

# Independent Reporting Mechanism (IRM): Malawi End-of-Term Report 2016-2018

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## Overview: Malawi

### Independent Reporting Mechanism (IRM) End-of-Term Report 2016-2018

Malawi's first action plan included measures to implement freedom of information and increase extractives' revenue transparency. While the government passed the Access to Information Bill during the action plan period, the Bill has lacked practical implementation. Moving forward, Malawi could improve the design of future commitments by including clearer indicators for implementation and making them more directly relevant to OGP values.

The Open Government Partnership (OGP) is a voluntary international initiative that aims to secure commitments from governments to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The Independent Reporting Mechanism (IRM) carries out a review of the activities of each OGP-participating country.

This report summarizes the results of the period from September 2016 to August 2018. It builds on the IRM midterm progress report on the country's OGP performance after one year of the plan's implementation.

Initially, the Ministry of Foreign Affairs and International Cooperation was the lead institution for Malawi's participation in OGP. This responsibility was moved to the Office of the President and Cabinet (OPC), under the leadership of the Principal Secretary for Good Governance, who reports directly to the OPC's Chief Secretary.

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.

Overall, two out of the five commitments were not directly relevant to OGP values, as they focused on the funding of government institutions. The two that were completed, namely freedom of information and the extractive industry transparency initiative, have not resulted in the government opening up.

As the period ended, the government had not carried out the self-assessment. At the time of writing this report Malawi had not presented a new action plan for its second cycle.

**Table I: At a Glance**

	<b>Mid-term</b>	<b>End of term</b>
Number of Commitments	5	
<b>Level of Completion</b>		
Completed	2	2
Substantial	0	0
Limited	1	1
Not Started	2	2
<b>Number of Commitments with...</b>		
Clear Relevance to OGP Values	3	3
Transformative Potential Impact	0	0
Substantial or Complete Implementation	2	2
<b>All Three (☺)</b>	0	0
<b>Did It Open government?</b>		
Major	<b>0</b>	
Outstanding	<b>0</b>	
<b>Moving Forward</b>		
Number of Commitments Carried Over to Next Action Plan	N/A	

## Consultation with Civil Society during Implementation

Countries participating in OGP follow a process for consultation during development and implementation of their action plan.

Although the government established the National OGP Steering Committee, consisting of government, civil society, and private sector representatives to monitor the action plan's implementation, it did not meet during the implementation period. It should be noted that some civil society organisations (CSOs) have been independently highly involved in the progress made towards implementing some of the action plan's commitments, particularly the passage of the Access to Information (ATI) Bill and Malawi's participation in the Extractive Industries Transparency Industry Standard (through their role in the EITI multi-stakeholder group).

According to the government point of contact (PoC), a lack of resources was cited as the main reason for failure to meet.<sup>1</sup> The PoC indicated to the IRM researcher that one-on-one meetings took place with some CSOs working on areas relevant to the action plan commitments, including the Media Institute of Southern Africa (MISA)'s Malawi chapter meeting with the Ministry of Information and the Malawi Human Rights Commission on the ATI Bill, and the Chairperson of Natural Resources Justice Network meeting with the Ministry of Natural Resources, Energy and Mining on issues related to EITI.<sup>2</sup> While consulted CSOs expressed appreciation to the government for informing them on Malawi's progress in these thematic areas, the one-on-one meetings were informal and were not designed to serve as a substitute for the multi-stakeholder consultations of the National OGP Steering Committee. Because of the informal nature of these meetings, civil society as a whole could not provide input on implementation progress for the specific commitments in the action plan.

Table 2: Consultation during Implementation

Regular Multi-stakeholder Forum	Midterm	End of Term
1. Did a forum exist?	Yes	Yes
2. Did it meet regularly?	No	No

Table 3: Level of Public Influence during Implementation

The IRM has adapted the International Association for Public Participation (IAP2) "Spectrum of Participation" to apply to OGP.<sup>3</sup> 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 Implementation of Action Plan		Midterm	End of Term
<b>Empower</b>	The government handed decision-making power to members of the public.		
<b>Collaborate</b>	There was iterative dialogue AND the public helped set the agenda.		
<b>Involve</b>	The government gave feedback on how public inputs were considered.		
<b>Consult</b>	The public could give inputs.		
<b>Inform</b>	The government provided the public with information on the action plan.		
<b>No Consultation</b>	No consultation	✓	✓

<sup>1</sup> Interview with the Malawi Government Point of Contact, Mr Wezi Kayira.

<sup>2</sup> Interviews with MISA Chairperson, Ms Teresa Ndanga; and Natural Resources Justice Network, Mr Moses Mkandawire.

<sup>3</sup> 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](http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/foundations_course/IAP2_P2_Spectrum_FINAL.pdf)

## About the Assessment

The indicators and method used in the IRM research can be found in the IRM Procedures Manual.<sup>1</sup> One measure, the “starred commitment” (★), deserves further explanation due to its particular interest to readers and usefulness for encouraging a race to the top among OGP-participating countries. Starred commitments are considered exemplary OGP commitments. 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 judgment 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.<sup>2</sup>
- The government must make significant progress on this commitment during the action plan implementation period, receiving an assessment of “substantial” or “complete” implementation.

Starred commitments can lose their starred status if their completion falls short of substantial or full completion at the end of the action plan implementation period.

At the end of term, 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 reporting process. For the full dataset for Malawi, see the OGP Explorer at [www.opengovpartnership.org/explorer](http://www.opengovpartnership.org/explorer).

### About “Did It Open Government?”

To capture changes in government practice, the IRM introduced a new variable “Did It Open Government?” in end-of-term reports. This variable attempts to move beyond measuring outputs and deliverables to looking at how the government practice has changed as a result of the commitment’s implementation.

As written, some OGP commitments are vague and/or not clearly relevant to OGP values but achieve significant policy reforms. In other cases, commitments as written appear relevant and ambitious, but fail to open government as implemented. The “Did It Open Government” variable attempts to capture these subtleties.

The “Did It Open Government?” variable assesses changes in government practice using the following spectrum:

- **Worsened:** Government openness worsens as a result of the commitment.
- **Did not change:** No changes in government practice.
- **Marginal:** Some change, but minor in terms of its effect on level of openness.
- **Major:** A step forward for government openness in the relevant policy area, but remains limited in scope or scale.
- **Outstanding:** A reform that has transformed “business as usual” in the relevant policy area by opening government.

To assess this variable, researchers establish the status quo at the outset of the action plan. They then assess outcomes *as implemented* for changes in government openness.

Readers should keep in mind limitations. IRM end-of-term reports are prepared only a few months after the implementation cycle is completed. The variable focuses on outcomes that can be observed in government openness practices at the end of the two-year implementation period. The report and the variable do not intend to assess impact because of the complex methodological implications and the time frame of the report.

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<sup>1</sup> IRM Procedures Manual, <http://www.opengovpartnership.org/about/about-irm>.

<sup>2</sup> The International Experts Panel changed this criterion in 2015. For more information, visit <http://www.opengovpartnership.org/node/5919>.

## Commitment Implementation

### General Overview of Commitments

As part of OGP, countries are required to make commitments in a two-year action plan. The tables below summarize the completion level at the end of term and progress on the “Did It Open Government?” metric. For commitments that were complete at the midterm, the report will provide a summary of the progress report findings but focus on analysis of the ‘Did It Open Government?’ variable. For further details on these commitments, please see the Malawi IRM mid-term progress report 2017.

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.

**Table 4: Assessment of Progress by Commitment**

Commitment Overview	Specificity				OGP Value Relevance (as written)				Potential Impact				Completion		Midterm End of Term		Did It Open Government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
1. Freedom of Information			✓		✓		✓				✓					✓			✓		
2. Citizen Participation		✓				✓				✓			✓					✓			
3. National Integrity System & Fight Against Corruption		✓			Unclear					✓				✓				✓			
4. Public Sector Reforms & Public Service Delivery		✓			Unclear					✓			✓					✓			
5. Extractive Industries Transparency Initiative (EITI)			✓		✓	✓				✓						✓			✓		

## I. 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 Institution:** 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 (as written)				Potential Impact				Completion		Midterm End of Term		Did It Open Government?				
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
I. Overall			✓		✓		✓				✓				✓				✓		

### Commitment Aim

Although Section 37 of Malawi's Constitution affords citizens the right to access government-held information, there was no enabling legislation to guarantee or operationalise this right.<sup>1</sup> This commitment called for approving the Access to Information (ATI) Bill in the Cabinet and enacting the Bill in Parliament.

### Status

#### Midterm: Complete

This commitment was fully implemented by the midterm. Parliament passed the ATI Bill during the November-December 2016 Parliament Seating. In mid-February 2017, President Mutharika signed the



Bill into law. Earlier (in February 2016), several changes were made to the Bill, including the removal of both whistleblower protection and the proposed Independent Information Commission (IIC) as the oversight mechanism.<sup>2</sup> Following extensive civil society campaigning, these changes were reverted when Parliament referred the Bill back to the Media and Communications and Legal Affairs Committees for further scrutiny.<sup>3</sup>

However, 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). According to the Bill, the Malawi Human Rights Commission (MHRC) will oversee the implementation. The MHRC's implementation tasks include raising awareness of the right to access information; making recommendations to government on declassification of information; making recommendations to government on matters related to legal framework; publishing guidelines; and submitting performance reports to the National Assembly.<sup>4</sup>

The Executive Secretary of the MHRC indicated that the Commission is ready for the government to start the implementation process, arguing that insufficient funding seemed to be the underlying factor for the delay. However, the Ministry of Information did not provide the IRM researcher with any feedback on the delay. The IRM researcher contacted the Ministry of Information by email, and the Principal Secretary provided contacts for the Director who was charged with providing feedback. However, the Minister of Information has indicated that the Ministry is still working with the Ministry of Justice and the MHRC on the processes.<sup>5</sup>

### **Did It Open Government?**

#### **Access to Information: Marginal Public Accountability: Did Not Change**

Although Malawi's Constitution afforded citizens the right to access government-held information, prior to the passing of the Access to Information Bill, there was no enabling legislation to regulate and operationalise access to information. Limited public access to information on government actions perpetuates a culture of secrecy, which undermines public confidence in public institutions and their officials. The passing of the Bill thus provides Malawians with a legislative framework to exercise their constitutional right to request information, even though the actual implementation has stalled. The Centre for Law and Democracy (CLD), using the RTI Ranking, a comparative tool for assessing the strength of right to information, ranked Malawi's ATI Bill as the 15th strongest right to information bill in the world, and the fifth strongest in Africa.<sup>6</sup> The passage of the Bill has already provided positive changes in some government departments. For example, a 2018 study by the Media Institute of Southern Africa (MISA)'s Malawi chapter found that a number of government departments responded positively to information requests.<sup>7</sup>

However, while the passing of the ATI Bill is a major achievement for civil society and a significant milestone towards improving the ability of citizens to request government-held information, progress towards the Bill's practical implementation remains limited, and the commencement date remains open ended. In July 2017, the government formed a 12-member steering committee to ensure the implementation of the Bill, but this committee is still inactive, and the government has not allocated sufficient resources to perform this task.

Although Part IX of the Bill states that whistleblowers "shall not be penalized (sic)... as a result of having made or attempted to make a disclosure of information obtained in confidence in the course of that activity, if the disclosure is of public interest.", the actual penalties for victimising whistleblowers is not clearly delineated.<sup>8</sup> This represents a major concern for some civil society stakeholders. For example, MISA-Malawi has indicated that, "there are no clear remedies or [penalties] when whistleblowers are victimised or penalised. In addition, the oversight body does not have enforcement powers. This leaves the courts as the best option for whistleblowers if victimised or penalised. Accessing the courts is, however, a costly and lengthy process, thus not easily accessible to most Malawians".<sup>9</sup>

Furthermore, the Bill's passing and eventual implementation will not automatically open the government because of other inhibiting factors, including:

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

MISA, however, has already initiated awareness campaigns, which involve sensitising communities on how to utilise the provisions in the Bill once the implementation is announced.

### **Carried Forward?**

At the time of writing this report, Malawi has not developed its next action plan.

The passage 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. If, by the time of the next plan, the Bill is still not operational, the IRM researcher recommends including a commitment to push for this.

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<sup>1</sup> Malawi's Constitution: Section 37, <http://unpan1.un.org/intradoc/groups/public/documents/cafrad/unpan004840.pdf>

<sup>2</sup> 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-of-the-gazetted-ati-bill-2016.pdf>

<sup>3</sup> Chimkea, Rebecca. "MPs reject adulterated ATI Bill", The Nation, <http://mw.nation.com/mps-reject-adulterated-ati-bill/>

<sup>4</sup> Malawi Government. Access to Information Act, February 2017, Part II, 7-11, <https://malawilii.org/mw/legislation/act/2017/13>.

<sup>5</sup> Zodiac Online, 'MISA dares government on ATI law implementation', <https://zodiakmalawi.com/top-stories/misa-dares-govt-on-ati-law-implementation>

<sup>6</sup> 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](http://www.law-democracy.org/live/wp-content/uploads/2016/02/Malawi.RTI_Feb16.pdf).

<sup>7</sup> The Citizens' Analysis of Government Openness by MISA, 2018, [http://crm.misa.org/upload/web/transparency\\_assessment\\_malawi\\_2018.pdf](http://crm.misa.org/upload/web/transparency_assessment_malawi_2018.pdf)

<sup>8</sup> Malawi Government. Access to Information Act. February 2017. Part IX, 50, <https://malawilii.org/mw/legislation/act/2017/13>. The types of disclosure protected under Part IX (54) include (1) cases of violations of the law, (2) mismanagement of funds, (3) conflict of interest, (4) corruption, (5) abuse of public office, and (6) risks and threats to public health, safety and the environment.

<sup>9</sup> Transparency in Action, State of Access to Information in Africa 2017, page 21, <http://www.africanplatform.org/fileadmin/Content/PDF/Resources/State-of-ATI-in-Africa-2017.pdf>

## 2. Citizens 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 (as written)				Potential Impact				Completion		Midterm		Did It Open Government?					
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding	
2. Overall		✓				✓				✓			✓					✓				

## **Commitment Aim**

This commitment aimed to raise awareness of and promote equal, inclusive and informed participation of citizens to seek increased transparency, accountability and good governance. The commitment was a result of several studies, including one that showed that most citizens did not contact a local government councillor, a Member of Parliament, nor a government agency official about an important problem or even to give their views.<sup>1</sup>

## **Status**

### **Midterm: Not Started**

The IRM Progress Report noted that the commitment's milestones and activities were vaguely formulated in describing how public participation will influence policy. The completion level was therefore difficult to accurately assess.

### **End of term: Not Started**

By the end of the action plan, few activities had been carried out for this commitment. The civil society members who had been involved in a similar project by the German Corporation for International Cooperation (GIZ) that covered nine districts emphasised the importance of this commitment.<sup>2</sup> However, the government point of contact mentioned issues related to resources and the fact that the programme copied the approach of GIZ but did not take into consideration the required resources to fully implement it due to difficulties of including the project in the budget.<sup>3</sup>

## **Did It Open Government?**

### **Civic Participation: Did Not Change**

Due to the vagueness of the proposed activities, this commitment did not lead to improved levels of civic participation. Apart from limited consultations, there is a lack of mechanisms for providing feedback on the performance of duty bearers and local government. A number of areas in this commitment were similar to the project implemented by the public trust National Initiative for Civic Education (NICE), including strengthening democratic processes and good governance, and deepening citizens' voices to ensure that Malawians not only claim their democratic rights and hold duty bearers accountable for their performance, but also play an active role in democratic decision-making processes at all levels.<sup>4</sup> However, as mentioned above, the commitment lacked proper indicators to assess its implementation.

## **Carried Forward?**

At the time of writing this report, Malawi has not started to develop its next action plan.

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. The government could consider including 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.

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<sup>1</sup> 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](http://afrobarometer.org/sites/default/files/publications/Summary%20of%20results/mlw_r7_sor_eng_09102017.pdf).

<sup>2</sup> Interview with Mr Reifold Mwangonde, who was Executive Director for Citizen for Justice Network (CFJ) as the Action Plan was being formulated in 2017.

<sup>3</sup> Interview with the Malawi Government Point of Contact, Mr Wezi Kayira.

<sup>4</sup> <http://www.nice.mw/index.php/about-us/goals-and-objectives>

### 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 Institution:** 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 Asserts, 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 (as written)				Potential Impact				Completion		Midterm End of Term		Did It Open Government?					
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding	
3. Overall		✓			Unclear					✓				✓				✓				

#### Commitment Aim

The commitment aimed to improve the effectiveness of Malawi's national integrity system in fighting corruption. Malawians continue to perceive corruption as a serious problem in the country<sup>1</sup> which has been extenuated by several major corruption scandals in recent years. This commitment sought to ensure that anti-corruption institutions received adequate funding to fulfil their mandates, and to

address deficiencies in relevant legislation. This included the Anti-Corruption Bureau (ACB), the Office of the Director for Declaration Public Assets, the Director of Public Prosecutions, and the Judiciary.

### **Status**

#### **Midterm: Limited**

The IRM Progress Report considered the implementation of this commitment limited at the end of the first year. Although the 2017-18 budget showed an increase of almost 50 percent, compared to the 2016-17 budget for the ACB, the improvement in operations was minimal, and few key corruption cases were taken forward.<sup>2</sup> It was also noted that there was a general absence of concrete activities in the milestones which made the overall completion level of the commitment difficult to assess.

#### **End of term: Limited**

Following the IRM Progress Report, resource allocation has mostly not changed for ACB, which registered only a 14 percent increase, from MWK 3.06bn in 2017/18 to MWK 3.29bn in 2018/19.<sup>3</sup> There was slightly more for the Malawi Human Rights Commission, whose budget increased by about 36 percent, from MWK 557m in 2017/18 to MWK 759m in 2018/19.<sup>4</sup> However, the Directorate of Public Officers' Declarations, whose main goal is "to promote public confidence in the public service by administering declarations in a transparent, participatory and professional manner",<sup>5</sup> only registered a 10 percent increase, from MWK 705m in 2017/18 to MWK 776m in 2018/19.

### **Did It Open Government?**

**Access to Information: Did Not Change**

**Civic Participation: Did Not Change**

**Public Accountability: Did Not Change**

This commitment did not result in changes to government practice. While the commitment calls for increasing public education and awareness on the prevention of corruption and reporting abuse of public resources, its direct relevance to OGP values was 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 have been no additional mechanisms put in place to allow citizens to report corruption.

Furthermore, the international corruption rating for Malawi during the 2016-2018 period has diminished. In 2016, Transparency International placed Malawi at 112 out of 180 countries (2015 rating); in 2017 the country dropped to position 120 (2016 rating), and in 2018 it dropped to position 122 out of 180 countries (2017 rating).<sup>6</sup> Some experts have pointed out that the country is seen to have strong anti-corruption laws but has significant gaps between law and practice.<sup>7</sup>

### **Carried Forward?**

At the time of writing this report, Malawi has not started the development of its next action plan.

The IRM researcher recommends that future action plans more directly involve civil society in the development and implementation of anti-corruption commitments. For example, anti-corruption legislation could be reviewed following consultations with stakeholders, and the ACB could better educate the public on how to report corruption through its existing mechanisms. Such initiatives require additional resources, but they could help improve public participation in anti-corruption policy and would raise awareness of existing corruption reporting options.

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<sup>1</sup> Chancellor College Centre for Social Research, Governance and Corruption Survey 2013, May 2014, page 8, [http://www.acbmw.org/wp-content/downloads/Governance\\_Corruption\\_Survey\\_Report\\_2013.pdf](http://www.acbmw.org/wp-content/downloads/Governance_Corruption_Survey_Report_2013.pdf)

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<sup>2</sup> 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](http://www.finance.gov.mw/index.php?option=com_docman&task=doc_view&gid=306&Itemid=107)

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ministry of Finance, Economic Planning and Development, Draft Estimates of Expenditure on Recurrent and Capital Budget for Financial Year 2018/19 – Program Based Budget, [http://www.finance.gov.mw/index.php?option=com\\_docman&task=doc\\_view&gid=306&Itemid=107](http://www.finance.gov.mw/index.php?option=com_docman&task=doc_view&gid=306&Itemid=107)

<sup>6</sup> Transparency International: Malawi, <https://www.transparency.org/country/MWI>

<sup>7</sup> Farzana Nawaz (2012), Transparency International: Malawi, <https://www.transparency.org/country/MWI>

## 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 (as written)	Potential Impact	Comple tion	Midterm	Did It Open Government?
					End of Term	



	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding	
4. Overall		✓			Unclear					✓			↘					↘				

### Commitment Aim

The commitment aimed to improve Malawi’s public service through implementation of the Public Service Sector Reform Commission. It calls for the annual allocation of funds to public services based on needs, and increasing public satisfaction with public service delivery. However, the commitment failed to clarify how to determine the level of public satisfaction. The commitment milestones also did not clearly explain how the government would collect or incorporate public input for the reform.

### Status

#### Midterm: Not Started

Due to the absence of information and the vagueness of the milestones, the level of completion was considered not started at the midterm. There were several challenges in the institutional arrangement as it was initially under the Vice President’s Office. By 2017, the Vice President’s working relationship with the President had started to sour<sup>1</sup> and the Public Sector Reforms Unit started facing financial problems. The Unit was consequently moved to the Office of President and the Cabinet in January 2017, following the expiration of the Commission’s mandate, but without a clear budget line as suggested in the Commission’s final report.<sup>2</sup>

#### End of term: Not Started

As there were no consultations after the midterm, the level of implementation did not change and the increased financial challenges for the Unit meant few tangible results. The final report of the Commission recommended a fully-fledged secretariat with technical staff to oversee proper implementation, “to assume the role of monitoring and coordinating the reforms undertaken, in an effort to accelerate the effective delivery of public services and to ensure continuity”.<sup>3</sup> However, the move from the Vice President’s Office to the Office of the President saw few senior positions created. The improved service delivery will take time to start being appreciated by the public, as the final report clearly indicated that improvement in public service requires a long-term commitment by the government.<sup>4</sup>

### Did It Open Government?

#### Access to Information: Did Not Change

#### Civic Participation: Did Not Change

#### Public Accountability: Did Not Change

Due to lack of implementation, this commitment did not lead to changes in government practice. In general, Malawi’s public service sector has suffered from a deterioration of work ethics, indiscipline and absenteeism, and a proliferation of fraud and corruption.<sup>5</sup> The Public Service Reform Commission’s 2015 report blamed a lack of political will, insufficient resources, absence of a robust results-oriented performance management system for individuals and public agencies, weak incentives to reward productivity and low remuneration.<sup>6</sup>

While this is important in improving efficiency and effectiveness, the action plan was not clear on the OGP relevance in measuring the milestones. The commitment's milestones were based on funding, implying that the country has to generate enough resources to see any improvement in the public sector, as well as opening up public service. However, the country's revenue has deteriorated significantly during the past three years. The 2017/18 revenue only increased by 12 percent compared to 2016/17, that is, from MWK 971bn to MWK 1,096bn.<sup>7</sup>

### **Carried Forward?**

At the time of writing this report, the development of the next action plan had not started. Considering that public service reform is included in Malawi's third Growth and Development Strategy for 2017-22,<sup>8</sup> the IRM researcher recommends carrying it forward, and including opportunities for service users and stakeholders to participate in the management and delivery of public services.

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<sup>1</sup> During one of the mass rallies the President ignored the Vice President and invited other Ministers to talk about the performance of the Commission, while the Vice President was still Chair of the Commission, and present at that rally, <https://www.nyasatimes.com/mind-gap-malawi-president-vp-sour-relationship-mutharikas-vice-presidency-poisoned-chalice/>

<sup>2</sup> 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)

<sup>3</sup> Ibid, page 37

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid. pages xiv, 2, 14

<sup>7</sup> 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](http://www.finance.gov.mw/index.php?option=com_docman&task=doc_view&gid=306&Itemid=107)

<sup>8</sup> The Malawi Growth and Development Strategy (MGDS) III (2017-2022): Building a Productive, Competitive and Resilient Nation, November 2017, page 22, <https://mininginmalawi.files.wordpress.com/2018/03/malawi-growth-and-development-strategy-iii-2017-2022.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 (as written)				Potential Impact				Completion		Did It Open Government?						
	None	Low	Medium	High	Access to Information	Civic Participation	Public Accountability	Technology & Innovation for Transparency & Accountability	None	Minor	Moderate	Transformative	Not Started	Limited	Substantial	Completed	Worsened	Did Not Change	Marginal	Major	Outstanding
5. Overall			✓		✓	✓				✓						✓			✓		

## **Commitment Aim**

The commitment called 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. EITI countries are required to adopt the EITI Standards by establishing a national multi-stakeholder group (MSG) that includes government and non-governmental stakeholders to decide how the EITI process should work in that country. It also requires annual reporting of key information on the governance of the extractives sector and disseminating the findings and recommendations to the public.<sup>1</sup>

## **Status**

### **Midterm: Complete**

The milestones for the commitment were implemented prior to the formal publication of the action plan. The government developed a three-year (2015-2017) work plan for implementing EITI requirements in January 2015,<sup>2</sup> and established the MSG in February 2015, made up of representatives from the government, natural resource companies and CSOs.<sup>3</sup> An EITI Secretariat was also set up in 2015 to manage administrative tasks of the MSG and sits in the Revenue Policy Division of the Ministry of Finance, Economic Planning and Development.<sup>4</sup>

After formally joining EITI, Malawi has developed a Beneficial Ownership Disclosure Roadmap and an Open Data Policy.<sup>5</sup> There is also a detailed work plan for 2018.<sup>6</sup> In June 2018, Moors Stephens International Limited published the second Malawi EITI (MWEITI) report for the 2015/16 financial year, which discloses material payments made to the government by companies operating in the oil, gas and mining sectors.<sup>7</sup> The EITI Board began to assess Malawi against the 2016 Standard in September 2018, with the validation still officially under way at the time of writing this report.<sup>8</sup>

## **Did It Open Government?**

### **Access to Information: Marginal**

### **Civic Participation: Did Not Change**

The Malawi government is currently promoting foreign investment in the extractive industries, with the goal for the extractive sector (mining, oil and gas) to reach 20 percent of GDP by 2025.<sup>9</sup> However, prior to joining EITI, there was limited transparency and accountability regarding revenue and contracts from this sector.<sup>10</sup>

As a result of Malawi's participation in EITI, new information is now in the public domain regarding different contracts between the government and extractive industry companies. All negotiated extractive contracts in Malawi are available on the resource contracts repository ResourceContracts.org, the most recent being signed in 2014.<sup>11</sup> The IRM confirmed that the mining contracts were published to ResourceContracts.org on 29 July 2016 and the oil contracts were published on 12 May 2017.<sup>12</sup> Additionally, 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.<sup>13</sup> Therefore, the commitment has resulted in more publicly available information compared to status quo prior to the action plan period. While the establishment of the MSG is a positive development for civil society participation in the extractives sector, it was established prior to the start of the action plan, and thus civic participation is assessed as having not changed.

After joining EITI, Malawi went through additional assessments of its compliance with EITI Standards. The most recent compliancy assessment began in September 2018, after the end date of the action plan. Despite the government's commitment to EITI, some stakeholders involved in the MSG stated that transparency is still lacking in the sector. Mr Grain Malunga, one member of MSG, felt that the only way the extractive industry can improve is through revisions to the Mines and Minerals Act (1981) and addressing issues related to transparency in handling mining contracts.<sup>14</sup> Furthermore, stakeholders on the MSG still feel that some companies known to have made profits are not included

in the EITI report and did not meet the reporting threshold as agreed by the MSG.<sup>15</sup> Since EITI reporting is voluntary, civil society stakeholders feel that government could consider passing an EITI law, as in Nigeria, Tanzania and Zambia, whereby every company is mandated to report on EITI if it qualifies for reporting.<sup>16</sup>

A recent press release by 36 organisations representing Natural Resources Justice Network & Publish What You Pay Malawi (NRJN-PWYP) emphasised contract transparency and access to information as areas of concern for the Mines and Minerals Bill.<sup>17</sup> They felt that transparency of licenses and contracts should be mandatory by law. The CSOs acknowledged that the Bill improves public access to information but felt that it should be more explicit about what information is public and where it is accessed. They emphasised that all government monitoring reports should be accessible to any member of the public; similarly, all corporate submissions that affect the public interest (environmental, social, occupational health and safety), and especially those communities defined as ‘qualified community’, should be public.<sup>18</sup>

### Carried Forward?

At the time of writing this report, Malawi has not started development of the next action plan.

<sup>1</sup> EITI International Secretariat, the EITI Standard 2016, 15 February 2016, page 5,

[https://eiti.org/sites/default/files/migrated\\_files/english\\_eiti\\_standard\\_0.pdf](https://eiti.org/sites/default/files/migrated_files/english_eiti_standard_0.pdf)

<sup>2</sup> Malawi EITI 2015-2017 work plan, <https://eiti.org/document/malawi-eiti-20152017-work-plan>

<sup>3</sup> MWEITI Stakeholders, <http://mweiti.gov.mw/about-us/stakeholders/>

<sup>4</sup> MWEITI Brief History, <http://mweiti.gov.mw/about-us/brief-history/>

<sup>5</sup> EITI Malawi open data policy, <https://eiti.org/document/malawi-open-data-policy>

<sup>6</sup> This is mentioned in the 2015/16 Moores Stephens Report as comments from Secretariat, though it has not yet been published, page 103, <http://mweiti.gov.mw/wp-content/uploads/2017/04/MWEITI-2015-16-EITI-2nd-EITI-Final-Report-.pdf>

<sup>7</sup> MWEITI Report for 2015-2016 Financial Year, <http://mweiti.gov.mw/wp-content/uploads/2017/04/MWEITI-2015-16-EITI-2nd-EITI-Final-Report-.pdf>

<sup>8</sup> EITI Validation Schedule and Decisions, <https://eiti.org/document/validation-schedule-decisions>

<sup>9</sup> Malawi Extractives Industries Transparency Initiative, Beneficial Ownership Disclosure Roadmap, December 2016, [https://eiti.org/sites/default/files/documents/malawi\\_beneficial\\_ownership\\_disclosure\\_roadmap.pdf](https://eiti.org/sites/default/files/documents/malawi_beneficial_ownership_disclosure_roadmap.pdf)

<sup>10</sup> OXFAM: Malawi’s Troubled Oil Sector: Licences, Contracts and their Implications, 2017,

<https://mininginmalawi.files.wordpress.com/2017/02/oxfam-2017-malawis-troubled-oil-sector-licenses-contracts-and-their-implications.pdf>

<sup>11</sup> Resource Contracts: Malawi, <https://www.resourcecontracts.org/countries/mw>. At the time of writing this report, there have been no new contracts negotiated since 2014.

<sup>12</sup> IRM email correspondence with Charles Young (consultant with the National Resource Governance Institute) and Rachel Etter-Phoya, 19 March 2019.

<sup>13</sup> Malawi Mining Cadastre Portal, <http://portals.flexicadastre.com/malawi/>.

<sup>14</sup> Interview with Mr Grain Malunga, a member of the MSG and former Minister of Natural Resources. President Mutharika assented to the Mines and Minerals Act in February 2019, after the reporting period for the action plan. For more information, see: <https://allafrica.com/stories/201902140869.html>.

<sup>15</sup> Mining in Malawi: Uranium Doesn’t Grow on Trees, <https://mininginmalawi.com/2018/12/11/press-release-uranium-doesnt-grow-on-trees-rectify-malawis-mines-minerals-bill-natural-resources-justice-network-pwyp-malawi/>

<sup>16</sup> Mining in Malawi: Malawi’s Second EITI Report, [https://mininginmalawi.com/2018/09/12/malawis-second-eiti-report-now-available/.-It-should-be-noted-that-the-revised-Mines-and-Minerals-Act-\(assented-in-2019\)-will-allow-the-government-to-issue-regulations-to-make-reporting-under-MWEITI-mandatory.](https://mininginmalawi.com/2018/09/12/malawis-second-eiti-report-now-available/.-It-should-be-noted-that-the-revised-Mines-and-Minerals-Act-(assented-in-2019)-will-allow-the-government-to-issue-regulations-to-make-reporting-under-MWEITI-mandatory.)

<sup>17</sup> Mining in Malawi: Uranium Doesn’t Grow on Trees, <https://mininginmalawi.com/2018/12/11/press-release-uranium-doesnt-grow-on-trees-rectify-malawis-mines-minerals-bill-natural-resources-justice-network-pwyp-malawi/>

<sup>18</sup> Ibid. and interview with Mr. Moses Mkandawire, Chairperson of Natural Resources Justice Network.

## Methodological Note

The end-of-term report is based on desk research and interviews with governmental and nongovernmental stakeholders. The IRM report builds on the findings of the government's self-assessment report; other assessments of progress put out by civil society, the private sector, or international organizations; and the previous IRM progress report.

The end-of-term report is built on the findings of the midterm report and some assessments of progress by civil society. The interviews were in the form of key informant interviews/in-depth individual interviews. The IRM researcher also sent emails to all the stakeholders who were not available for a one-on-one interview. Some names have been omitted, unless explicitly agreed by respondents, in the interest of free expression.

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

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