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Action Plan Review: Malawi 2023–2025

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Introduction

In January 2021, the Independent Reporting Mechanism (IRM) rolled out new products that resulted from the IRM Refresh process.[1] The new approach builds on the lessons learned after more than 350 robust, independent, evidence-based assessments conducted by the IRM and inputs from the OGP community. The IRM seeks to put forth simple, timely, fit for purpose, and results-oriented products that contribute to learning and accountability in key moments of the OGP action plan cycle.

IRM products are:
- **Co-Creation Brief:** Brings in lessons from previous action plans, serves a learning purpose, and informs co-creation planning and design.
- **Action Plan Review:** A quick, independent technical review of the characteristics of the action plan and the strengths and challenges IRM identifies to inform a stronger implementation process.
- **Results Report:** An overall implementation assessment that focuses on policy-level results and how changes happen. It also checks compliance with OGP rules and informs accountability and longer-term learning. This product was rolled out in a transition phase in 2022, beginning with action plans ending implementation on 31 August 2022. Results Reports are delivered up to four months after the end of the implementation cycle.

This product consists of an IRM review of the Malawi 2023–2025 action plan. The action plan comprises 5 commitments that the IRM has filtered and clustered into 4. This review emphasizes its analysis on the strength of the action plan to contribute to implementation and results. For the commitment-by-commitment data, see Annex 1. For details regarding the methodology and indicators used by the IRM for this Action Plan Review, see Section III.

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[1] IRM Refresh: https://www.opengovpartnership.org/process/accountability/about-the-irm/irm-refresh.

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Section I: Overview of the 2023–2025 Action Plan

Following a four-year vacuum in OGP and challenging political transitions, Malawi introduced a second action plan that focuses on transparency and anti-corruption. To deliver on its promises, implementation will require proper allocation of resources to key institutions and strong implementation and enforcement of legal frameworks. The IRM recommends that civil society are made a core partner in implementing reforms through equal representation and influence in the Steering Committee and thematic working groups.

Malawi joined OGP in 2013. This report evaluates the design of its second action plan which comprises 5 commitments. Three commitments carry forward policy areas covered in the first action plan,[1] such as access to information, anti-corruption, and extractive sector transparency. The other two commitments—aimed at accelerating the adoption of digital governance and enhancing parliamentary openness—build on past commitments related to public service delivery and citizen participation.

Upon concluding its 2016–2018 action plan cycle, the Office of the President and Cabinet (OPC) of Malawi attempted to co-create a second action plan. However, this was interrupted by the 2019 presidential election which took place in May with incumbent President Peter Mutharika winning.[2] Following a lengthy series of nationwide protests led by young people and activists, the Constitutional Court of Malawi ruled in February 2020 that the election failed to satisfy the standards of a free and fair election and subsequently ordered for a re-election to take place.[3]

In June 2020, Lazarus Chakwera won the re-election and was inaugurated as new president. However, the political transition continued to be difficult as Mutharika challenged the legality of President Chakwera's victory to the Constitutional Court in August 2021.[4] Caught in a "hostile political environment" amid ongoing COVID-19 pandemic, the OGP process was set aside while relationships between government and civil society became "very confrontational".[5] In March 2022, OGP declared Malawi "inactive" after failing to deliver an action plan in consecutive cycles.[6]

AT A GLANCE

Participating since: 2013
Action plan under review: 2023–2025
IRM product: Action Plan Review
Number of commitments: 5

Overview of commitments:
Commitments with an open gov lens: 5 (100%)
Commitments with substantial potential for results: 2 (40%)
Promising commitments: 2

Policy areas carried over from previous action plans:
Access to information
Anti-corruption
Extractive sector transparency

Emerging policy areas:
Digital governance
Open parliament

Compliance with OGP minimum requirements for Co-creation:
Acted according to OGP process: No

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In March 2022, President Chakwera met with USAID Administrator Samantha Power to talk partnership in realizing the "Malawi 2063: An Inclusively Wealthy and Self-Reliant Nation" long-term development plan,[7] during which Malawi's inactive OGP membership was discussed.[8] At the World Economic Forum (WEF) in May 2022, President Chakwera met with Chandler Foundation representatives to discuss anti-corruption and civil service reform agendas.[9] At the National Anti-Corruption Conference in July 2022, further conversations between the government and Chandler Foundation resulted in a public pledge from President Chakwera to co-create an OGP action plan by the end of 2022.[10] In early August 2022, Directors-General of the Anti-Corruption Bureau and Financial Intelligence Authority met with several development partners which included USAID and OGP.[11] In September 2022, President Chakwera met with OGP CEO Sanjay Pradhan to discuss how an OGP action plan could strengthen Malawi's anti-corruption efforts.[12]

Following these series of strategic meetings, the OPC hosted a co-creation kick-off workshop on 16–17 August 2022. Representatives from government, civil society, and private sector identified 11 key policy areas that would direct the design of commitments for the new action plan.[13] These included open parliament, anti-corruption, right to information, digital governance, fiscal openness, gender, civic space, public service delivery, justice, marginalized communities, and natural resources.[14] To facilitate the co-creation process, the OPC hired Henry Chingaipe, Executive Director of the Institute for Policy Research and Social Empowerment (IPRSE), as an external consultant under a need-based arrangement with financial support from the Chandler Foundation.[15] Malawi's long absence from OGP had left a big gap in the government's capacity to lead an effective co-creation as well as in the general understanding of OGP process among all stakeholders involved.[16]

Early in the co-creation process, the consultant found that stakeholders were largely unaware of OGP rules and standards. They attributed this to lack of engagement with civil society during inactivity in OGP and lack of efforts to involve other government ministries and agencies outside of the OPC in the previous cycle.[17] As such, the consultant conducted a refresh session to share findings of IRM reports for Malawi's first action plan and briefed the participants on OGP Participation and Co-Creation Standards.[18] The OPC then selected 5 of the 11 key policy areas—open parliament, anti-corruption, right to information, digital governance, and natural resources—as priorities based on feasibility of implementation and relevance to the Malawi 2063 development plan. The consultant began drafting the commitments in consultation with government ministries and agencies to ensure suitability with their work plans.[19] Civil society and other non-government actors were not consulted further in the drafting of commitments.

On 30 November 2022, the OPC presented the 5 commitment proposals and gathered feedback from participants of the multistakeholder forum. The OPC provided bespoke responses and clarifications during the forum, and amended the draft. In early December 2022, the OPC submitted the final action plan document to the OGP Support Unit, who subsequently published it on 29 December 2022.[20] President Chakwera formally launched the action plan at a public event in June 2023 attended by representatives from across government, traditional chiefs, civil society, and development partners. Technical working group leads publicly signed agreements with the president to implement the commitments.[21]

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Overall, the action plan sets a very ambitious scope with two promising commitments—Commitments 1 and 5—which are assessed as the beneficial ownership transparency cluster. They share an aim of introducing legal provisions for beneficial ownership information collection and disclosure with emphasis on companies that participate in government tenders as well as those in the extractive sector respectively. While they carry the potential to curb corruption in critical areas of governance, implementing both initiatives simultaneously may stretch available resources and end up stalling progress on all fronts. In a context where resistance to anti-corruption has come not only from external actors but also from within the government itself, capacity and budgetary constraints could hamper implementation.

The remaining three commitments could generate meaningful impact, but budgetary, capacity, and regulatory constraints pose potential challenges. Commitment 2, aimed at operationalizing political finance transparency, seeks to fulfill the mandate of the 2018 Political Parties Act to establish the Office of the Registrar of Political Parties (ORPP). In addition to administering political party registration, it will be responsible to collect and disclose party financial records and audit reports. However, with government budget concentrated on infrastructure building and maintenance, some experts doubt that anti-corruption and governance reform would be sufficiently resourced,[22] especially following the widespread impact of Cyclone Freddy disaster.[23]

Commitments 3 on e-government acceleration aims to increase the efficiency of public service delivery. However, whereas internet access is unevenly distributed across demographic and geographic divides, the commitment is focused on internal reforms and lacks provision to address the infrastructure gap. It is also unclear how the government will fund the development of the digital information systems that would be required for e-government transition. Commitment 4 on legislative oversight of loan bills aims to resolve opaque public debt management stemming from frequent bypass of proper parliamentary procedures due to loan bills being processed as emergency proposals. However, the commitment design does not address the underlying context of government budget being heavily reliant on external loans. These two commitments could result in important open government reforms as long as the implementers could navigate those challenges.

As the government does not have any dedicated OGP website or online repository to publish information and documentation about the process, participation in the forum was limited to invite-only.[24] Going forward, the OPC could develop an OGP website or online repository to ensure greater accessibility and compliance with OGP Participation and Co-Creation Standards in future cycles. In early stage, the OPC could add Malawi OGP information (such as action plans and Steering Committee composition) to their official website[25] and maintain a public file hosting folder to share documentation of action plan co-creation and implementation.

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[14] "Malawi OGP National Action Plan 2023–2025," Open Government Partnership, 29 December 2022, https://www.opengovpartnership.org/documents/malawi-action-plan-2023-2025.

[15] Frank Kalowamfumbi (Office of the President and Cabinet of Malawi), interview by IRM researcher, 23 February 2023.

[16] Kalowamfumbi, interview.

[17] Chingaipe, interview; IRM assessment of Malawi's first action plan implementation process presented identical findings, see: Paul L. Kwengwere, "Independent Reporting Mechanism (IRM): Malawi End-of-Term Report 2016–2018," Open Government Partnership, 26 May 2019, https://www.opengovpartnership.org/documents/malawi-end-of-term-report-2016-2018, 3–4.

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[19] Chingaipe, interview.

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Section II: Promising Commitments in Malawi's 2023–2025 Action Plan

The following review looks at the two commitments that the IRM identified as having the potential to realize the most promising results. Promising commitments address a policy area that is important to stakeholders or the national context. They must be verifiable, have a relevant open government lens, and have modest or substantial potential for results. This review also provides an analysis of challenges, opportunities, and recommendations to contribute to the learning and implementation process of this action plan.

Table 1. Promising commitments

Promising commitments
1 and 5. Beneficial ownership transparency cluster: This cluster aims to introduce legal mandates for beneficial ownership transparency in the extractive sector and government procurement. It also promises to increase public oversight through the incorporation of open contracting principles and parliamentary oversight with committee hearings.

Commitments cluster 1 and 5: Beneficial ownership transparency

Lead agencies: Public Procurement & Disposal of Assets Authority (PPDA), Anti-Corruption Bureau (ACB), Department of the Registrar General (DRG), Government Contracting Unit (GCU), Ministry of Mining (MOM), Ministry of Finance (MOF), Malawi Extractive Industries Transparency Initiative (MWEITI) National Secretariat

For a complete description of the commitments, see Commitments 1 and 5 in the action plan.

Context and objectives

Commitment 1 aims to mandate the collection of beneficial ownership information and publication of an open beneficial ownership registry to close the gaps in Malawi's public procurement system. This commitment seeks to mainstream the principles of open contracting in government procurement processes to improve transparency and curb corruption, which civil society organizations alleged to have reached the extent of state capture[1] by business entities. Commitment 5 aims to achieve similar goals, but specifically within the extractive sector and includes a provision for enhanced licensing oversight by the relevant parliamentary committee.

The fight against corruption in Malawi has long been a priority reform area, particularly in government procurement. In February 2023, Chair Gladys Ganda of the Budget and Finance Committee of the Malawi National Assembly cited a study that indicates 20% of the national budget is lost to corruption every year.[2] An audit of government accounts between 1995 and 2020 also reported loss of public funds due to payment of contracts that were never delivered.[3] Additionally, procurement irregularities make up over 70 percent of all corruption cases handled by the Anti-Corruption Bureau (ACB).[4]

Potential for results: Substantial

In the status quo, the Public Procurement and Disposal of Assets Authority (PPDA) implements a manual procurement system that contributes to long processing time and lack of transparency.

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Resultantly, the PPDA often uses single-source and exclusionary methods to fulfill contracts, making the process more vulnerable to corruption.[5] Malawi Procurement Act[6] does not specify any obligation for companies participating in government tenders to do anything aside from standard registration with the Department of the Registrar General (DRG). However, in December 2022 the Minister of Justice published the Companies (Beneficial Ownership) Regulations in the gazette,[7] which require the collection and disclosure of beneficial ownership information and provide the legal framework to strengthen public procurement transparency.

The first milestone of Commitment 1 specified introducing provisions to mandate the collection of beneficial ownership information of companies through amendments of the Companies and Procurement Acts. This milestone was completed in December 2022 under the Companies (Beneficial Ownership) Regulations that require publication of beneficial ownership information and makes non-compliance with disclosure requirements an offense.[8] The second milestone will focus on establishing an open and publicly accessible beneficial ownership registry. The PPDA will lead these efforts by rolling out initiatives to incorporate the open contracting principles in public procurement, including by creating channels for citizen participation in the monitoring and oversight of government contracting. To do so, the PPDA will begin to publish notices of intention to award—especially high-value contracts—on newspapers and its website so that citizens can provide feedback and information on potential winners. Implementers could explore learning and collaboration opportunities from partners with relevant experience, such as CoST – Infrastructure Transparency Initiative[9] who previously managed public monitoring of project accountability and transparency through the Information Platform for Public Infrastructure Malawi.[10]

Milestones included in Commitment 5 aim to introduce regulations to mandate the disclosure of natural resource contracts as well as beneficial ownership information of contract holders via the Mines and Minerals Act.[11] Passed in April 2023, the Act provides for the creation of a public registry of mining licenses, including information of individual owners. It also enables the public to request a copy of a license for a fee.[12] Altogether, the 2023 Mines and Minerals Act and the 2022 Companies (Beneficial Ownership) Act may provide the legal framework foreseen under Commitment 5.

The Ministry of Mining (MOM) leads the implementation of this commitment alongside the Malawi Extractive Industries Transparency Initiative (MWEITI) National Secretariat hosted within the Ministry of Finance (MOF). The commitment builds on MWEITI's work on revenue transparency to expand the disclosure regime to encompass the full chain of natural resource governance from contracting, licensing, production, exporting, to social and environmental analyses. To increase oversight of the sector, implementation of this commitment will also aim to build the capacity of the Committee on Natural Resource and Climate Change of the National Assembly in scrutinizing extractive contracts through parliamentary hearings and meetings. Additionally, the commitment included a milestone to establish a mining sovereign fund with transparent rules for withdrawals and deposits. However, the 2023 Mines and Minerals Act did not ultimately include such provision.[13]

While current administration has spoken strongly against corruption, a public perception survey conducted by Afrobarometer released in May 2022 reported that over 66% of Malawians believed corruption increased in the past year, with 57% attributing the increase to misappropriation of COVID-19 pandemic response funds.[14] There are also several indications

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that anti-corruption efforts face resistance from within the ranks of the government itself. A particularly high-profile example of this is the arrest of Vice President Saulos Klaus Chilima by the ACB on 25 November 2022 for accepting bribes to award government contracts without going through proper procurement process.[15] Therefore, it is important for the implementation of these commitments to engage the public in meaningful and iterative manners, which could help heal public trust in the government. Implementers could begin by documenting all feedback received on potential contract winners and providing written responses published on the websites of relevant agencies (e.g., PPDA, MOM, and MWEITI).

Considering the continued significant loss of public funds due to corruption in government procurement and lack of transparency in natural resource governance, the efforts to institutionalize beneficial ownership transparency and increase oversight in these commitments could deliver substantial results. Successful implementation could improve the capacity of the PPDA, DRG, ACB, MOM, MOF, and the National Assembly in conducting adequate scrutiny of companies participating in government tenders and equip them with the much-needed legal bases to perform better due diligence.

Opportunities, challenges, and recommendations during implementation
Overall, the scope of these commitments is considerably ambitious for a 2-year action plan cycle, especially considering that Malawi is restarting its OGP process after a four-year inactivity and tumultuous political transitions.

OGP members in the region have successfully pursued similar reforms by dividing milestones across consecutive action plan cycles. Nigeria, for instance, joined OGP in 2016 and implemented their first beneficial ownership commitment in the 2017–2019 cycle by establishing a registry focused only on the extractive sector.[16] They subsequently followed this up by implementing another commitment in the 2019–2022 cycle that expanded coverage to other sectors.[17] By focusing resources and efforts on milestones with narrower scope in each cycle, they were able to achieve incremental but significant progress, albeit within a longer time frame.[18] Specifically, the following two factors enabled the Nigerian OGP process to usher meaningful reforms in beneficial ownership transparency, which Malawian stakeholders could reflect on for long-term strategic planning:[19]

- **Strong multistakeholder coalition of champions committed to advancing beneficial ownership reform**. In Malawi, the PPDA could work with the Register of Companies to implement beneficial ownership disclosure requirements for procuring companies, before expanding to all companies. Likewise, the Register of Companies can collaborate with the Mining and Mineral Regulatory Authority called for under the 2023 Act. The Register of Companies could assist the new authority with disclosure of mining licenses and information sharing between institutions.[20] These lead bodies should also work closely with civil society and private sector through the relevant thematic working group. The private sector can be a key ally to communicate the obligations and benefits around beneficial ownership transparency to their peers.
- **A dedicated budget line for OGP activities**. As is the case in many OGP countries, action plan implementation is often restricted by limited budget availability. Positively, civil society noted that efforts are underway in Malawi to allocate a small budget provision for Malawi OGP activities within the OPC budget.[21] In Nigeria, the government established a dedicated budget line for OGP commitments implementation, which enabled OGP reforms to sustain despite political transitions and leadership changes at

implementing agencies and partner organizations. Funding sourced from international partners also helped beneficial ownership reforms progressed.

Drawing on these lessons learned, actors implementing these commitments could consider taking the following actions:

- **Conduct a joint meeting between implementing stakeholders of the two commitments to align expectations**. Mindful of resource and time constraints, the stakeholders could identify specific milestones to prioritize. For example, joint efforts could be concentrated on implementing the amendments to the new Companies and Mining Acts. Lead implementers of the two commitments can begin building a strong multistakeholder coalition that is involved in the overall decision-making process to ensure that they commit to supporting the initiative beyond initial stages.
- **Design a long-term strategy and allocate budget to build towards a free, central beneficial ownership registry**. Implementers can consider starting with the disclosure of beneficial ownership information in priority areas, such as for companies bidding in public procurement and those in the extractive sector. Reformers can then use the lessons and processes established for these focused publications to work towards the publication of beneficial ownership information for all registered companies. Implementers can engage partners such as Open Ownership for support with strategic and technical planning.[22]
- **Consult internationally recognized beneficial ownership transparency guidelines and optimize bilateral, regional, and international platforms for peer learning opportunities**. These include the following guidelines, standards, recommendations, and platforms, but not limited to:
  - Extractive Industries Transparency Initiative's Standard,[23] Implementation Guide,[24] and Global Conferences;[25]
  - The Financial Action Task Force's International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation[26] and Guidance on Beneficial Ownership of Legal Persons;[27]
  - The International Monetary Fund's Guide to Beneficial Ownership;[28]
  - Open Government Partnership's Beneficial Ownership Leadership Group,[29] Regional Meetings, and Global Summits;[30]
  - Open Ownership's Principles for Effective Beneficial Ownership Disclosure,[31] Policy Brief on Beneficial Ownership Data in Procurement,[32] Beneficial Ownership Declaration Forms: Guide for Regulators and Designers,[33] Beneficial Ownership Disclosure Workbook,[34] and Guide to Implementing Beneficial Ownership Transparency.[35]
  - International Working Group of Sovereign Wealth Fund's "Santiago Principals".[36]

Other commitments
Commitments that the IRM did not identify as promising as written in the action plan are discussed below. This review provides recommendations to contribute to the learning and implementation of these commitments.

Commitment 2 on political finance transparency aims to establish and operationalize the Office of the Registrar of Political Parties (ORPP) by supporting the development of a robust procedure and mechanisms to ensure compliance with the mandates of the Access to Information Act[37] as well as the Political Parties Act[38] which regulate the financial transparency

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of political parties. Since Malawi adopted the multiparty system in 1995, there had been no specific accountability mechanisms for political parties despite receiving funding from government budget.[39] Once established, the ORPP will work with the Anti-Corruption Bureau (ACB), the Malawi Human Rights Commission (MHRC), and civil society stakeholders to develop a set of guidelines and reporting templates to carry out the mandate of the Political Parties Act. Additionally, it will collaborate with the Centre for Multiparty Democracy (CMD) to carry out awareness raising initiatives.

Demands for greater transparency of political party finances saw a significant increase during the 2019 presidential election and its 2020 re-run. Failure from the Ministry of Justice (MOJ) to establish the ORPP, coupled with the DRG's lack of capacity and resources as transitional caretakers,[40] meant that citizens remain without access to political party financial information. In May 2022, the Malawi Law Society (MLS) filed a lawsuit against Registrar-General Chikumbutso Namelo for failing to comply with their information request for political party funding and audit reports.[41] According to the Centre for Social Transparency and Accountability (CSAT), the MOJ's failure to establish the ORPP despite the Political Parties Act being passed in 2018 "provides a fertile ground for abuse of public funds and fraud".[42]

As the commitment will initiate the process of establishing the ORPP, the stakeholders involved in implementation possess a strategic opportunity to influence the development of the procedure and guidelines. This will require the MOJ as lead agency to establish clear rules of how other stakeholders, especially civil society organizations, can play meaningful roles beyond basic consultation. The commitment's success would largely hinge on **sufficient allocation of budget and resources**, especially given that party leaders have complained about the high costs of external auditors.[43] To fill this gap, the government could, for instance, mandate the National Audit Office (NAO) to audit political party finances in lieu of external contractors. To do so, the NAO would need support in the forms of increased budget allocation, additional staff, and stronger capacity building.

Commitment 3 on the adoption and utilization of e-government aims to resolve the layered problems with digital systems in public service delivery across government institutions. Successful implementation of this commitment is expected to facilitate government institutions and workers to replace manual processes—often cited as reason for slow and inefficient public service delivery—with interconnected, centralized digital systems. The Ministry of Information and Digitalization (MOID) will lead the implementation of this commitment by conducting institutional reviews and address capacity gaps in adopting e-government systems.

The commitment is designed to break down the silos in which government institutions work without proper inter-institutional coordination as data and information are stored manually and communications occur through personal webmail domains as opposed to a centralized government server. However, proposed activities in the commitment design are largely internal reform related to existing initiatives such as the Digital Government Transformation Agenda[44] and the Digital Skills and Innovation Grants.[45]

With low internet penetration rate at 24.4 percent[46] and internet costs that is among the most expensive in the African region,[47] implementers could rethink how OGP commitment adds value to ongoing e-government reform initiatives. For example, the implementers could collect public feedback to inform the design of e-government systems, introduce open data principles in

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digital information disclosure, and conduct campaigns and trainings to increase uptake of digital public service delivery.

Commitment 4 on legislative oversight of public debt aims to introduce a mandatory referral for loan authorizations (money bills) to the Budget and Finance Committee of National Assembly. Currently, the Public Finance Management Act[48] requires all government loans to be approved by the parliament. However, time constraints and low capacity have not allowed for proper scrutiny despite the MOF reporting huge budget deficit of 825 billion MWK (approximately 807 million USD) in the 2021–2022 fiscal year[49] and estimating higher deficit of 884 billion MWK (865 million USD) for the 2022–2023 fiscal year—about 7.7% of GDP—financed by domestic and foreign loans.[50]

As lead implementer of this commitment, the Budget and Finance Committee of the National Assembly proposes that all loan authorizations go through mandatory referral recommendation to the Business Committee, who will then work with the MOF to pilot hearings on future bills while simultaneously building the capacity of parliamentarians on public debt management. The Budget and Finance Committee will ensure that the government discloses all information to the public, including repayment details and lender data. Sufficient information disclosure will allow civil society stakeholders to conduct social accountability assessment of government loans.

The proposed commitment design adds an important layer of scrutiny in government loans authorization which responds to the high demand for loan reform from political parties, development partners, and civil society. However, with emergency exception being invoked frequently[51] to bypass parliamentary scrutiny, it is difficult to expect that the additional committee scrutiny would result in substantial changes. In implementing the commitment, it is necessary for relevant actors, especially the MOF, to address the underlying gaps in government budget planning while strengthening parliamentary oversight. The MOF could also leverage the OGP process to conduct need-based participatory budgeting to identify development programs that generate similar level of economic growth without reliance on loans and alternative sources of financing.

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Section III. Methodology and IRM Indicators

The purpose of this review is not an evaluation. It is intended as a quick, independent, technical review of the characteristics of the action plan and the strengths and challenges the IRM identifies to inform a stronger implementation process. The IRM highlights commitments that have the highest potential for results, a high priority for country stakeholders, a priority in the national open government context, or a combination of these factors.

The IRM follows a filtering and clustering process to identify promising reforms or commitments:

> **Step 1:** Determine what is reviewable based on the <u>verifiability</u> of the commitment as written in the action plan.
> **Step 2:** Determine if the commitment has an <u>open government lens</u>. Is it relevant to OGP values?
> **Step 3:** Review commitments that are verifiable and have an open government lens to identify if certain commitments need to be clustered. Commitments that have a common policy objective or contribute to the same reform or policy issue should be clustered. The potential for results of clustered commitments should be reviewed as a whole. IRM staff follow these steps to cluster commitments:
> > a. Determine overarching themes. If the action plan is not already grouped by themes, IRM staff may use OGP's thematic tagging as reference.
> > b. Review commitment objectives to identify commitments that address the same policy issue or contribute to the same broader policy or government reform.
> > c. Organize commitments into clusters as needed. Commitments may already be organized in the action plan under specific policy or government reforms.
> **Step 4:** Assess the <u>potential for results</u> of the clustered or standalone commitment.

Filtering is an internal process. Data for individual commitments is available in Annex 1. In addition, during the internal review process of this product, the IRM verifies the accuracy of findings and collects further input through peer review, OGP Support Unit feedback as needed, interviews and validation with country stakeholders, an external expert review, and oversight by IRM's International Experts Panel (IEP).

As described earlier, IRM relies on **three key indicators** for this review:

I. Verifiability
- **Yes, specific enough to review:** As written in the action plan, the stated objectives and proposed actions are sufficiently clear and include objectively verifiable activities to assess implementation.
- **No, not specific enough to review:** As written in the action plan, the stated objectives and proposed actions lack clarity and do not include explicitly verifiable activities to assess implementation.
- Commitments that are not verifiable will be considered not reviewable, and further assessment will not be carried out.

II. Open government lens

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This indicator determines if the commitment relates to the open government values of transparency, civic participation, or public accountability as defined by the Open Government Declaration and the OGP Articles of Governance by responding to the following guiding questions. Based on a close reading of the commitment text, the IRM first determines whether the commitment has an open government lens:

- **Yes/No:** Does the commitment set out to make a policy area, institution, or decision-making process more transparent, participatory, or accountable to the public?

The IRM uses the OGP values as defined in the Articles of Governance. In addition, the following questions for each OGP value may be used as a reference to identify the specific open government lens in commitment analysis:

- **Transparency:** Will the government disclose more information, improve the legal or institutional frameworks to guarantee the right to information, improve the quality of the information disclosed to the public, or improve the transparency of government decision-making processes or institutions?
- **Civic Participation:** Will the government create or improve opportunities, processes, or mechanisms for the public to inform or influence decisions? Will the government create, enable, or improve participatory mechanisms for minorities or underrepresented groups? Will the government enable a legal environment to guarantee freedoms of assembly, association, and peaceful protest?
- **Public Accountability:** Will the government create or improve opportunities to hold officials answerable for their actions? Will the government enable legal, policy, or institutional frameworks to foster accountability of public officials?

III. Potential for results

The IRM adjusted this indicator—formerly known as the "potential impact" indicator—to take into account the feedback from the IRM Refresh consultation process with the OGP community. With the new results-oriented strategic focus of IRM products, the IRM modified this indicator to lay out the expected results and potential that would be verified in the IRM Results Report after implementation. Given the purpose of this Action Plan Review, the assessment of potential for results is only an early indication of the possibility the commitment has to yield meaningful results based on its articulation in the action plan in contrast with the state of play in the respective policy area.

The scale of the indicator is defined as:

- **Unclear:** The commitment is aimed at continuing ongoing practices in line with existing legislation, requirements, or policies without indication of the added value or enhanced open government approach in contrast with existing practice.
- **Modest:** A positive but standalone initiative or change to processes, practices, or policies. The commitment does not generate binding or institutionalized changes across government or institutions that govern a policy area. Examples are tools (e.g., websites) or data release, training, or pilot projects.
- **Substantial:** A possible game changer for practices, policies, or institutions that govern a policy area, public sector, or the relationship between citizens and state. The commitment generates binding and institutionalized changes across government.

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This review was prepared by the IRM in collaboration with Ravio Patra and was externally expert reviewed by German Emanuele. The IRM methodology, quality of IRM products, and review process are overseen by IRM's IEP. For more information, see the IRM Overview section of the OGP website.[1]

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[1] IRM Overview: https://www.opengovpartnership.org/irm-guidance-overview.

Annex 1. Commitment by Commitment Data[1]

Commitment 1: Open contracting and beneficial ownership transparency

- Verifiable: Yes
- Does it have an open government lens? Yes
- This commitment has been clustered as: Beneficial ownership transparency (Commitments 1 and 5 of the action plan)
- Potential for results: Substantial

Commitment 2: Operationalization of political finance transparency

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 3: Adoption of e-government and digital inclusion

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 4: Legislative oversight of public debt

- Verifiable: Yes
- Does it have an open government lens? Yes
- Potential for results: Modest

Commitment 5: Transparency in natural resource governance

- Verifiable: Yes
- Does it have an open government lens? Yes
- This commitment has been clustered as: Beneficial ownership transparency (Commitments 1 and 5 of the action plan)
- Potential for results: Substantial

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[1] **Editorial note**:
1. For commitments that are clustered: the assessment of potential for results is conducted at the cluster level, rather than the individual commitments.
2. Commitment titles may have been edited for brevity. For the complete text of commitments, please see Malawi 2023–2025 action plan.

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Annex 2. Action Plan Co-Creation

OGP member countries are encouraged to aim for the full ambition of the updated OGP Participation and Co-Creation Standards that came into force on 1 January 2022.[1] IRM assesses all countries that submitted action plans from 2022 onward under the updated standards. OGP instituted a 24-month grace period to ensure a fair and transparent transition to the updated standards. During this time, IRM will assess countries' alignment with the standards and compliance with their minimum requirements.[2] However, countries will only be found to be acting contrary to the OGP process if they do not meet the minimum requirements, starting with action plans submitted to begin in 2024 and onward. Table 2 outlines the extent to which the countries' participation and co-creation practices meet the minimum requirements that apply during development of the action plan.

Table 2. Compliance with minimum requirements

Minimum requirement	Met during co-creation?	Met during implementation?
1.1 Space for dialogue: The OPC convened government officials and civil society representatives in a kick-off meeting on 16–17 August 2022.[3] An OPC consultant conducted a series of interviews, drafted commitments, and shared with the forum in a validation meeting on 30 November 2022.[4] In total, the forum met twice in a 4-month span. Participation was on an invite-only basis and, while existing members can recommend others to be invited, there was no publicly available information about the forum's rules and agenda.[5]	No	*To be assessed in the Results Report*
2.1 OGP website: There was no OGP website throughout the co-creation process. The OPC has indicated that there is a plan to add a submenu on their website to publish information about the Malawi OGP process in March 2023.[6]	No	*To be assessed in the Results Report*
2.2 Repository: There was no repository that collects information and documentation of the OGP process. All documentation were stored in private computes of the OPC consultant,[7] which was not shared with the IRM to verify.	No	*To be assessed in the Results Report*
3.1 Advanced notice: Participants were invited to the co-creation meetings without receiving any information about the forum agenda.[8] The IRM assessment concludes that the process was rushed to meet the end-of-2022 deadline publicly set by the president following a series of meetings with donors and development partners between May–August 2022.	No	Not applicable
3.2 Outreach: Throughout co-creation, the OPC sent emails to invite a select group of civil society stakeholders to join the process. Participants were also asked to recommend other partners to invite to the forum.	Yes	Not applicable
3.3 Feedback mechanism: The OPC interviewed government officials to draft commitments, but not civil society representatives. To finalize the draft the OPC gathered the forum again to solicit feedback at the 30 November 2022 validation meeting, but only gave civil society the opportunity	Yes	Not applicable

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to read and comment on the draft verbally during that meeting duration.[9]		
4.1 Reasoned response: The OPC took minutes of meetings with civil society throughout the co-creation process. The OPC responded to feedback directly during the meetings.[10] Ideally, stakeholders should be given reasonable time to read draft action plans before being asked to provide feedback and the meeting notes (including responses to those feedback) should be made available for public access.	Yes	Not applicable
5.1 Open implementation: The IRM will assess whether meetings were held with civil society stakeholders to present implementation results and enable civil society to provide comments in the Results Report.	Not applicable	*To be assessed in the Results Report*

The IRM acknowledges that the stakeholders involved in the co-creation process of Malawi 2023–2025 action plan were working against the background of a difficult political transition and a variety of other external challenges including the ongoing impact of the COVID-19 pandemic as well as institutional memory and knowledge loss caused by the four-year gap in Malawi's activity in the OGP process. Going forward, the IRM recommends the following steps to help the Malawi OGP forum comply with OGP's minimum requirements:

- **Strengthen civil society participation in the Steering Committee.** The OPC should convene the Steering Committee (at least twice a year) to discuss any developments in the OGP process, particularly the progress and challenges of commitments implementation. Current civil society members should receive sufficient information on OGP processes and commitment progress to ensure meaningful participation in decision-making. Civil society members can also assist OPC with inviting more organizations whose work aligns with open government into the process. These activities should be undertaken with the ultimate aim of equal representation and influence of government and civil society members on the Steering Committee and in thematic working groups.
- **Open public access to information on OGP process.** The OPC could create a website or add a submenu on the existing OPC's website dedicated to Malawi OGP process. At minimum, the website must have information such as contact information of Malawi OGP point of contact, timeline of the OGP process, basic information of the multistakeholder forum (including its remit, membership, and agenda), and digital copies of all Malawi OGP action plans and evaluation reports (past and current).
- **Create a repository to preserve institutional memory and knowledge**. The OPC could consider utilizing alternative, free online tools such as Google Drive, Microsoft One Drive, DropBox, and so on to collect, store, and circulate information and documentation related to the OGP process. The OPC could manage the storage and hyperlink to it on the OPC website (or the OGP website, should one be developed).
- **Conduct outreach activities to mainstream OGP.** Steering Committee members could host a series of workshops to introduce OGP to key government and civil society stakeholders. Commitments implementation would benefit from this as limited participation during co-creation process might have left out certain stakeholders who would otherwise be interested and/or have resources to achieve commitments' objectives. Additionally, to increase awareness of OGP and its process, the OPC could consider circulating brief informational materials, especially via online channels (e.g., email/social media/text messaging platforms). The Kenya OGP community, for example,

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maintains a WhatsApp group for all individuals in and outside government interested in OGP events and updates.

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[1] 2021 OGP Participation and Co-Creation Standards: https://www.opengovpartnership.org/ogp-participation-co-creation-standards.

[2] IRM Guidelines for the Assessment of Minimum Requirements: https://www.opengovpartnership.org/documents/irm-guidelines-for-the-assessment-of-minimum-requirements.

[3] Namadzunda, "Government reactivates OGP membership".

[4] Kalowamfumbi, interview.

[5] Chingaipe, interview.

[6] Kalowamfumbi, interview.

[7] Chingaipe, interview.

[8] Chingaipe, interview.

[9] Chingaipe, interview.

[10] Chingaipe, interview.

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