consultation	No consultation		X

3.4 Consultation During Implementation

As part of their participation in OGP, governments commit to identify a forum to enable regular multi-stakeholder consultation on OGP implementation. This can be an existing entity or a new one. This section summarizes that information.

The Office of the President and Cabinet intended the National OGP Steering Committee to serve as the multi-stakeholder forum to monitor the action plan’s implementation. However, as discussed in the above section, the Steering Committee has not met since the submission of the final action plan for approval. Civil society has been unable to monitor the action plan’s implementation, despite the involvement of CSOs in the development. It should be noted that CSOs have been highly involved in the progress made towards implementing some of the action plan’s commitments, particularly the passage of the Access to Information Bill and Malawi’s participation in the Extractive Industries Transparency Industry Standard (through their role in the EITI multi-stakeholder group). However, this progress has occurred independently of Malawi’s participation in OGP and the country’s action plan, and has not been the result of civil society or Steering Committee monitoring. Going forward, the Office of the President and Cabinet plans to conduct public awareness-raising campaigns for Malawi’s OGP activities through print and electronic media outlets, though it is unclear if these campaigns will take place.

The consultation meeting in Liwonde in October 2014 included a diverse range of actors as well as actual attendance (involving government, private sector, civil society and donors). In the future, participants from this meeting could be formalized as an accountability forum to meet regularly to review implementation progress. The Office of the President and Cabinet could also set up sectoral sub-committees (one for each of the five commitments) to meet more regularly during the implementation.

3.5 Self-Assessment

The OGP Articles of Governance require that participating countries publish a self-assessment report three months after the end of the first year of implementation. The self-assessment report must be made available for public comments for a two-week

period. This section assesses compliance with these requirements and the quality of the report.

The Office of the President and Cabinet has not published a self-assessment report for the first year of the action plan's implementation.

¹ For more information on the Office of the President and Cabinet, see <http://www.opc.gov.mw/>.

² Memo from the Chief Secretary to the Government to all Principal Secretaries involved in the five key OGP commitments of Malawi Ref No. 10/01/1 dated 2 March 2016.

³ Ministry of Information, Civic Education and Tourism, E Government Department, Office of the President and Cabinet, Directorate of Rural Development, Directorate of Local Government and Decentralisation, Directorate of Chiefs Administration, Ministry of Finance, Ministry of Gender, Women and Children's Affairs, Ministry of Labour, Ministry of Sports and Culture, the Anti-Corruption Bureau, the Judiciary, Public Reform Programme, Malawi Electoral Commission, Ministry of Home Affairs and Internal Security, Directorate of Public Prosecutions, Directorate of Public Assets Declaration, Malawi Revenue Authority, Directorate of Public Safety and Road Traffic.

⁴ Ministry of Information, Civic Education and Tourism; Ministry of Local Government and Rural Development; Anti-corruption Bureau, Public Sector Reforms, Foreign Affairs and International Cooperation; Ministry of Energy, Mining and Natural Resources, and Office of the President and Cabinet.

⁵ Ministry of Information, Civic Education and Tourism; Ministry of Local Government and Rural Development; the Anti-Corruption Bureau; Office of the President and Cabinet; Office of the Vice President; Ministry of Finance, Economic Planning and Development.

⁶ Malawi OGP National Action Plan 2016 -2018, https://www.opengovpartnership.org/sites/default/files/Malawi_NAP_2016-2018.pdf.

⁷ Ibid.

⁸ For more information on the IAP2 Spectrum, see: http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/foundations_course/IAP2_P2_Spectrum_FINAL.pdf.

IV. Commitments

All OGP-participating governments develop OGP action plans that include concrete commitments over a two-year period. Governments begin their OGP action plans by sharing existing efforts related to open government, including specific strategies and ongoing programs.

Commitments should be appropriate to each country's unique circumstances and challenges. OGP commitments should also be relevant to OGP values laid out in the OGP Articles of Governance and Open Government Declaration signed by all OGP-participating countries.¹

What Makes a Good Commitment?

Recognizing that achieving open government commitments often involves a multiyear process, governments should attach timeframes and benchmarks to their commitments that indicate what is to be accomplished each year, whenever possible. This report details each of the commitments the country included in its action plan and analyzes the first year of their implementation.

The indicators used by the IRM to evaluate commitments are as follows:

- **Specificity:** This variable assesses the level of specificity and measurability of each commitment. The options are:
 - **High:** Commitment language provides clear, verifiable activities and measurable deliverables for achievement of the commitment's objective.
 - **Medium:** Commitment language describes activity that is objectively verifiable and includes deliverables, but these deliverables are not clearly measurable or relevant to the achievement of the commitment's objective.
 - **Low:** Commitment language describes activity that can be construed as verifiable but requires some interpretation on the part of the reader to identify what the activity sets out to do and determine what the deliverables would be.
 - **None:** Commitment language contains no measurable activity, deliverables, or milestones.
- **Relevance:** This variable evaluates the commitment's relevance to OGP values. Based on a close reading of the commitment text as stated in the action plan, the guiding questions to determine the relevance are:
 - **Access to Information:** Will the government disclose more information or improve the quality of the information disclosed to the public?
 - **Civic Participation:** Will the government create or improve opportunities or capabilities for the public to inform or influence decisions?
 - **Public Accountability:** Will the government create or improve opportunities to hold officials answerable for their actions?
 - **Technology & Innovation for Transparency and Accountability:** Will technological innovation be used in conjunction with one of the other three OGP values to advance either transparency or accountability?²
- **Potential impact:** This variable assesses the *potential impact* of the commitment, if completed as written. The IRM researcher uses the text from the action plan to:
 - Identify the social, economic, political, or environmental problem;

- Establish the status quo at the outset of the action plan; and
- Assess the degree to which the commitment, if implemented, would impact performance and tackle the problem.

Starred commitments are considered exemplary OGP commitments. In order to receive a star, a commitment must meet several criteria:

- Starred commitments will have “medium” or “high” specificity. A commitment must lay out clearly defined activities and steps to make a judgement about its potential impact.
- The commitment’s language should make clear its relevance to opening government. Specifically, it must relate to at least one of the OGP values of Access to Information, Civic Participation, or Public Accountability.
- The commitment would have a "transformative" potential impact if completely implemented.³
- The government must make significant progress on this commitment during the action plan implementation period, receiving an assessment of "substantial" or "complete" implementation.

Based on these criteria, Malawi’s action plan did not contain any starred commitments.

Finally, the tables in this section present an excerpt of the wealth of data the IRM collects during its progress reporting process. For the full dataset for Malawi and all OGP-participating countries, see the OGP Explorer.⁴

General Overview of the Commitments

Malawi’s first action plan contained five commitments focusing on improving access to information, increasing civic participation, reducing corruption, improving public sector delivery, and increasing transparency in extractive industries.

¹ Open Government Partnership: Articles of Governance, June 2012 (Updated March 2014 and April 2015), https://www.opengovpartnership.org/sites/default/files/attachments/OGP_Articles-Gov_Apr-21-2015.pdf.

² IRM Procedures Manual. Available at: http://www.opengovpartnership.org/sites/default/files/IRM-Procedures-Manual-v3_July-2016.docx.

³ The International Experts Panel changed this criterion in 2015. For more information visit: <http://www.opengovpartnership.org/node/5919>.

⁴ OGP Explorer: bit.ly/1KE2Wil.

1. Freedom of Information

Commitment Text:

The enactment of the access to information law underpins the need to realize the constitutional principles on right to information. Easy access to information increases transparency, which in turn, promotes accountability by enabling citizens to hold duty bearers to account for their actions

Milestones:

1.1. Cabinet approves Access to Information Bill and the Bill is gazette

1.2. Parliament enacts the Access to Information Law

Responsible institutions: Ministry of Information, Civic Education and Tourism

Supporting institutions: Office of the President and Cabinet, E-Government Department, Ministry of Justice and Constitutional Affairs, Media Institute of Southern Africa (MISA Malawi), Citizens for Justice, Malawi Human Rights Commission, Malawi Broadcasting Corporation, National Initiative for Civic Education, Zodiac Radio and TV, Malawi Communications Regulatory Authority (MACRA), Council for Non-Governmental Organization (CONGOMA), Daily Times – Print and TV and National Newspapers Limited

Start date: Not specified

End date: Not specified

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
1. Overall			✓		✓		✓				✓		Yes				✓

Context and Objectives

Section 37 of Malawi’s Constitution stipulates that “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.”¹ However, there has been no enabling legislation to regulate and operationalize access to information in Malawi. As a result, according to Transparency International, “the government does not publish enough information to allow citizens and civil society to judge the government’s performance in the provision of goods and services. This lack of information also provides politicians with the opportunity to allocate goods and services through clientelism, to “buy” political support.”² This commitment aims to ensure citizens are able to exercise their constitutional right to

access government-held information. Specifically, it calls for approving the Access to Information (ATI) Bill in the Cabinet and enacting the Bill in Parliament. The ATI Bill is the part of the government's National Access to Information Policy of January 2014, which calls for the enactment of ATI legislation.³

Passage of the ATI Bill is clearly relevant to the OGP value of access to information. Additionally, Part IX of the ATI Bill provides whistleblower protection for the disclosure of violations of the law, mismanagement of funds, conflicts of interest, corruption, abuse of public office and risks to public safety.⁴ Part VII establishes the right to an internal review by the information holder if access to requested information is denied, and Part VIII allows persons who have exhausted the internal review to apply to the Human Rights Commission to review the decision of the information holder.⁵ These protections and review mechanisms make the commitment relevant to the OGP value of public accountability. While the commitment does not define the timeline for enacting the ATI Bill, the two milestones stated are verifiable actions. Therefore, the commitment's specificity is marked as medium.

The passing of the ATI Bill is widely perceived as a major accomplishment by civil society stakeholders after 12 years of campaigning and negotiations with the government.⁶ Human Rights Watch reports that the ATI Bill is especially important to mining communities in Malawi who will be able to access information for planned mining operations and the associated health and safety risks.⁷ The Centre for Law and Democracy (CLD), using the RTI Ranking, a comparative tool for assessing the strength of right to information legislation, ranked Malawi's ATI Bill as the 15th strongest right to information bill in the world, and the fifth strongest in Africa.⁸

However, while civil society has hailed the ATI Bill as a major breakthrough in securing the right of access to information, practical obstacles may limit the capacity of many citizens to effectively exercise this right. The Malawi chapter of the Media Institute of Southern Africa (MISA) has noted a variety of immediate, intermediate, and underlying obstacles to access to information. Such obstacles include:

- high illiteracy rates,
- limited willingness and ability of officials to grant access,
- limited physical access to locations where information is stored (especially for rural Malawians, the majority of the population),
- low public awareness of the right to access public information, and
- insufficient and inconsistent legal protection of human rights.⁹

While this commitment secures the legal foundation for access to information, the application of the right in practice will require a more holistic change in culture for public officials and the public. Had the commitment involved a long-term strategy to work with civil society to raise awareness of the right to information, the potential impact could have been transformative. As written, however, the potential impact is marked as moderate.

Completion

The initial draft ATI Bill gazetted in Parliament in February 2016 included several changes and exclusions that civil society stakeholders (such as MISA Malawi) found detrimental to the Bill. Notably, it removed the proposed Independent Information Commission (IIL) as the oversight mechanism, replaced the Malawi Human Rights Commission (MHRC) as the body to review appeals of disclosure refusals with the High Court, and did not provide whistleblower protection.¹⁰ Parliament eventually rejected this modified draft Bill in July 2016 and referred the Bill to Media and Communications and Legal Affairs Committees for further scrutiny.¹¹ Following the recommendations of these committees, and after further campaigning by civil society

stakeholders, Parliament passed the ATI Bill in December 2016 with the reintroduction of whistleblower protection and the reintroduction of MHRC as the oversight and appeals mechanism.¹² President Arthur Mutharika signed the Bill into law in February 2017, thus completing both of the commitment's milestones.¹³

Since the presidential signing of the ATI Bill, there has been limited progress made towards its practical implementation. The Ministry of Information has not set a commencement date for implementation as the ATI Bill states (the provision to set a commencement date is open ended in the Bill). In July 2017, the government formed a 12-member steering committee to ensure the effective implementation of the ATI Bill. The committee members were selected from the MHCR, the Ministry of Justice and Constitutional Affairs (MoJCA) and the Ministry of Information and Information Technology (MolCT). The committee has reportedly begun drafting terms of reference and a draft roadmap for the implementation of the Bill.¹⁴ Adequate funding is also a major issue towards implementation. According to MISA Malawi, the 2016-2017 national budget does not allocate specific funding to ATI activities, while a February 2018 budget review meeting resulted in cuts to the MHRC's funding (to be explained in greater detail in the IRM's End of Term Report). According to the civil society group ActionAid, the MHRC has stated that its current allocated budget for rolling out the ATI Bill is far too small for what would be needed to perform its tasks as the oversight mechanism.¹⁵

Next Steps

The passing of Malawi's ATI Bill is a major achievement for civil society and a significant milestone towards improving the ability of citizens to exercise their constitutional right to access to information. Moving forward, the government should work closely with civil society to ensure the numerous and deeply entrenched obstacles that might limit the capacity for the public to access information are adequately addressed. This could involve carrying out awareness-raising campaigns in rural communities, ensuring illiterate citizens have adequate mechanisms to request and understand information, and providing the MHRC with sufficient funds to effectively serve as the oversight mechanism.

It is important to note that the ATI law and access to information more broadly go hand in hand with other initiatives in Malawi's action plan, namely improving anti-corruption mechanisms and joining the Extractive Industries Transparency Initiative (EITI). For example, anti-corruption efforts could be strengthened by expanding the ATI law's whistleblower protection guarantees, and special attention could be placed on accessing information on extractives industry contracts and licenses as Malawi moves towards EITI compliance.

¹ Malawi's Constitution: Section 37,

<http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004840.pdf>.

² Transparency International Anti-Corruption Helpdesk, Overview of Corruption in Malawi, 3 September 2014,

https://knowledgehub.transparency.org/assets/uploads/helpdesk/Country_Profile_Malawi_2014.pdf.

³ Republic of Malawi, National Access to Information Policy, January 2014,

<http://www.macra.org.mw/wp-content/uploads/2014/07/National-Access-to-Information-Policy.pdf>.

⁴ Access to Information Act,

<http://crm.misa.org/upload/web/Access%20To%20Information%20Act%202017.pdf>.

⁵ The Malawi Gazette Supplement,

<http://crm.misa.org/upload/web/Access%20To%20Information%20Act%202017.pdf>.

⁶ Chunga, Same, "Malawi Parliament passes ATI Bill", The Nation, 15 December 2016,

<http://mwnation.com/malawi-parliament-passes-ati-bill/>.

⁷ Human Rights Watch, "Malawi: Information Bill Aids Mining Communities", 25 January 2017,

<https://www.hrw.org/news/2017/01/25/malawi-information-bill-aids-mining-communities>.

⁸ Centre for Law and Democracy, Malawi: Analysis of the Access to Information Bill, 2015, February 2016, http://www.law-democracy.org/live/wp-content/uploads/2016/02/Malawi.RTI_Feb16.pdf.

⁹ Media Institute of Southern Africa, “Obstacles to Access to Information in Malawi”, February 2012, http://crm.misa.org/upload/web/malawi_ati_obstacles.pdf.

¹⁰ Media Institute of Southern Africa Malawi, “A Rapid Analysis and Assessment of the Access to Information Bill, 2016”, March 2016, <http://crm.misa.org/upload/web/Analysis%20of%20the%20Gazetted%20ATI%20Bill%202016.pdf>.

¹¹ Chimkea, Rebecca. “MPs reject adulterated ATI Bill”, *The Nation*, 16 July 2016, <http://mwntation.com/mps-reject-adulterated-ati-bill/>.

¹² Khanje, Thom, “MISA Malawi Applauds Parliament for Passing Access to Information Bill”, 16 December 2016, <http://misa.org/featured-on-home/misa-malawi-applauds-parliament-passing-access-information-bill/>.

¹³ Khanje, Thom, “MISA Malawi Applauds President Mutharika for Signing ATI Bill”, <http://malawi.misa.org/2017/02/16/misa-malawi-applauds-president-mutharika-signing-ati-bill/>. The final version of the Bill, <http://crm.misa.org/upload/web/Access%20To%20Information%20Act%202017.pdf>

¹⁴ Kumwenda-Mana, Sylvester. “Malawi govt forms steering committee to implement Access to Information Act”, *Nyasa Times*, 21 July 2017, <https://www.nyasatimes.com/malawi-govt-forms-steering-committee-implement-access-information-act/>

¹⁵ ActionAid Malawi, “Will the ATI Law live its promise?”, 8 November 2017, <http://www.actionaid.org/malawi/news/will-ati-law-live-its-promise>

2. Citizen Participation

Commitment Text:

Informed participation is essential for thriving democratic state. Citizen participation in a functioning democracy requires that they are fully engaged in the processes of identifying their needs and priorities and feedback is provided on performance. This ensures that citizens become partners with their governments and other service providers in a manner that promotes good governance and human rights. If citizens fail to actively participate, there is a danger that policies, programmes and interventions implemented at community levels will be simply imposed upon them. Such top-bottom approaches more often fail to realistically and accurately incorporate the most pressing needs of these communities.

Milestones:

2.1. Annual change in knowledge and attitudes among citizens leading to demand for their rights, services and accountability

2.2. Proportion of citizens expressing satisfaction with results of their participation in development and democratic processes

2.3. Proportion of the population confirming having received feedback following their consultation or participation

Responsible institution: Ministry of Local Government and Rural Development

Supporting institutions: Office of the President and the Cabinet, Ministry of Finance, Economic Planning and Development, Ministry of Information, Civic Education and Tourism, Ministry of Gender, Women and Children Affairs, Ministry of Sports and Culture, Ministry of Labour, Youth and Manpower Development, National Initiative for Civic Education (NICE), Council for Non Governmental Organizations (CONGOMA), Citizens for Justice (CFJ), Catholic Commission for Justice and Peace (CCJP), Institute for Policy Interaction (IPI), Ministry of Local Government, National Libraries, and the National Integrity Platform

Start date: Not specified

End date: Not specified

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
2. Overall		✓				✓				✓			No	✓			

Context and Objectives

Currently, the level of civic participation in Malawi is low and opportunities to participate in consultations are limited. For example, the 2017 Afrobarometer survey for Malawi found that the vast majority of respondents did not contact a local government councilor, a member of Parliament, or official of a government agency about an important problem or to give their views.¹ Malawi received 15 out of 100 possible points for public participation in the International Budget Partnership 2017 Open Budget Survey, and the country “provides few opportunities for the public to engage in the budget process.”² The government of Malawi has prioritized improving civic participation through several long-term initiatives. Civic participation is a focal point in Malawi’s long-term development strategy known as Vision 2020.³ Malawi’s Public Service Charter calls for the government to “ensure mechanisms of participation and consultation involving the public, and all other stakeholders are effectively put in place.”⁴

This commitment seeks to improve the levels of civic participation by increasing citizens’ understanding of consultation opportunities, increasing the level of public satisfaction with consultation, and increasing the proportion of the public who receive feedback following their consultation. The commitment’s milestones are indicators of successful implementation (i.e. changes in public attitudes towards and satisfaction with participation), as opposed to verifiable actions to be implemented. Therefore, the specificity is marked as low. The commitment does not explain how citizen feedback on consultations will be collected or how consultations will be incorporated into policy. While public participation is important for determining priority areas for aid and the level of public satisfaction among aid recipients, the commitment’s milestones and activities as written are vague in their description of how public participation will influence policy to have more than a minor potential impact on open government.

Completion

Due to the lack of specific indicators for this commitment’s milestones, it is difficult to determine the accurate level of implementation. While the public trust National Initiative for Civic Education (NICE) has implemented various participation projects in Malawi, it is unclear if these projects are related to the commitment in the action plan.

Next Steps

Improving opportunities for citizens to participate in decision-making processes is an important long-term strategy to ensure Malawi’s future development projects are based on citizen needs and feedback. Future action plans could include participation commitments with more measurable indicators of implementation, such as training specific numbers of officials in participation best practices and providing citizen forums with the ability to formally hold government accountable.

¹ Afrobarometer Round 7, Summary of Results for Malawi, 2017, http://afrobarometer.org/sites/default/files/publications/Summary%20of%20results/mlw_r7_sor_eng_09102017.pdf.

² Open Budget Survey results for Malawi in 2017, <https://www.internationalbudget.org/wp-content/uploads/malawi-open-budget-survey-2017-summary.pdf>.

³ Malawi Vision 2020, <http://www.sdn.org.mw/malawi/vision-2020/chapter-1.htm#1.1.3> Citizens' Participation

⁴ Malawi Public Service Charter, <http://workspace.unpan.org/sites/internet/Documents/UNPAN039481.pdf>.

3. National Integrity System and Fight Against Corruption

Commitment Text:

This commitment requires urgent attention to ensure effective coordination and harmonization of the national effort to combat corruption and promote integrity, reviewing and addressing deficits in legislation of key accountability institutions to ensure that they are able to execute and fulfill their mandate, enhancing ethical conduct of political representatives and public officials and increasing public education and awareness on the prevention of corruption and reporting abuse of public resources.

Milestones:

3.1. National accountability institutions progressively having adequate resources to operate effectively

3.2. Reviewed legislation to remedy deficits in laws impacting on the fight against corruption

Responsible institutions: The Anti-Corruption Bureau and Office of the President and Cabinet Good Governance Unit

Supporting institutions: Anti-Corruption Bureau, National Audit Office, Public Sector Reform Commission, the Judiciary, Parliament, Office of the Ombudsman, Malawi Police Service, Malawi Electoral Commission, Ministry of Home Affairs and Internal Security, Immigration, Office of Director of Public Procurement, Ministry of Justice and Constitutional Affairs, Directorate of Public Prosecutions, Directorate of Public Assets Declaration, Malawi Economic Justice Network (MEJIN), Media Institute of Southern Africa (MISA), Council for Non-Governmental Organizations of Malawi (CONGOMA), Citizens for Justice (CFJ), Catholic Commission for Justice and Peace (CCJP), National Construction Industry Council (NCIC/COSTI Steering, Committee), Office of the Declaration of Assets, Malawi Judiciary, and Malawi Police, Malawi Confederation of Commerce and Industry (MCCI)

Start date: Not specified

End date: Not specified

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
3. Overall		✓			Unclear					✓			Yes		✓		

Context and Objectives

Corruption remains a persistent problem for good governance and economic development in Malawi. Malawi ranked 120 out of 176 countries in Transparency International's 2016 Corruption Perception Index.¹ A joint Transparency International and Afrobarometer study in 2015 found that 69 percent of respondents in Malawi perceive their government to be doing badly in fighting corruption, while only 28 percent perceive it to be doing well.² The Centre for Social Research's 2013 Governance and Corruption Survey found that 96 percent of Malawians view corruption as a serious problem in Malawi.³ The 2014 "Cashgate" and 2016 "Tractorgate" corruption scandals (described in greater detail in Section II: Context) have demonstrated the weaknesses in the country's anti-corruption legislation and have had far-reaching consequences for the country's citizens. Notably, the loss of confidence in anti-corruption institutions following the "Cashgate" scandal prompted international donors to cancel USD 150 million in crucial foreign assistance to Malawi.⁴

The primary anti-corruption body in Malawi is the Anti-Corruption Bureau (ACB). According to Global Integrity, the ACB "is regularly accused of ignoring major corruption accusations leveled against senior government officials," and the ACB's independence is questionable due to the president's powers to hire and fire the Bureau's director.⁵ This analysis was echoed in Transparency International's 2013 assessment of the ACB within the context of Malawi's National Integrity System.⁶ Malawi has also passed anti-corruption legislation, such as the Public Officers' (Declaration of Assets, Liabilities and Business Interests) Act of 2013, which requires the President and Cabinet, Members of Parliament and prescribed public officers to declare their assets, liabilities and business interests upon assuming office.⁷

This commitment seeks to reduce corruption by ensuring that anti-corruption institutions have adequate funding to fulfill their mandates, and by addressing deficiencies in relevant legislation. While the commitment calls for "increasing public education and awareness on the prevention of corruption and reporting abuse of public resources," the relevance to OGP values of the individual milestones is unclear. For example, the funding assurances of the anti-corruption institutions and the review of anti-corruption legislation do not explicitly involve consultations with civil society or the public, and there are no additional mechanisms that will be put in place to allow citizens to report corruption. The milestones do not provide details on how the funding and legislation review will be carried out, and the commitment does not specify which institutions and legislation will be reviewed. Therefore, the specificity is marked as low. While the lack of funding prohibits the ACB from fulfilling its mandate, the commitment does not address the issue of its lack of independence from the government. Had the commitment included measures to provide greater public oversight of the ACB's activities and decisions, the potential impact might have been greater. However, as written in the action plan, the commitment's potential impact is marked as minor.

Completion

In the Draft 2017-2018 Financial Statement, the Ministry of Finance, Economic Planning & Development lists the projected 2017-2018 budget for the ACB at roughly 3.065 million MWK, which represents an increase of about 1 million MWK from 2016-2017 (2.063 million MWK).⁸ The Office of the Director of Public Officers' Declarations, which oversees the Public Officers' Act, the Office of the Ombudsman, and the Malawi Human Rights Commission, which oversees the Access to Information Bill (discussed in Commitment 1), are all projected to receive budgets of varying amounts in 2017-2018. The ambassadors from the European Union and the US have welcomed the increased allocation of funds to these good governance

institutions.⁹ According to feedback provided by experts in Malawi, the amount of funding the ACB received was lower than the allocated budget.¹⁰

The review of deficiencies in anti-corruption legislation (Milestone 3.2) is difficult to assess. The 2004 Corrupt Practices Act stipulates that the ACB must provide Parliament with annual reports on its performance.¹¹ The ACB's 2012-2017 Strategic Plan calls for certain corruption-related legal reforms, such as amending the Parliamentary and Presidential Act to incorporate issues of corruption, creating a code of conduct for Parliament, and reviewing laws that effect the private sector to incorporate issues of corruption.¹²

The absence of concrete activities in the milestones makes the overall completion level of the commitment difficult to assess. Therefore, the completion is considered limited.

Early Results

The ACB website currently does not list the total number of complaints received, completed investigations, or cases recommended for prosecution beyond the years 2012-2013.¹³ The ACB has continued to pursue corruption cases during the first year of the action plan. For example, in June 2017, the ACB arrested the former Roads Authority CEO for illegally recommending his own company to be awarded a World Bank contract,¹⁴ and in July 2017 ACB arrested the former agriculture minister over illegal procurement contracts for maize imports from Zambia.¹⁵ The ACB's investigation into the high-profile and politically-charged "Cashgate" scandal is ongoing, despite human and financial challenges, as well as allegations of political interference.¹⁶

Next Steps

Although Malawi has anti-corruption institutions and legislation that generally conform to international best practices, enforcement remains inconsistent and corruption remains a major barrier to economic development. While providing sufficient funding for institutions and updating relevant legislation are important initiatives, future action plans should more directly involve civil society and the public in the development and implementation of anti-corruption commitments. For example, anti-corruption legislation could be reviewed following consultations with the stakeholders, and the ACB could better educate the public on how to report corruption through its existing mechanisms. Such initiatives would help improve public participation in anti-corruption policy and would raise awareness of existing corruption reporting options.

¹ Transparency International Corruption Perceptions Index 2016,

https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

² Transparency International and Afrobarometer's African edition of the Global Corruption Barometer, https://www.transparency.org/whatwedo/publication/people_and_corruption_africa_survey_2015.

³ Chancellor College Centre for Social Research, Governance and Corruption Survey 2013, May 2014, Pg. 8, http://www.acbmw.org/wp-content/downloads/Governance_Corruption_Survey_Report_2013.pdf

⁴ Jimu, Christopher, "UK says Malawi aid freeze not punishment", The Nation, 26 November 2013, <http://mwnation.com/uk-says-malawi-aid-freeze-not-punishment/>.

⁵ Global Integrity Report 2011: Malawi, <https://www.globalintegrity.org/research/reports/global-integrity-report/global-integrity-report-2011/gir-scorecard-2011-malawi/>.

⁶ Malawi National Integrity System Assessment Report 2013, http://issuu.com/transparencyinternational/docs/2013_malawinis_en?e=2496456/6675410

⁷ Public Officers (Declarations of Assets, Liabilities and Business Interest) Act, <http://crm.misa.org/upload/web/Public%20Officers%20Declaration%20of%20Assets%20Liabilities%20and%20Business%20Interests%20Act%202013.PDF>.

⁸ Ministry of Finance, Economic Planning and Development, Draft 2017-2018 Financial Statement, http://www.finance.gov.mw/index.php?option=com_docman&task=doc_view&gid=306&Itemid=107, Pg. 41.

⁹ Chizimba, Henry, "Mixed reactions on the 2017-2018 Malawi national budget; donors and oppositions hail it", the Maravi Post, 20 September 2017, <http://www.maravipost.com/mix-reactions-2017-2018-malawi-national-budget-donors-oppositions-hails/>.

¹⁰ Comments provided to the IRM by Fletcher Tembo, former Director of the Making All Voices Count Programme, 26 April 2018.

¹¹ Corrupt Practices Act No. 17 of 2004, http://www.acbmw.org/wp-content/downloads/Corrupt_Practices_Act-No%2017_of_2004.pdf.

¹² Strategic Plan for the Anti-Corruption Bureau (2012-2017), Pg. 46, http://www.acbmw.org/wp-content/downloads/Strategic_Plan_140813.pdf.

¹³ Anti-Corruption Bureau, Malawi, http://www.acbmw.org/?page_id=291.

¹⁴ Anti-Corruption Bureau, Malawi, "ACB Arrests Former Roads Authority CEO Eng. Hiwa in Lilongwe, <http://www.acbmw.org/?p=629>.

¹⁵ Anti-Corruption Bureau, Malawi, "ACB Arrests Former Minister of Agriculture- Hon. Dr. George Chaponda and Grace Mijaga Mhango, <http://www.acbmw.org/?p=648>.

¹⁶ Nhlema, Jaqueline, "New Cashgate Files Piling on ACB Table", Zodiak Online, 7 March 2018, <https://zodiakmalawi.com/top-stories/new-cashgate-files-piling-on-acb-table>.

4. Public Sector Reforms and Public Service Delivery

Commitment Text:

An efficient and effective public sector is a bedrock for sustainable development. A robust public service provides a sufficient capacity necessary to retain a competent workforce and achieve national development outcomes.

This commitment enjoins government and all stakeholders to pursue and implement concrete and results oriented reforms that will revitalize the public service delivery machinery, process and systems. Specifically, improvements of the public sector delivery will be underpinned by the broader public reforms currently being championed by the Office of the Vice President through the Public Service Sector Reform Commission. These reforms seek to generate improvements through:- depoliticizing the public service, entrenching ethics, integrity and discipline, systematic development of human resource, harmonizing remuneration and conditions of service, rightsizing, harmonizing human resource management systems, effective implementation of performance management systems, establishing efficient and effective funding and payment systems, decentralizing service delivery, fostering efficient utilization of public resources, adopting technological innovations that improve efficiency and effectiveness of public service delivery and undertaking public service legal reforms.

Milestones:

- 4.1. Annual budget allocation for public services matched with funding needs
- 4.2. Government maintains adequate funding to key public services
- 4.3. Proportion of the public expressing satisfaction with public service delivery

Responsible institution: Public Sector Reforms Unit in the Office of the Vice President

Supporting institutions: Office of the President and Cabinet, Public Sector Reforms Department, Ministry of Local Government and Rural Development (MOLGRD), Ministry of Information (MOI), Malawi Revenue Authority (MRA), Ministry of Health, Ministry of Home Affairs, Ministry of Education, the Director of Public Safety and Road Traffic, Ministry of Finance and Economic Development, Department of Statutory Corporations and various ministries, departments and agencies of government, Council for Non-Governmental Organizations of Malawi (CONGOMA), Malawi Confederation of Commerce and Industry (MCCI), Economic Association of Malawi

Start date: Not specified

End date: Not specified

Commitment Overview	Specificity	OGP Value Relevance	Potential Impact	On Time?	Completion
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	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete	
4. Overall		✓			Unclear					✓			No	✓				

Context and Objectives

Malawi's economic difficulties have led to the inconsistent provision and underfunding of public services. For example, shortages of medicine and doctors mean that healthcare facilities are often inadequately equipped to adequately service the public.¹ The country's rapid population growth rate has placed additional pressures on public services due to increased demand.² President Arthur Mutharika launched a public sector reform agenda in 2015, which included the establishment of a Public Service Reforms Commission to investigate the deficiencies in the provision of public service, and to provide recommendations on how to improve it.³ The Commission published its final report and recommendations in February 2015.⁴

This commitment aims to improve Malawi's public service through the implementation of the Public Service Sector Reform Commission. More specifically, it calls for the annual allocation of funds to public services based on needs, and increasing public satisfaction with public service delivery. Increasing public satisfaction with service delivery is relevant to the OGP value of civic participation. However, the commitment does not clarify how the level of public satisfaction will be determined. Therefore, the specificity is low. The commitment only vaguely implies public input for the Public Service Reform. However, without consultation with stakeholders or the public, it is unclear how the planned reforms will be implemented based on public needs, or how the public will be able to provide feedback on the reform efforts. Therefore, the potential impact is marked as minor.

Completions

The Commission's official mandate expired in January 2017, after which responsibility for implementing the reforms was moved to the Office of the President and Cabinet's Public Sector Reforms Unit.⁵ Citing the Commission's exit report, the Malawian news outlet *The Nation* reported in March 2017 significant challenges and delays in implementing the reforms, notably that "inadequate financial resources hindered progress and achievement of tangible results in some of the sectors involved."⁶ Due to the absence of further information and the vagueness of the milestones, the level of completion is considered to be "not started" and not on schedule.

Next Steps

Malawi's third Growth and Development Strategy for 2017-22 indicates that the government will continue to pursue the public sector reform agenda over the next five years.⁷ In addition to increasing the level of satisfaction of public service users, the Malawi Public Service Charter calls for the establishment of "a framework for consultations with service users and assist these public institutions manage the expectations of service users."⁸ Future action plans that focus on public service

reforms should include opportunities for public consultations to ensure reforms are based on stakeholder priorities.

¹ Mussa, Richard & Masanjala, Winford Henderson, Oxfam, “A Dangerous Divide: The State of Inequality in Malawi”, Pg. 13, https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/rr-inequality-in-malawi-261115-en.pdf.

² Malawi’s population has doubled over the past 20 years, <https://www.imf.org/en/Publications/CR/Issues/2017/07/05/Malawi-Economic-Development-Documents-45037>

³ Kamakanda, Gladys, “APM launches public service reforms agenda, unveils report”, Malawi News Agency, 13 February 2015, <http://www.manaonline.gov.mw/index.php/national/general/item/1963-ape-launches-public-service-reforms-agenda-unveils-report>.

⁴ Public Service Reforms Commission, Making Malawi Work, [https://info.undp.org/docs/pdc/Documents/MWI/Malawi%20Public%20Service%20Reform%20Report\(1\)%20\(2\).pdf](https://info.undp.org/docs/pdc/Documents/MWI/Malawi%20Public%20Service%20Reform%20Report(1)%20(2).pdf).

⁵ “Malawi govt announces public service reforms commission mandate expires Jan 31, 2017”, The Maravi Post, 7 January 2017, <http://www.maravipost.com/malawi-govt-announces-public-service-reforms-commission-mandate-expires-jan-31-2017/>.

⁶ Chikoko, Rex, “Gloomy picture for public reforms”, The Nation, 2 March 2017, <http://mwnation.com/gloomy-picture-for-public-reforms/>.

⁷ The Malawi Growth and Development Strategy (MGDS) III (2017-2022): Building a Productive, Competitive and Resilient Nation, November 2017, Pg. 22, <https://mininginmalawi.files.wordpress.com/2018/03/malawi-growth-and-development-strategy-iii-2017-2022.pdf>.

⁸ Malawi Public Service Charter: Raising the Bar of Excellence, Pg. 3, <http://workspace.unpan.org/sites/internet/Documents/UNPAN039481.pdf>.

5. Extractive Industries Transparency Initiative- (EITI)

Commitment Text:

The extractive industry sector and natural resources has been associated with a curse instead of a blessing for a lot of African countries and thus partly because of lack of transparency in the sector. To make sure that revenue from the industry contributes to sustainable development, there is need for a tool that tracks revenue collection and where such revenue goes. EITI is such a tool as it provides information to different stakeholders and citizens. Availability of information on revenue transparency will help citizens appreciate how much money the government receives from the sector and how that money contributes to national budget and translating to service delivery.

Milestones:

5.1. Establishment of the Multi-stake holder Grouping

5.2. Submission of EITI application

5.3. Establishing the EITI secretariat

5.4. Recruitment of staff to work at the secretariat

Responsible institution: Ministry of Finance, Economic Planning and Development

Supporting institutions: Ministry of Energy and Natural Resources, Office of the President and Cabinet (OPC), Malawi Revenue Authority (MRA), and Reserve Bank of Malawi, Citizens for Justice (CFJ), ActionAid, Council for Non-Governmental Organizations of Malawi (CONGOMA), Catholic Commission for Justice and Peace (CCJP), Institute for Policy Interaction (IPI), Foundation for Community Support Services (FOCUS), Paladin Energy Ltd, Mkango Resources Limited and Globe Metals Ltd, Shayona Cement Limited, and Malawi Chamber of Commerce and Industry

Start date: Not specified

End date: Not specified

Commitment Overview	Specificity				OGP Value Relevance				Potential Impact				On Time?	Completion			
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Tech. and Innov. for Transparency and Accountability	None	Minor	Moderate	Transformative		Not Started	Limited	Substantial	Complete
5. Overall			✓		✓	✓				✓			Yes				✓

Context and Objectives

Although extractive industries currently constitute less than 1 percent of Malawi's GDP, the government is promoting investment in the extractive industries to reach 20 percent of GDP by 2025.¹ This commitment calls on Malawi to begin the process of joining the Extractive Industries Transparency Initiative (EITI), a global standard to promote open and accountable management of natural resources, as proposed in the country's Mines and Minerals Policy of 2013.² EITI countries are required to adopt the EITI Standards by:

- 1) Establishing a national multi-stakeholder group (MSG) that includes government, companies and civil society to decide how the EITI process should work in that country,
- 2) Reporting annually on the key information about the governance of the extractives sector, such as the allocation licenses, tax and social contributions companies pay, and where this money ends up in the government at the national and regional level, as well as recommendations on how to improve the sector's governance, and
- 3) Disseminating the findings and recommendations in the EITI reports to the public.³

Upon completion of these steps, candidate countries submit their EITI Candidature Application to the EITI Board, which makes a final decision on the candidate country's status. If admitted, the candidate country is given a deadline to provide its first annual EITI report.⁴

Adopting the EITI principles requires consistent reporting on information pertaining to the extractives sector and disseminating the information to the public, thus making the commitment relevant to the OGP value of access to information. Also, the involvement of civil society in the multi-stakeholder group would allow civil society to directly influence the way in which EITI is implemented in Malawi, thus making the commitment relevant to the OGP value of civic participation. The commitment's milestones are straightforward and pertain to the application of EITI participation, such as the establishment of the multi-stakeholder group and the EITI Secretariat. However, because they lack clear timeframes and details on the size and structure of these initiatives, the commitment's specificity is marked as medium.

Malawi's interest in EITI comes at a time when extractive industries are expected to become major sources of revenue for the country. Civil society groups view compliance and implementation of the EITI Standard as a way for Malawi to avoid the "resource curse" that prevents many developing countries from benefiting from the revenue from their abundant natural resources.⁵ Human Rights Watch has reported on numerous human rights and health risks affecting rural communities near coal and uranium mining sites around Lake Malawi, that could be exacerbated by the recent issuing of licenses and contracts to explore for oil and gas extraction.⁶ The publication of EITI reports would provide greater transparency on the allocation of these licenses and contracts, as well as providing valuable information on the environmental impact of extractive industries and the payment of taxes by companies.⁷ However, the commitment does not call for additional transparency or consultation activities beyond those required for EITI Candidate status. Had the commitment gone further to outline clear steps to take Malawi from EITI Candidacy to EITI Compliance, the commitment's potential impact might have been higher. However, given the absence of additional activities, the commitment's potential impact is assessed as minor.

Completion

The milestones for this commitment were completed in 2015 and 2016, prior to the period covered in the first action plan. A three-year (2015-2017) work plan for implementing EITI requirements was developed and published in January 2015.⁸ Malawi established the multi-stakeholder group in February 2015. The multi-stakeholder group is chaired by the Director of Revenue of the Ministry of Finance, Economic Planning and Development of Malawi and comprises 23 representatives: seven from Government Entities, eight from the extractive companies, and eight from civil society. Malawi submitted its application for EITI Candidature status in July 2015,⁹ and was formally admitted as an EITI Candidate country in October 2015.¹⁰ Initially, an interim EITI Secretariat was formed in July 2015, including one representative from the German Corporation for International Cooperation (GIZ), and three from the Ministry of Finance. Three members (a Technical Manager, a Communications and Engagement Officer and a Project Accountant) were recruited in July 2016 to oversee the day-to-day activities of EITI in Malawi, as part of the permanent EITI Secretariat, and an office was established within the Revenue Policy Division at the Ministry of Finance.¹¹

During the first year of action plan implementation, Malawi further pursued compliancy with the EITI. Moore Stephens submitted Malawi's first EITI report in April 2017 for the period from July 2014 to June 2015.¹² In accordance with EITI open data requirements, the report was also published in open data format (Excel). The report covered the oil, gas, mining and forestry sectors, and included 13 recommendations to improve the EITI process. In accordance with EITI compliancy requirements, Malawi has developed a Beneficial Ownership Disclosure Roadmap¹³ and an Open Data Policy (both published in January 2017).¹⁴ There is also a detailed work plan for 2018.¹⁵ In February 2017, a delegation from Malawi EITI (MWEITI) visited Nigeria to study how Malawi can emulate the successes of Nigeria's implementation of EITI principles.¹⁶ It should be noted, however, that the EITI Board has yet to officially assess Malawi against the 2016 Standard (this is scheduled to take place in September 2018).¹⁷

Early Results

The EITI process has already led to preliminary improvements in transparency around the extractives sector in Malawi. Currently, five contracts are published in full on ResourceContracts.org, a global repository of extractive sector contracts (for Nyala Mines, Paladin Limited, Pacific Oil Limited, and two for RAK Gas MB45).¹⁸ The Ministry of Natural Resources, Energy and Mining (formerly the Ministry of Mining) and the Trimble Land Administration have developed an interactive mining map (Mining Cadastre Portal) for the Malawi EITI website, showing the geographical area of the country divided into "blocks" for different types of mining licenses.¹⁹

Next Steps

Obtaining EITI candidacy status is an important first step towards greater transparency in the extractives sector. As the EITI process moves forward, the multi-stakeholder group and the EITI Secretariat should work diligently to address the 13 recommendations outlined in the first EITI report. Future action plans could try to move Malawi from candidacy to full compliance with the 2016 EITI Standard. This is especially important because the EITI Board will begin assessing Malawi's compliance with the Standard in September 2018. This could involve commitments pertaining to the implementation of Malawi's Open Data Policy and Beneficial Ownership Disclosure Roadmap (mentioned in the Completion section above). Malawi's Open Data Policy outlines specific policy objectives and activities to achieve them, including:

- 1) Ensuring enhanced accessibility and communication of EITI data;

- 2) Ensuring regular reconciliation of payments by companies and receipts by government entities.²⁰

Because of their clear relevance to OGP values as written in the Open Data Policy, future action plans could incorporate these policy objectives and their corresponding implementation activities as the specific milestones in a new commitment.

Public participation and accountability are important elements to ensure transparency in the extractives sector. Malawi is currently in the process of reforming its Mines and Minerals Act of 1981. The draft bill calls for “grievance mechanisms to address concerns and issues related to license holder’s operations and the process to be used in addressing these concerns and issues.”²¹ The IRM considers the creation of these grievance mechanisms, as well as the necessary support for citizens to make use of them, as important potential initiatives in order to provide the public with a means to hold mining and petroleum companies accountable based on the information made available from EITI activities.

Furthermore, civil society groups in Malawi (such as PWYP-Malawi), as well as the multi-stakeholder group, believe that passing EITI legislation is important to provide the legal enforcement for the country’s adherence to EITI principles and standards, and to address delays in government entities and extractive companies submitting their reporting templates.²² Malawi’s first EITI report noted that neither government entities nor extractive companies submitted their reporting templates by the stipulated deadline.²³ Additionally, by establishing a legal framework for EITI activities, Malawi would join a growing number of countries that have enacted specific legislation regarding EITI, such as Nigeria, Tanzania, and Liberia.²⁴ Civil society also noted that the findings of future EITI reports could be disseminated using more understandable formats for communities and citizens to use the information.

¹ Malawi Extractives Industries Transparency Initiative, Beneficial Ownership Disclosure Roadmap, December 2016,

https://eiti.org/sites/default/files/documents/malawi_beneficial_ownership_disclosure_roadmap.pdf.

² Republic of Malawi, Mines and Minerals Policy of Malawi, Ministry of Mining, March 2013, <http://www.eisourcebook.org/cms/Malawi%20Mines%20&%20Minerals%20Policy%202013.pdf>.

³ EITI International Secretariat, The EITI Standard 2016, 15 February 2016, https://eiti.org/sites/default/files/migrated_files/english_eiti_standard_0.pdf, Pg. 5.

⁴ Steps that countries must take to become EITI-compliant, <https://eiti.org/guide/sign-up>

⁵ See: <http://mweiti.gov.mw/about-us/brief-history/>.

⁶ Human Rights Watch, “They Destroyed Everything: Mining and Human Rights in Malawi”, 27 September 2016, <https://www.hrw.org/report/2016/09/27/they-destroyed-everything/mining-and-human-rights-malawi>.

⁷ Mining and Trade Review, <https://mininginmalawi.files.wordpress.com/2017/10/mining-trade-review-october-2017-electronic-copy.pdf> and Malawi’s troubled oil sector, <https://mininginmalawi.files.wordpress.com/2017/02/oxfam-2017-malawis-troubled-oil-sector-licenses-contracts-and-their-implications.pdf>.

⁸ Malawi’s Three Year Work Plan (2015-2017), https://eiti.org/sites/default/files/documents/2015-2017_malawi_work_plan.pdf.

⁹ Malawi’s EITI Candidature Application Form, <https://eiti.org/sites/default/files/documents/Malawi%20EITI%20Candidature%20%20Application%20Form%2027%20July%20%202015.pdf>.

¹⁰ Kråkenes, Anders T., “Malawi admitted as EITI candidate”, EITI, 22 October 2015, <https://eiti.org/news/malawi-admitted-as-eiti-candidate>.

¹¹ Malawi Extractive Industries Transparency Initiative, Annual Progress Report, 2016, <http://mweiti.gov.mw/wp-content/uploads/2017/04/MWEITI-2016-Annual-Progress-Report.pdf>.

¹² Malawi Extractive Industries Transparency Initiative, MWEITI Report for the year ended 30 June 2015, https://eiti.org/sites/default/files/documents/mweiti_2014-15_eiti_report_final_1.pdf.

¹³ Malawi’s Beneficial Ownership Disclosure Roadmap, https://eiti.org/sites/default/files/documents/malawi_beneficial_ownership_disclosure_roadmap.pdf.

¹⁴ Malawi’s Open Data Policy, https://eiti.org/sites/default/files/documents/malawi_open_data_policy.pdf.

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- ¹⁵ MWEITI Secretariat Annual Work Plan for 2018, http://mweiti.gov.mw/wp-content/uploads/2017/04/Final-Copy_MWEITI-Secretariat-Work-Plan-for-2018-1.pdf.
- ¹⁶ Okere, Roseline, "Malawi to explore Nigeria's oil, gas transparency initiative", The Guardian, 2 February 2017, <https://guardian.ng/business-services/malawi-to-explore-nigerias-oil-gas-transparency-initiative/>.
- ¹⁷ For EITI's validation schedule and decisions, see: <https://eiti.org/document/validation-schedule-decisions>.
- ¹⁸ ResourceContracts.org, <http://www.resourcecontracts.org/countries/mw>.
- ¹⁹ Malawi Mining Cadastre Portal, <http://portals.flexicadastre.com/malawi/>.
- ²⁰ Malawi's Open Data Policy, Pg. 4, http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi_open_data_policy.pdf.
- ²¹ Nyondo, Ephraim, "The draft mining bill: What's in it?", The Nation, 23 January 2016, <http://mwnation.com/the-draft-mining-bill-whats-in-it/>.
- ²² IRM email exchange with representative from the Centre for Environmental Policy and Advocacy (CEPA), 26 April 2018.
- ²³ Malawi Extractive Industries Transparency Initiative, MWEITI Report for the year ended 30 June 2015, Pgs. 66-67, https://eiti.org/sites/default/files/documents/mweiti_2014-15_eiti_report_final_1.pdf.
- ²⁴ For the EITI legislation in Nigeria, see the 'Nigeria Extractive Industries Transparency Initiative. (NEITI) Act,' 2007, https://eiti.org/sites/default/files/documents/neiti_act_2007.pdf; for the EITI legislation in Tanzania, see 'The Tanzania Extractive Industries (Transparency and Accountability) Act, 2015,' <http://www.teiti.or.tz/wp-content/uploads/2014/03/The-Tanzania-Extractive-Industries-Transparency-Accountability-Act-2015.pdf>; for the EITI legislation in Liberia, see 'An Act Establishing the Liberia Extractive Industries Transparency Initiative (LEITI)', 10 July 2009, <http://www.leiti.org.lr/uploads/2/1/5/6/21569928/act.pdf>.

V. General Recommendations

An important stakeholder priority for Malawi's first action plan was passing the Access to Information Bill in Parliament. While the commitments in the action plan generally pertain to major open government priority areas in Malawi, their final scope and activities are limited in relation to the issue they address (such as anti-corruption and public sector reform), thus lowering their potential impact.

This section aims to inform development of the next action plan and guide completion of the current action plan. It is divided into two sections: 1) those civil society and government priorities identified while elaborating this report and 2) the recommendations of the IRM.

5.1 Stakeholder Priorities

One major priority for stakeholders in Malawi is passing the Access to Information Bill, which was included as a commitment in the action plan. While the other commitments generally reflect stakeholder priorities (such as anti-corruption, public service reform, and the extractives sector), it is unclear the extent to which the final scope of these commitments accurately reflects stakeholder feedback.

The co-creation process for Malawi's next action plan is currently delayed, and the stakeholder priorities for the next plan are unclear. Following a recent meeting in Malawi, the Office of the President and Cabinet informed the OGP Support Unit that the government plans to hold two workshops in the coming months; one to discuss the findings from the IRM Progress Report and to begin the process for developing the next action plan (tentatively scheduled for early June 2018), and a second to finalize the draft action plan before its submission to OGP (tentatively scheduled for late July or early August 2018).

5.2 IRM Recommendations

1. Reinvigorate the National OGP Steering Committee

The establishment of the National OGP Steering Committee as a multi-stakeholder forum consisting of government, civil society and private sector representatives was a positive step towards an inclusive co-creation process for Malawi's first action plan. However, the Steering Committee is currently inactive, and has not met since the action plan's submission in September 2015. The Office of the President and Cabinet should reinvigorate the Steering Committee as the country's multi-stakeholder forum by ensuring the development of future action plans follow OGP's Participation and Co-Creation Standards. Specifically, the development of action plans should involve the following basic steps:¹

- The government should send open invitations to as many interested government and civil society stakeholders as possible to participate in the co-creation process. Invitations to participate in the co-creation of action plans should be transparent and not limited to a few selected stakeholders.
- Participants in the Steering Committee should be selected through a fair and transparent process. The Steering Committee should also clearly lay out its responsibilities during the development and implementation processes.
- The Steering Committee should meet on a regular basis to oversee both development and implementation of future action plans. This generally requires at least four meetings per year (i.e. once every quarter).

- During the development and implementation of future action plans, the government should provide the public with reasoned responses for how decisions are made in the Steering Committee. This would include providing the minutes of meetings, the basic decision-making structure, and explanations on how public feedback is incorporated into the action plan.

2. Include activities that offer additional value to already planned activities

The five commitments in Malawi's first action plan are largely derived from existing government reform programs and initiatives. For example, Commitment 1 calls for passing the Access to Information Bill in Parliament, Commitment 3 calls for ensuring adequate funding for the Anti-Corruption Bureau, and Commitment 5 calls for joining EITI. While these initiatives are important steps towards improving open government in Malawi, the actual implementation activities themselves do not go beyond their basic existing framework, and thus limit the potential impact for the commitments. Future action plans should strive to add value to these existing efforts by including commitments with concrete outcomes that would improve these important policy areas.

3. Ensure capacity to implement ATI

The passing of the Access to Information (ATI) Bill in Parliament during the first year of the action plan cycle is a major milestone for open government in Malawi, and addresses an important priority for civil society stakeholders. However, the current action plan does not provide extra ambition to this policy area that could have made the commitment's impact potentially transformative. Given its importance of access to information, and its relevance to issues of public accountability and transparency, future action plans could build the institutional and legal frameworks to ensure sufficient capacity to implement the ATI Bill. In this regard, future commitments could help reduce certain practical barriers that citizens may face in order to exercise their constitutional right to access information. For example, the government and informed civil society stakeholders could work together to carry out awareness-raising campaigns in rural communities and areas with high illiteracy to promote the specifics of the ATI Bill to underrepresented segments of the public.

4. Improve commitment design

Although the commitments in Malawi's first action plan mostly address important open government issues in the country, the actual indicators for successful implementation are mostly vague and difficult to accurately assess. For example, Commitment 2, on improving civic participation, includes as a milestone an "annual change in knowledge and attitudes among citizens leading to demand for their rights, services and accountability" without specifying how the government will determine this change in attitude (i.e. through public surveys). Similarly, Commitment 4 on public sector reforms involves increasing public satisfaction with public service delivery, but does not explain how public feedback will be gathered. Future commitments should be designed so that they include clear activities and milestones to be implemented that are both verifiable and measurable.

Additionally, Commitments 3 and 4 focus largely on ensuring adequate funding to the relevant anti-corruption agencies and public services, but do not provide the public with the ability to affect these initiatives, thus making their relevance to OGP values unclear. Future commitments should include public-facing elements in the implementation activities and should not be purely internal initiatives.

5. Use OGP to advance priorities in Malawi

As mentioned in the Context section, Malawi relies heavily on foreign donations to implement development projects, which presents challenges towards enacting open

government reforms. Notably, major corruption scandals and a general lack of transparency in decision making can intimidate foreign donors from implementing development projects in Malawi. In this regard, the government could leverage Malawi’s participation in OGP as a platform to build international confidence in Malawi’s state institutions and to reassure foreign donors that the country is committed to transparency and open government. For example, future action plans could include commitments that pertain directly to foreign assistance in Malawi, such as improving transparency in the procurement process to secure development funds and foreign loans. Detailed information on foreign assistance and the projects they fund should be made available to the public (i.e. in the form of a database) to ensure transparency.

Additionally, given the anticipated importance that the extractives sector will play in Malawi’s future economic development, participation in OGP can serve as a valuable mechanism to avoid the negative effects that often occur in resource-rich countries, such as corruption, environmental degradation and conflict (the “resource curse”). Achieving “Compliant” status for EITI (as mentioned in Commitment 5) would also be a major step towards mitigating these negative effects, and future action plans could include more commitments that combine Malawi’s participation in OGP with EITI.

Table 5.1: Five Key Recommendations

1	Reinvigorate the National OGP Steering Committee
2	Include activities that offer additional value to already planned activities
3	Ensure capacity to implement ATI
4	Improve commitment design
5	Use OGP to advance priorities in Malawi

¹ For more information on the OGP Participation and Co-Creation Standards, see: http://www.opengovpartnership.org/sites/default/files/OGP_Participation-Cocreation-Standards20170207.pdf.

VI. Methodology and Sources

The IRM progress report is written by researchers based in each OGP-participating country. All IRM reports undergo a process of quality control to ensure that the highest standards of research and due diligence have been applied.

Analysis of progress on OGP action plans is a combination of interviews, desk research, and feedback from nongovernmental stakeholder meetings. The IRM report builds on the findings of the government's own self-assessment report and any other assessments of progress put out by civil society, the private sector, or international organizations.

Each IRM researcher carries out stakeholder meetings to ensure an accurate portrayal of events. Given budgetary and calendar constraints, the IRM cannot consult all interested or affected parties. Consequently, the IRM strives for methodological transparency and therefore, where possible, makes public the process of stakeholder engagement in research (detailed later in this section.) Some contexts require anonymity of interviewees and the IRM reviews the right to remove personal identifying information of these participants. Due to the necessary limitations of the method, the IRM strongly encourages commentary on public drafts of each report.

Each report undergoes a four-step review and quality-control process:

1. Staff review: IRM staff reviews the report for grammar, readability, content, and adherence to IRM methodology.
2. International Experts Panel (IEP) review: IEP reviews the content of the report for rigorous evidence to support findings, evaluates the extent to which the action plan applies OGP values, and provides technical recommendations for improving the implementation of commitments and realization of OGP values through the action plan as a whole. (See below for IEP membership.)
3. Prepublication review: Government and select civil society organizations are invited to provide comments on content of the draft IRM report.
4. Public comment period: The public is invited to provide comments on the content of the draft IRM report.

This review process, including the procedure for incorporating comments received, is outlined in greater detail in Section III of the Procedures Manual.¹

Interviews and Focus Groups

Each IRM researcher is required to hold at least one public information-gathering event. Researchers should make a genuine effort to invite stakeholders outside of the "usual suspects" list of invitees already participating in existing processes. Supplementary means may be needed to gather the inputs of stakeholders in a more meaningful way (e.g., online surveys, written responses, follow-up interviews). Additionally, researchers perform specific interviews with responsible agencies when the commitments require more information than is provided in the self-assessment or is accessible online.

IRM staff wrote this report, under the guidance of the IEP. IRM staff relied heavily on desk research from OGP's Washington D.C. office to determine the level of implementation for Malawi's commitments in this report. In addition to desk research, the IRM contacted several civil society representatives in Malawi working closely on issues related to the action plan, namely access to information and the extractives sector. These included representatives from the Malawi chapter of the Media Institute

of Southern Africa (MISA), the Centre for Environmental Policy and Advocacy (CEPA), the Malawi chapter of Publish What You Pay (PWYP), and the multi-stakeholder group (MSG) for the Extractive Industries Transparency Initiative (EITI) in Malawi. The IRM incorporated the feedback from these civil society representatives into the analysis in this report.

About the Independent Reporting Mechanism

The IRM is a key means by which government, civil society, and the private sector can track government development and implementation of OGP action plans on an annual basis. The design of research and quality control of such reports is carried out by the International Experts Panel, comprised of experts in transparency, participation, accountability, and social science research methods.

The current membership of the International Experts Panel is

- César Cruz-Rubio
- Mary Francoli
- Brendan Halloran
- Jeff Lovitt
- Fredline M’Cormack-Hale
- Showers Mawowa
- Juanita Olaya
- Quentin Reed
- Rick Snell
- Jean-Patrick Villeneuve

A small staff based in Washington, DC, shepherds reports through the IRM process in close coordination with the researchers. Questions and comments about this report can be directed to the staff at irm@opengovpartnership.org.

¹ IRM Procedures Manual, V.3: <https://www.opengovpartnership.org/documents/irm-procedures-manual>.

VII. Eligibility Requirements Annex

The OGP Support Unit collates eligibility criteria on an annual basis. These scores are presented below.¹ When appropriate, the IRM reports will discuss the context surrounding progress or regress on specific criteria in the Country Context section.

In September 2012, OGP officially encouraged governments to adopt ambitious commitments that relate to eligibility.

Table 7.1: Eligibility Annex for Malawi

Criteria	2013	Current	Change	Explanation
Budget Transparency ²	4	2	Decreased	4 = Executive's Budget Proposal and Audit Report published 2 = One of two published 0 = Neither published
Access to Information ³	3	3	No change	4 = Access to information (ATI) Law 3 = Constitutional ATI provision 1 = Draft ATI law 0 = No ATI law
Asset Declaration ⁴	4	4	No change	4 = Asset disclosure law, data public 2 = Asset disclosure law, no public data 0 = No law
Citizen Engagement (Raw score)	3 (5.84) ⁵	3 (5.66) ⁶	No change	<i>EIU Citizen Engagement Index</i> raw score: 1 > 0 2 > 2.5 3 > 5 4 > 7.5
Total / Possible (Percent)	14/16 (88%)	12/16 (75%)	Decreased	75% of possible points to be eligible

¹ For more information, see <http://www.opengovpartnership.org/how-it-works/eligibility-criteria>.

² For more information, see Table 1 in <http://internationalbudget.org/what-we-do/open-budget-survey/>. For up-to-date assessments, see <http://www.obstracker.org/>.

³ The two databases used are Constitutional Provisions at <http://www.right2info.org/constitutional-protections> and Laws and draft laws at <http://www.right2info.org/access-to-information-laws>.

⁴ Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, and Andrei Shleifer, "Disclosure by Politicians," (Tuck School of Business Working Paper 2009-60, 2009), <http://bit.ly/19nDEfK>; Organization for Economic Cooperation and Development (OECD), "Types of Information Decision Makers Are Required to Formally Disclose, and Level Of Transparency," in *Government at a Glance 2009*, (OECD, 2009), <http://bit.ly/13vGtqS>; Ricard Messick, "Income and Asset Disclosure by World Bank Client Countries" (Washington, DC: World Bank, 2009), <http://bit.ly/1cloyf>. For more recent information, see <http://publicofficialsfinancialdisclosure.worldbank.org>. In 2014, the OGP Steering Committee approved a change in the asset disclosure measurement. The existence of a law and de facto public access to the disclosed information replaced the old measures of disclosure by politicians and disclosure of high-level officials. For additional information, see the guidance note on 2014 OGP Eligibility Requirements at <http://bit.ly/1EjLJ4Y>.

⁵ "Democracy Index 2010: Democracy in Retreat," The Economist Intelligence Unit (London: Economist, 2010), <http://bit.ly/eLC1rE>.

⁶ "Democracy Index 2014: Democracy and its Discontents," The Economist Intelligence Unit (London: Economist, 2014), <http://bit.ly/18kEzCt>.