



Independent observer  
of the Global Fund

# Accountability for Global Fund Grants in Malawi

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# List of acronyms

ACB	Anti-Corruption Bureau
AIDS	Acquired Immuno Deficiency Syndrome
CCM	Country Coordinating Mechanism
CSO	Civil society organization
DHRMD	Department of Human Resources and Development
DPP	Director of Public Prosecutions
EHP	Essential Health Package
GDP	Gross Domestic Product
HADG	HIV/AIDS Development Group
HIV/AIDS	Human Immunodeficiency Virus
HSSP	Health Sector Strategic Plan
IAWP	Integrated Annual Work Plan
LFAs	Local Fund Agents
MDAs	Ministries, Departments and Agencies
MGFATMCC	Malawi Global Fund Coordinating Committee
MOH	Ministry of Health
MoLGRD	Ministry of Local Government and Rural Development
MPF	Malawi HIV/AIDS Partnership Forum
NAC	National AIDS Commission
NAO	National Audit Office
PIU	Program Implementation Unit
PRs	Principal Recipient
PU/DRs	Progress Update and Disbursement Reports
SRs	Sub-recipients
SWAp	Sector Wide Approach
TB	Tuberculosis
TWGs	Technical Working Groups
WHO	World Health Organization

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# Executive summary

The Global Fund is the single most important source of funding for HIV/AIDS, TB and malaria in Malawi, where it has invested approximately US\$936 million since 2003. Malawi's HIV/AIDS prevalence (9.1%) among adults aged 15-49 years ranks among the highest in the world and the country is also among the high burden HIV/AIDS/TB countries. Moreover, malaria remains a public health issue as it accounts for 30% of all outpatient visits and 40% of all hospitalization among under 5 years old. Corruption levels in Malawi remain high although significantly lower than levels in neighboring countries, or countries in the same income categories.

The Global Fund does not have in-country offices and relies on government and non-government implementing partners to conduct programs. The Global Fund applies a "zero-tolerance" policy towards misuse of its investments and it has set up its own mechanisms to ensure effective use of its investment by the implementers.

It is in this context of high prevalence of disease, high level of corruption that the study aims to investigate accountability of Global Fund grants in Malawi.

The Global Fund has several core structures involved in accountability. At the headquarter level are the Board which deals with governance issues and set policies; the Technical Review Panel which evaluates funding requests; the Secretariat which oversees grant management, monitors activities and analyzes risks; and the Office of the Inspector General which audits and safeguards the Fund's investments. At the national level are the Country Coordinating Mechanisms (CCM) which represents all stakeholders at national level, submits requests for funding and oversees grants in-country; the Local Fund Agent which is the "eyes and ears" of the Global Fund in the country; the Principal Recipients who implement the grant.

Malawi has put in place the legislative framework and strengthened oversight institutions that have helped fight corruption. Among important institutions are the Public Accounts Committee (PAC) of the Parliament; the office of the Auditor General, the Anti-Corruption Bureau, the Office of the Director of Public Procurement of the Executive, the Office of the Ombudsman and the Judiciary. In addition, development partners, the media and civil society organizations participate in accountability in the country. However, there often is a lack of follow-up on issues and sanctions.

Recommendations to improve accountability for Global Fund's grants in Malawi are (1) Strengthen existing accountability structures; especially promote the autonomy of the various accountability institutions by ensuring financial independence of these institutions and increase the effectiveness of the audit system; (2) Reinforce CSOs and media capacity in accountability and health matters.

# Introduction

**The concept of accountability refers to individuals or organizations taking responsibility for their actions and being answerable for performance, finance or political/ democratic activities appraised against pre-existing standards.<sup>1</sup>**

Within the health sector, accountability is best apprehended through its three main components –who (responsible parties), what (issues for which parties are responsible) and how (appropriate accountability mechanisms).<sup>2</sup> Accountability in health is a major concern because of the multiple actors and the substantial amounts of money involved as well as the potential impact on lives.

The Global Fund to Fight AIDS, Tuberculosis (TB) and Malaria (hereafter the Global Fund) is one of the largest financiers of programmes aimed to fight these three diseases globally. From its inception in 2002 to July 2016, the Global Fund had invested more than US\$30 billion in over 100 countries and in the process established inclusive mechanisms to manage the funds transparently. These investments led to 20 million lives saved globally,<sup>3</sup> stronger health governance, increased participation of diverse actors in health policy processes, improved transparency, accountability and responsiveness to country needs.<sup>4</sup>

The Global Fund does not have in-country offices. Its core principles are partnership, country ownership, performance-based financing and transparency. The Global Fund's bases its investments on national strategies and channels funds through national systems. Implementers are often government and non-government implementing partners.<sup>3,5</sup> Implementers are in charge of funds management and service delivery. Since its inception, the Global Fund has applied "Zero-tolerance" policy towards misuse of its investments; and it has set up approaches and mechanisms to ensure effective use of its investment by the implementers. Thus, when a state institution such as the Ministry of Health is an implementer, it follows not only Global Fund's regulations but also that of their state. In principle, those two layers of accountability reinforce each other and ensure financial accountability for the investment.

However, the Office of Inspector General (OIG) has reported misappropriation of Global Fund's investments in different countries over the years. The Global Fund currently applies a risk differentiation to its grants management and supporting processes. In practice, this policy suggests tailored management oversight per country depending on the grant, the disease distribution and the country portfolio risk.<sup>6</sup> For instance, as accountability mechanisms implemented were satisfactory in Rwanda, the country has obtained more flexibility to pool the Global Fund investments with national and other donors for better efficiency and higher impact.<sup>7</sup>

In that context, it is important to study national accountability mechanisms as they relate to the Global Funds' investments in the health sector. This study is part of a larger set of case-studies in Kenya, Malawi, Uganda and Zambia. Focusing on Malawi, this study analyzes the Global Fund and national frameworks, discusses their limitations and offers recommendations.

## The Global Fund investment in Malawi

Malawi is a low income country in Southern Africa, with a population of 17.2 million<sup>8</sup> and a Gross Domestic Product (GDP) per capita of US\$381.37 in 2015.<sup>9</sup> It is one of the least developed countries in the world<sup>10</sup> and is ranked 173 out of 188 countries in the Human Development Index 2015<sup>11</sup>.

The Global Fund has supported Malawi since 2003 and has invested about US\$936 million as of December 2016, with 74% target to HIV/AIDS programs. Initially, the Fund had been funding Malawi using the two pooled mechanisms (described under health financing) i.e. the health Sector Wide Approach (SWAp) (funds the entire health sector) and the HIV/AIDS pool (which funds the HIV/AIDS response).<sup>11</sup> However, in August 2011, the Global Fund opted out of the pooled funding mechanism and became a discrete donor where investment channeled directly to the principal recipients (PRs)<sup>12</sup>. The Global Fund support has contributed to providing anti-retroviral therapy (ART) to 590 000 persons and distributing almost eight million insecticide-treated nets.

## Epidemiological context of HIV/AIDS, TB and malaria in Malawi

Communicable diseases such as HIV/AIDS, TB and malaria are highly prevalent in Malawi. With nearly one million people living with HIV/AIDS, Malawi's HIV prevalence (9.1%) among adults aged 15-49 years ranks among the highest in the world.<sup>13</sup> Similarly, with a TB prevalence of 334/100 000 in the adult population<sup>14</sup>, the World Health Organization (WHO) considers Malawi to be one of the high burden TB countries<sup>15</sup>. Malaria continues to be a major public health concern in Malawi and is a major cause of morbidity and mortality across all age groups. It accounts for 30% of all outpatient visits<sup>16</sup> and 40% of hospitalizations among children under five years of age.<sup>17</sup> Treatment for these three conditions is offered free of charge within the public sector reducing barriers to access care.

## Organization of the health sector in Malawi

In Malawi, health services are provided by public and private providers. The public sector includes all facilities under the Ministry of Health (MOH) and other government ministries and departments whereas the private sector consists of private-for-profit and private not-for-profit service providers. The MOH has the overall responsibility of managing and coordinating the health sector.<sup>18</sup> It develops policies, standards and protocols, and provides technical support and supervision to the Ministry of Local Government and Rural Development (MoLGRD). The MOH is responsible for delivery of services at the central hospitals while the MoLGRD delivers services at the district and lower levels.

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<sup>1</sup> The Human Development Index (HDI) is a 'summary measure for assessing long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living'

## Health financing

Over the years, the government of Malawi and donors have invested significant resources in the health sector. In 2014, health care spending represented 11.38% of the GDP. In the 2016/2017 financial year, the health sector was allocated 8% of the national budget, down from 12.4% in the 2009/10 financial year, which is much lower than the 15% African countries committed to spend in health care in the Abuja Declaration.<sup>18</sup> The government funded 52% of the total health care expenditures in 2015, while out of pocket expenses accounted for 10.6%. Majority of donor funding for HIV/AIDS comes from the Global Fund and the US Government.<sup>19</sup>

Since 1999, donors in Malawi have utilized the sector-wide approach (SWAp)<sup>20</sup> where various funding agencies support a specific policy or strategy with clear sector targets. Under the SWAp, there are shared approaches for implementing the sector strategy and review of progress towards the set targets.<sup>21</sup> There are two main modes of funding by the partners under the SWAp.<sup>20</sup> First, there is the pooled funding where donors deposit the funds into one account and those funds are available for the entire sector. Second, discrete funding is where donors deposit funds in individual bank accounts and those funds may be available for the entire health sector, earmarked for specific activities or channelled directly to an implementation entity.

A separate pooled mechanism, coordinated by the National Aids Commission (NAC), exists specifically for HIV/AIDS. The Integrated Annual Work Plan (IAWP), which is an implementation tool for the National HIV/AIDS Action Framework and the National HIV/AIDS Policy, guides this arrangement.

## Corruption in Malawi

Corruption level remains high in Malawi although it is significantly lower than levels in neighbouring countries, or countries in the same income categories. Malawi ranked 112 out of 168 in the 2015 Transparency International Corruption Perception Index, with a score of 31 on a scale that ranges from 0 (most corrupt) to 100 (least corrupt)<sup>22</sup>, down from 37 in 2012 and 2013. This decline indicates an increase in perception that corruption is widespread in Malawi.

The Governance and Corruption Survey, conducted in 2013, revealed similar results. Respondents ranked corruption as the second major factor undermining the country's development; corruption was ranked third in the 2010 survey. The survey also revealed a sharp deterioration in the overall integrity of public institutions. There was also a significant decline in the public's perception on the effectiveness of the anti-corruption mechanisms in place. Institutions perceived as effective in the fight against corruption include media (73.6%), religious bodies (72.6%), non-governmental organizations (61.1%), academia (60.9%), the Anti-corruption bureau (50.5% - down from 73% in 2010), Police (49.6%) and the Office of the Ombudsman (48.5%).

Corruption in Malawi ranges from high level political corruption to petty corruption such as bribery.<sup>10</sup> Less than 2% of Malawians have ever paid bribe to health care officials or professionals. In regards to grand corruption, Malawi experienced what most refer as the biggest corruption episode of all time, in 2013, when an estimated US\$32m (approximately one percent of Malawi's GDP) of government funds was misappropriated in what is commonly

called the Cashgate scandal.<sup>23</sup> The theft occurred in key institutions like the Office of the President (OPC), the ministries of Defence, Tourism and Lands. Perpetrators took advantage of weaknesses in the Integrated Financial Management Information System (IFMIS), a software meant to support budgeting, accounting and reporting, and transferred funds from the government accounts to suppliers of goods and services that were never supplied.<sup>24</sup> Money was also lost via unsupported payments and inflated procurement prices. The perpetrators then deleted history of these transactions. Such misappropriation and theft of public money is associated with weak or unutilized internal control systems.<sup>24</sup>

## Corruption in the health sector

In 2014, the National Aids Commission (NAC) was accused of disbursing money meant for HIV/AIDS programs to two organizations whose activities are unrelated to the HIV/AIDS response (commonly known as the NAC-gate scandal). One of the organizations, Beautify Trust Malawi (BEAM Trust), owned by the first lady, received US\$11000 while Mulhako wa Alhomwe, a tribal association, also received funding from NAC. It is believed that money disbursed to BEAM Trust was used to launch the organization. It is not clear the actions taken to resolve this issue but there are some reports that some of the money was refunded to the NAC.

## Response to misappropriation of funds

The Cashgate scandal attracted a lot of negative publicity both locally and globally. Following this scandal, donors suspended funding worth US\$150 million for the 2013/14 financial year. Some of the donors resumed funding only after the government gave reassurance and verified the proper use of funds. Three years later, majority of Malawi's traditional donors are adamant on withholding direct budgetary support until the government resolves prior scandals of misappropriation or theft of funds.<sup>25</sup>

However, misappropriation of public resources was not a new concept in Malawi. In 2011, Britain had suspended part of its funding for general budget support worth 19 million Euros citing poor economic management and governance. Mid-2012, Britain resumed funding to Malawi after change of the country's leadership – former president Joyce Banda took over the presidency after the death of Bingu wa Mutharika. Even earlier in 2001, four major donors had suspended aid to Malawi due to widespread corruption and economic mismanagement. Among them are the European Union (EU) suspended funding of 15 million Euros and demanded a refund of 7 million Euros that had already been disbursed citing non-adherence to procedural requirements in awarding of government contracts.

# Methods

## Data source

The study uses qualitative data. First, we conducted a literature review to understand the landscape, inform the design of the interview guides and understand the data collected. Then, a team of trained interviewers conducted 10 face-to-face key informant interviews in English from April to May 2015 officials from the Ministry of Health, the National Audit Office, cooperating partners, media houses, and civil society organizations (CSOs). We offered no compensation to the interviewees and maintained anonymity for all of them.

## Data Analysis

A trained specialist transcribed the primary data. We then coded it using NVivo version 10 based on recurring themes, and analysed the themes.



# Findings

**Both the Global Fund and the Malawian government have set up structures, processes and mechanisms to ensure accountability for Global Fund monies.**

## Global Fund accountability structures and mechanisms

### Global level

#### Board

The Board governs Global Fund's operations. It approves all funding decisions, appraises performance, manages risk, engages partners, mobilizes resource and advocates for the Global Fund.<sup>26</sup> The Board represents all stakeholders including donors and implementer governments, non-state implementers, private sector, foundations and affected communities. The Board carries out its work through three different committees: audit and finance; ethics and governance; and strategy committees.<sup>27</sup> Both the Secretariat and the Office of the Inspector General (OIG) report to the Board.

#### Global Fund Secretariat

The Global Fund Secretariat carries out the day to day activities of the Global Fund. Specific functions include managing grants and risks, coordinating application process while integrating gender, human rights and key population issues.<sup>28</sup> It enhances accountability by ensuring effective and efficient implementation of grants at the country level, for instance, through the development of eligibility criteria and guidelines, and monitoring and evaluation.

#### Global Fund country teams

Each team consists of the fund portfolio manager (FPM) and one or two programme officers, supported by technical and functional teams from procurement, monitoring, finance and legal departments. Over the years, the country team has made a number of country visits to Malawi.

The country team and the risk officer of the Secretariat are the first and second line responders in the Global Fund accountability mechanisms.<sup>29</sup>

## The Office of the Inspector General (OIG)

The OIG is an independent entity of the Global Fund that oversees the Global Fund's Secretariat and grant implementers' operations to ensure compliance to the Fund's policies and procedures. The OIG prevents and detects fraud, waste, malfeasance and mismanagement. The OIG reports its findings directly to the Global Fund Board. The OIG has conducted a number of audits in Malawi, and launched the 'I speak Out Now' campaign, in 2016, to encourage people to report misuse of resources.<sup>30</sup>

An audit conducted by the Office of the Inspector General in 2010 on all Malawi grants which ran from October 2003 to June 2010 identified significant weaknesses in grant administration, procurement and supplies management and financial management.<sup>12</sup> Some of these weaknesses included the use of funds to make transactions that are either ineligible and/or inadequately supported (up to US\$4 million), inadequate capacity to carry out the procurement at local levels and multiplicity of oversight structures leading to duplication among others.

In their most recent audit, conducted in 2016, the OIG assessed the adequacy, efficiency and effectiveness of the implementation arrangements put in place in grants that ran between January 2014 and December 2015; specifically in three main regards - quality of services, supply chain systems and grant absorption.<sup>30</sup> In carrying out this audit, the OIG visited four warehouses, 30 health and storage facilities.

Table 1 below highlights the OIG's key findings from this audit published this year. The OIG uses a general audit rating classification. They assign areas under audit any of these four ratings: "Effective" (no issues or few minor issues noted), "Partially effective" (moderate issues noted), "Needs significant improvement" (one or few significant issues noted) and "Ineffective" (multiple significant and/or material issues noted).

Action	Rating
Mechanisms to ensure the quality of services	Needs significant improvement
Supply chain system to effectively store, deliver, account for and quality assure health products	Needs significant improvement
Absorption of Global Fund grants and achievement of grant objectives	Partially effective

**Table 1: Office of the Inspector General (OIG) ratings for Malawi grants  
Summary of findings**

The OIG identified key issues in each of the three disease programs: suboptimal compliance to HIV/AIDS testing guidelines within the HIV/AIDS program; inadequate capacity of staff and ineffective measures to address TB infection control within the TB program; and weak case management within the malaria program.

In regards to the supply chain system, the OIG identified poor record-keeping, inadequate storage at the facility level and weak accountability structures as the main gaps affecting the supply chain system.

There have been significant issues with the absorption of grants in Malawi. Grant implementers only utilized 30% (US\$36m) of funds disbursed for the implementation of grant activities (US\$124m) from 2009 to 2015.<sup>30</sup> Similarly, the most recent grant, which started in January 2016, also recorded a low absorption rate of less than 1%. The OIG attributed the low absorption rate to ineffective program management by the implementers and inefficiencies in managing the portfolio by the Global Fund Country Team.

<sup>2</sup> High impact countries are those countries with a high burden of disease

To resolve issues identified during the audit, the OIG together with the country listed a series of agreed actions with clear timelines for their implementation. Some of the recommended actions include the completion of a Risk and Assurance plan for the Malawi portfolio which will consider a comprehensive review of mitigation measures (fiscal agents, logistics agent and the Program Implementation Unit (PIU)) and assurance providers.<sup>30</sup>

## National level

The Global Fund has set up structures at the country level. The Secretariat also works with other technical partners working within the countries such as the WHO and the Joint United Nations Programme on HIV/AIDS (UNAIDS).<sup>31</sup>

### Malawi Global Fund Coordinating Committee (MGFATMCC)

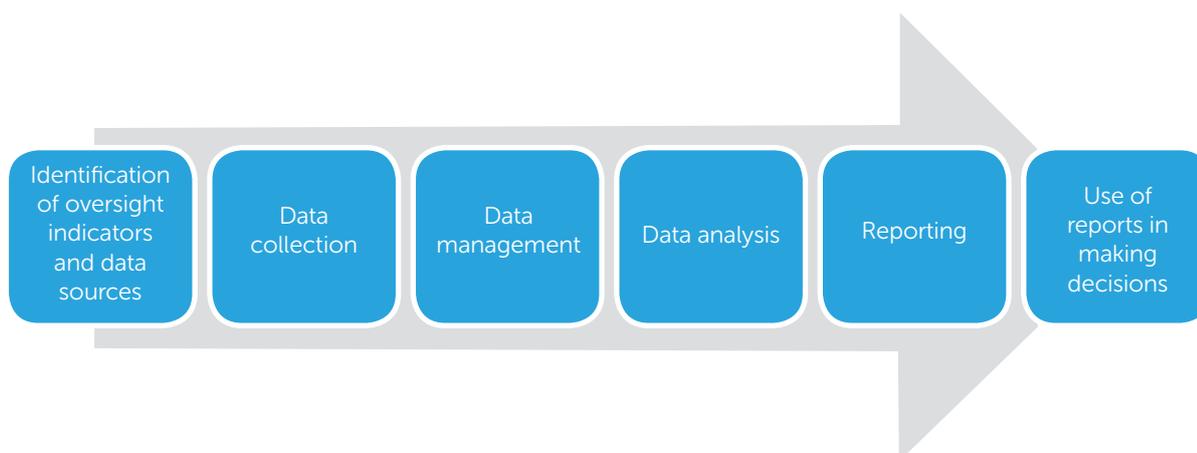
The Malawi Global Fund Coordinating Committee (MGFATMCC) – equivalent to the Country Coordinating Mechanism (CCM) – and prepares funding requests to the Global Fund based on the National Strategic Plan and oversees Global Fund grant implementation at the country level.<sup>32</sup> Members of the MGFATMCC include representatives of the PLHIV, private sector, public sector, civil society and development partners, and are appointed by their constituents.

*The MGFATMCC has an Oversight Committee which provides technical support in overseeing grant implementation in Malawi [interviewee 7].*

The oversight process starts with the identification of oversight indicators and ends with the use of reports to make decisions.<sup>33</sup> Four financial, six management and ten performance/programmatic indicators are developed and used. Sources of data include grant implementation reports (such as dashboards, PU/DRs), site visits, additional information from the Principal Recipients (PRs) and sub-recipients (SRs), the Fund Portfolio Manager, and grant performance reports and grant score cards.



Figure 1: The Malawi Global Fund Coordinating Committee (MGFATMCC)'s oversight process



*However, an interviewee argued that lack of a legal status limits the MGFATMCC's ability to enforce accountability of Global Fund grants [interviewee 4a].*

### Local fund agent (LFA)

The Global Fund appoints a Local Fund Agent (LFA), chosen on a competitive basis, to be its “eyes and ears on the ground” in other words to carry out some oversight functions as it does not have in-country offices.<sup>34</sup> The Principal Recipients submit PU/DRs to the LFA, which then conducts site visits to verify the accuracy of the data, and/or clarifies it.<sup>35</sup> Finally, the LFA reports findings to the Global Fund and offer technical advice on whether to release the next disbursement. Malawi's current LFA is PricewaterhouseCooper (PwC).

### Principal and sub recipients

Principal recipients (PRs) are responsible for implementing programmes funded by the Global Fund at the country level and, at the same time, selecting other organizations (sub-recipients) to implement part of the activities on their behalf.<sup>36</sup> PRs are either governmental, non-governmental, private sector entities or, international entities and NGOs such as the UN agencies. Once selected, the LFA evaluates each of the nominated PRs to ascertain their capacity. The Global Fund then signs an agreement with each of the selected PRs. In Malawi, the PRs are the Ministry of Health, World Vision Malawi and Action Aid Malawi.

To increase the coverage of services, the PRs work with several sub-recipients (SRs) who implement parts of the grants and report directly to them. In practice, SRs and sub sub-recipients (SSRs) implement the majority of the grants while the PRs manage grant implementation.<sup>36</sup>

In regards to grant oversight, the PRs are required to submit copies of all relevant documents such as audit reports and implementation letters to the MGFATMCC.<sup>33</sup> In addition, the PRs are required to share data, e.g. progress update and disbursement report (PU/DRs), and to provide additional information to the MGFATMCC upon request. The PR also report to the Global Fund via the LFA. On the other hand, SRs are required to submit periodic and timely data to the PR, and provide data to the MGFATMCC, upon request.<sup>33</sup> They also receive site visits by the MGFATMCC and are requested to provide relevant information.

*The PRs receive reports from the sub-recipients and then verify and analyse the data to ensure completeness, accuracy and quality. However, in practice, PRs sometimes face difficulties in holding the SRs to account [interviewee 8].*

## Program Implementation Unit (PIU)

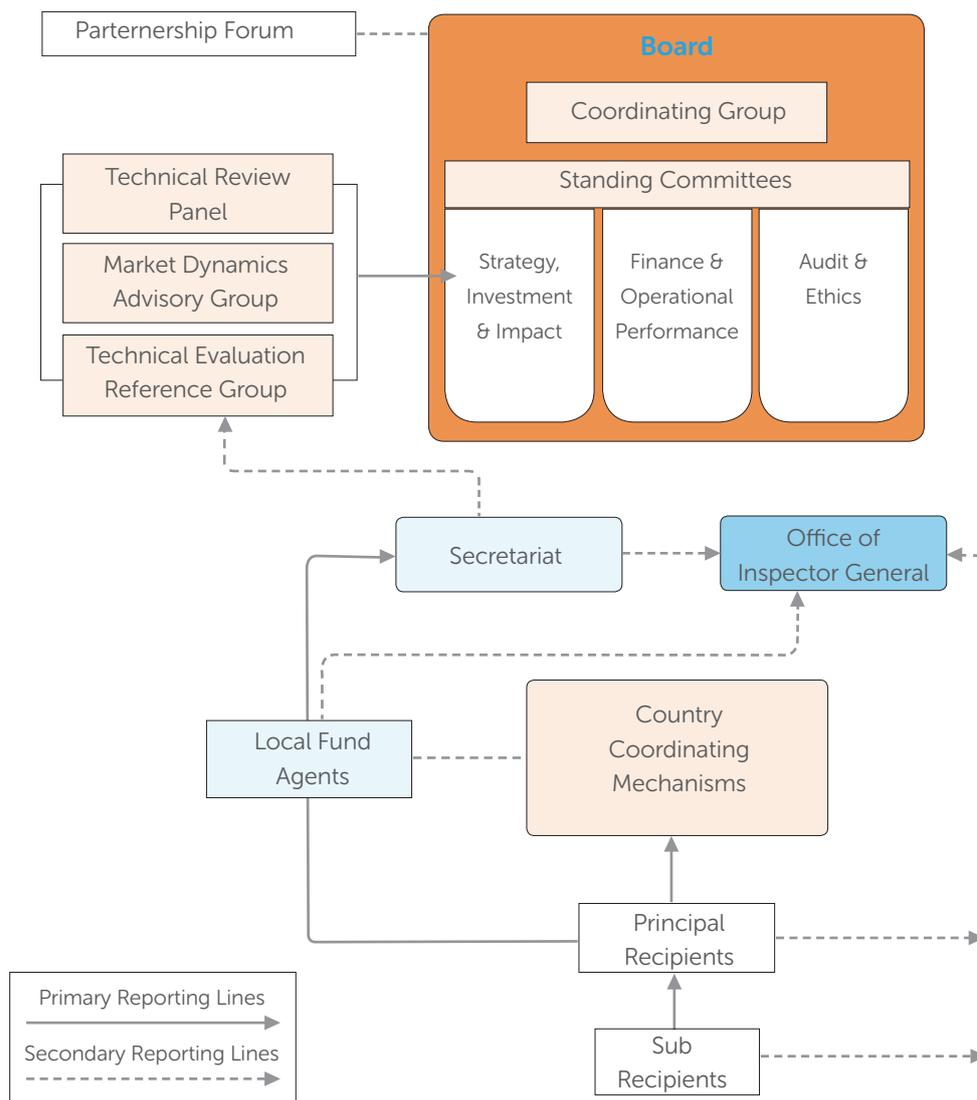
The Program Implementation Unit (PIU) provides technical oversight and reporting for the pooled/basket funding. The PIU, which is set up and funded by the Global Fund, is responsible for all programmatic reporting especially for the pooled funds.

### Relationship between the different actors

There is no direct communication between the LFA and the MGFATMCC. Once the PR reports to the LFA who then reports to the Global Fund. The Portfolio Manager then shares information relevant for oversight to the MGFATMCC.<sup>33</sup>

Figure 2: Framework of Global Fund structures at Global Fund and country levels

## Malawi national accountability structures and mechanisms



## The Constitution of Malawi 1994

Health is one of the principles of National Policy included in the 1994 Constitution (Article 13). The state is obliged to promote the welfare and development of the people of Malawi by adopting and implementing policies and legislation aimed at achieving adequate health care.

The Bill of Rights included in the Constitution empowers citizens to hold the government and other non-governmental actors accountable.<sup>37</sup> These rights and freedoms such as the freedom of association, assembly, expression, freedom to possess own opinion and to take part in peaceful demonstrations are prerequisites for vertical accountability. The Constitution also guarantees freedom of the press allowing the press to report and publish freely within Malawi and abroad. Lastly, each citizen has the right to access information held by the State or any of its organs at any level of government if the information is necessary for other rights to be upheld (Article 37).

The Constitution has also introduced measures meant to enhance accountability, transparency, personal integrity and financial probity within public institutions (Article 13). For instance, it establishes various institutions such as Parliament, the Judicature, and independent offices and commissions that operate independently from the Executive and report to the National Assembly: the Office of the Auditor General and the Office of the Ombudsman. Victims of human right violations have the right to seek the protection from a competent court or seek assistance from the Office of the Ombudsman or independent commissions such as the Human Rights Commission (Article 46).

## Elections

Free and fair elections are theoretically one of the best mechanisms of enhancing political accountability<sup>38, 39, 40</sup> as they allow citizens to put in office deserving leaders and remove those perceived as lacking.<sup>41</sup> Malawians hold presidential and parliamentary elections every five years. Holding elections is not guarantee of democracy: there is also need to monitor the performance of these elected representatives and recall those under-performing. However, Malawians do not have the authority to recall their representatives as the National Assembly passed an act that repealed the recall clause in 2005.

## Executive

The Executive consists of the President, Vice-President, Ministers, deputy Ministers and the Director of Public Prosecutions (DPP). Ministers and deputy Ministers, both appointed by and accountable to the President, run and head government departments. Cabinet consists of members of the Executive and has the responsibility of advising the President on policy-related issues (Article 92). The cabinet also initiates bills to the National Assembly; supervises government departments including parastatal bodies; implements and administers legislation; prepares and formulates the national budget (Article 96). The Cabinet Committee on Health provides political and policy guidance for the health sector.<sup>18</sup>

The Health Sector Working Group (HSWG) coordinates the health sector in Malawi. The HSWG endorses the health sector budget and the Annual Implementation Plan; oversees implementation of this plan and the Health Sector Strategic Plan (HSSP); and give recommendations on policies. Member of the HSWG includes MOH, other

ministries and departments, local government and development partners.<sup>18</sup> The HSWG receives technical advice from the Senior Management Committee, which approves health-related policies and plans.

The DPP handles criminal proceedings against any person brought before any court other than a court martial: he or she can institute and undertake; take over and continue; and discontinue the proceedings (section 99). The President appoints the DPP subject to confirmation by the Public Appointments Committee. The DPP holds office for a term of five years but the President may remove him/her from office on the grounds of incompetence, or incapacitation (section 101). Despite being an independent office, the DPP is under the direction of the Attorney General.

## Department of Human Resources Management and Development (DHRMD)

It is a department within the Office of the President and Cabinet responsible for coordinating the HIV/AIDS response within the public sector, particularly via the workplace programmes.

## Parliament

The Constitution established a unicameral legislature which consists of the National Assembly and the President. The National Assembly consists of members elected by each constituency. It has three main roles: representative, oversight and legislative. Specific functions of the National Assembly are to pass laws, approve the national budget, oversee appointments of key public officials, and monitor government's expenditure.<sup>37</sup> In overseeing the Executive, Parliament has the right to summon the President to answer questions relating to government policies (Article 89).

This report highlights four parliamentary committees involved in accountability as it relates to finances and health. The Public Accounts Committee (PAC) scrutinizes financial statements of institutions and statutory bodies using public funds, and reviews audit reports from the office of the Auditor General (public audit act (PAA), section 19). The committee reports to the National Assembly, and focuses on items in the financial statements and reports what requires further attention (PAA, section 19).

The Public Appointments Committee reviews, approves or challenges appointments made by the Executive including those of the Director of Public Prosecutions (DPP) and the Auditor General. They can also recommend for the removal from office of an official on the grounds of incompetence or incapacity.

The Budget committee considers matters relating to the budget and government taxation policies. The Parliamentary Committee on Health focuses on the health sector, interacting closely with the Senior Management Committee.<sup>18</sup>

Committees have powers, assigned to them by Standing orders, to summon or subpoena witnesses; require any person to disclose information – papers and records- relevant to the committees' proceedings; and create subcommittees.<sup>42</sup>

## Judiciary

The Judiciary interprets, protects and enforces the Constitution and all laws enacted in accordance with the Constitution. The Judiciary is independent of influence and direction of any person or authority (Article 103). Malawi's Judiciary consists of the Supreme Court of Appeal - the most superior court in Malawi -, the High Court and the Magistrate's courts. The President appoints the Chief Justice, who is the head of the Judiciary, with the approbation of the National Assembly.

The courts solves disputes between the various accountability institutions and political conflicts. The Judiciary, however, faces a number of challenges in executing its function, including insufficiency of qualified judges and magistrates. In addition, due to the highly specialized nature of corruption cases, there are backlogs and a failure to impose sanctions.<sup>37</sup>

## Office of the Ombudsman

The Office of the Ombudsman is an independent constitutional office whose function is to investigate cases of injustices and provide an alternative solution to resolution in a court of law (Article 123). The Office's jurisdiction is limited to the public sector. The Public Appointments Committee appoints the Ombudsman from a pool of applications received by the Clerk of the National Assembly [Article 122]. The Constitution gives the Ombudsman the power to subpoena any person; to require the disclosure of information from any public body; to question persons believed to possess information relevant to an investigation, and charge those who do not comply of contempt at the High Court.

Services of the Office of the Ombudsman are free of charge and in principle more efficient than lengthy court processes.<sup>43</sup> In 2015, the Office of the Ombudsman received 287 new complaints - a 8% increase from 2014 - while 2794 cases had been brought forward from 2014. The third highest number of complaints in 2015 were against the Ministry of Health.

The Office of the Ombudsman faces a number of challenges including inadequate full time staff and backlogs: only 175 of the 3081 cases registered at this office in 2015 were resolved and the rest carried forward to 2016.

## National Local Government Finance Committee

The National Local Government Finance Committee is a constitutional committee created in 2001 to ensure that local governments have adequate resources to carry out their work and monitor financial performance.<sup>44</sup> Members of this committee include the Principal Secretary for Local Government, a practising accountant, one person nominated by the local government officials, Chairman or member of the Civil Service Commission and a representative of the Electoral Commission (Article 151).

# Public accountability policies, laws, institutions and mechanisms

## Policies and strategies

*Policies, derived from the Constitution, establish general directions to actualize accountability and transparency in the country.<sup>45</sup> Though policies and strategies to enhance accountability are adopted, much more can be done to implement them [interviewee 2].*

*“There are gaps [in implementation of policies] of course which we should admit. These gaps arise especially when we look at the users of the service. We have a gap in terms of the power dimensions[...] We have the ministry of health as the duty bearer providing the service and then we have the users. It could be because of the lack of empowerment sometimes at that lower level, it’s a bit difficult to hold the provider accountable there are times maybe services are not well provided but you find people just maybe suffering in silence” [Interviewee 8]*

## Malawi Health Sector Strategic Plan (HSSP)

The HSSP 2011-2016 is a five-year plan aimed at ensuring social and economic development of Malawi by improving the health status of the population. This strategic plan aims to achieve increased coverage of high quality Essential Health Package (EHP) services; strengthen health system to support the delivery of EHP services; reduce health risks; and improve equity and efficiency in the delivery of quality EHP services.<sup>18</sup>

## Malawi National HIV/AIDS Strategic Plan (NSP) 2015-2020

The Malawi National HIV/AIDS Strategic Plan (NSP) 2015-2020 was developed to meet the ambitious 90-90-90 treatment targets released by UNAIDS in 2014. The plan will achieve this by identifying and eliminating program and system gaps within the next five years.<sup>32</sup> It also brings together all stakeholders in the HIV/AIDS response: government, civil society, private sector, and development partners. Guiding principles of the 2015-2020 NSP include application of an investment approach, focus on evidence-based interventions for maximum impact, better targeting of critical interventions to key and vulnerable populations, quality improvement, service integration, multi-sectoral inclusion, community engagement, human rights and gender.

## National Decentralization Policy of 1998

The Policy aimed to reduce poverty levels in Malawi by decentralizing political and administrative power to the district level, improve the quality of public service delivery and enhance public participation at the local level.<sup>46</sup> The policy provides for the establishment of local government institutions including the District Councils (formerly known as the Assemblies), and prescribes their composition, powers, functions, committees and financing.

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<sup>3</sup>Targets include: diagnosis of 90% of all people living with HIV/AIDS (PLHIV), start and retain 90% of those diagnosed on ART and achieve viral suppression for 90% of patients on ART

## Specific legislation

### Public finance management act (PFMA) of 2003

The PFMA enhances effective and responsible financial and economic management within the government. It also outlines the accountability arrangements that accompany the financial and economic management. The act assigns the Ministers, Secretary to the Treasury and Controlling Officers, among other officers, the responsibility of managing public finances. This Act requires the Secretary to the Treasury, who is the Principal Secretary of the Ministry of Finance, to prepare and submit financial statements, by 31st October of each year, to the Auditor General who shall then review the statements and compile a report for submission to the National Assembly (section 83).

### Public audit act of 2003

The public audit act promotes transparency and accountability of public funds. It enhances the oversight function of the National Assembly by ensuring that it accesses information needed to scrutinize revenues, public expenditure, assets, liabilities and management of public funds (section 3). It also promotes accountability of Ministries and statutory bodies in the utilization and management of public funds and other resources.

The Public Audit Act establishes the National Audit Office headed by the Auditor General (section 4).

### Auditor General

The office of the Auditor General is an independent public office established under Article 184 of the Constitution to audit and report on all accounts of government ministries, departments, agencies (MDAs), statutory offices and treasury funds in Malawi. The President appoints the Auditor General with the approbation of National Assembly (Article 184 of the Constitution). The President also has the power to remove the Auditor General from office on the grounds of incompetence, incapacitation, questionable financial integrity or attainment of retirement age.

*The Auditor General in Malawi conducts two types of audits: the financial audits and specialized audits (performance and IT audits) [interviewee 10a]. Financial audits focus on the financial performance of the MDAs in their use of public resources. Performance audits focus on the 3Es – economy (spending less), efficiency (spending well) and effectiveness (spending wisely) of public money [interviewee 10a]. These audits compare resources invested with the results obtained and answers questions such as was the target population reached and was there efficiency in how the money was used [interviewee 10a]. The Auditor General does not conduct the performance audits on an annual basis, as they are both lengthy and costly, and when conducted they do not review the entire programs but high risk areas.*

The Auditor General submits audit reports to the President and the National Assembly at least once a year and not later than 31st December of each year (six months after the end of the financial year) [section 15].

*Although the law lays out a seamless process from audit by the Auditor General to review of the report by the Public Accounts Committee, in practice, this process faces several challenges. First, the Auditor General has limited access to relevant*

information<sup>47</sup> from some institutions or agencies that do not cooperate.<sup>48</sup> Second, release of audit reports is delayed at times from a few months to more than a year [interviewee 10b]. Third, a backlog of audit reports exists at the National Assembly; in early 2015, the Public Accounts Committee were finalizing the review of the 2012/2013 audit report [interviewee 10a]. Finally, the National Assembly and the Executive rarely take up or follow-up on audit findings.<sup>49</sup>

## Corrupt practices act of 1995

The corrupt practices which the Anti-Corruption Bureau and provided measures to prevent corruption. The Act criminalizes corruption by listing offences such as attempted corruption, misuse of public office, extortion and bribery.

## Anti-Corruption Bureau

The Anti-Corruption Bureau (ACB) is an independent government department responsible for spearheading the fight against corruption in Malawi. Specific functions include prevention of corruption in both public and private institutions; handling complaints and reports on alleged or suspected corruption; investigating complaints; and prosecuting offences with the direction of the Director of Public Prosecutions (section 10).

The President appoints the Director of ACB upon confirmation by the Public Appointments Committee (section 5) and can similarly remove him/her from office on the grounds of inability to perform the office duties or misbehaviour (section 6).

The act empowers the ACB to carry out their mandate. The ACB has access to documents and information relevant to the investigation; and may require any public officer to avail information relevant to their investigation. In addition, the ACB may access, with a warrant of a magistrate, all documents related to an investigation, and premises of any government office, public or private body (section 11). Depending on the results of the investigation, the ACB can engage the appropriate authority to carry out corrective action. The ACB is required to submit reports of their activities, within three months after the end of every year, to the National Assembly, President, Cabinet and the Minister.

## Public procurement act of 2003

The public procurement act governs and regulates public procurement in Malawi by establishing principles and procedures public institutions should follow in the procurement of goods, works and services. It established the Office of Director of Public Procurement which enforces this act.

The act also establishes internal procurement committees in all MDAs to ascertain availability of funds for each procurement, open bids and examine, evaluate and compare bids and select the successful bidder (section 8). MDAs may establish specialized procurement units.

## Office of the Director of Public Procurement

The Director of Public Procurement is responsible for monitoring and overseeing public procurement in Malawi. The Director develops procurement regulations and instructions; enhances the efficiency and effectiveness of public procurement operations; promotes the availability of qualified procurement workforce; and collect data on public procurement to ascertain compliance to procurement legislation, regulations and instructions (section 5).

The President appoints the Director, with the approbation of the Public Appointments Committee. The Director may hold office for a maximum of two terms – four years each – although the President may remove him/her from office on the grounds of misconduct or misbehaviour and incompetence (section 6).

## Public officers (Declaration of assets, liabilities and business interests) act of 2013

The public officers (Declaration of assets, liabilities and business interests) act provides for the 'declaration of assets, liabilities and business matters' by certain public officers within the first three months of assuming office. Among them are political and elected officers such as the President, Members of Parliament and ministers; senior public officers such as the Ombudsman, DPP and Auditor General; and other officers within the oversight institutions e.g. Judiciary, Anti-Corruption Bureau.

## Office of the Director of Public Officers' Declarations

The act establishes the Office of the Director of Public Officer's Declarations to enforce this act. The Director receives and verifies declarations and recommends the development of rules and regulations necessary for enforcement of this act. The Public Appointments Committee selects the Director from a pool of applications received by the Clerk of the National Assembly and can remove him/her on grounds of misconduct or inability to perform their functions (section 8). The Director reports to the Parliament.

The act also establishes a Monitoring Committee to supervise the Director (section 13). The Director submits annual declarations reports to this committee which then confirms that all listed public officers are in full compliance. The committee may take any appropriate action to enforce compliance by public officers.

## Penal code act

The Penal code act outlines corruption and passive bribery as offences (section 90). Persons found guilty of corruptly soliciting, receiving or obtaining or attempting to receive or obtain any monetary or non-monetary benefits in exchange for a service rendered or to be rendered are liable to imprisonment (section 90a). Furthermore, individuals who offer monetary or non-monetary benefits to any person employed in the public service in exchange for any act or omission by the employed person is also guilty of an offence (section 90-b). The Penal Code also guards against conflict of interest in the case of public officials occupying key positions in government (section 93).

**Table 2: Legal and institutional framework and associated mechanisms**

	Legislation	Implementing institution	Mechanism
Constitution	Public audit act 2003	Auditor General	Audits
	Public finance management act 2003	Secretary to the Treasury	Internal audit
	Corrupt practices act of 1995	Anti-Corruption Bureau (ACB)	Investigations Prosecution
	Public procurement act of 2003	Office of the Director of Public Procurement	Development of regulations and instructions Monitoring performance
	Public officers (Declaration of assets, liabilities and business interests) act of 2012	Office of the Director of Public Officers' Declarations	Verifying declarations
		Monitoring committee	Monitors the Director Verifies compliance to the act
	Penal code act	Police ACB Judiciary Office of the Ombudsman	Investigations Prosecution

## Partnerships

There has been a shift in moving towards greater coordination of activities by the various partners e.g. the government, development partners, civil society including the faith based organizations (FBOs). Various partnerships and forums have been created to facilitate this.

### Malawi HIV/AIDS Partnership Forum (MPF)

The Malawi HIV/AIDS Partnership Forum (MPF) is an advisory body established to advise the National Aids Commission (NAC)<sup>32</sup>. MPF consists of representatives of all coordination structures within the HIV/AIDS response including NAC, the HIV/AIDS Development Group (HADG), Technical Working Groups (TWGs), Department of Human Resources and Development (DHRMD), line ministries and civil society.

### Technical working groups (TWGs)

The TWGs provide technical guidance and make recommendations on technical issues, and report to the MPF in regards to issues concerning HIV/AIDS. 18 There are a total 11 TWGs in the Malawi health sector.

## HIV/AIDS Development Partners Group (HAG)

The HIV/AIDS Development Partners Group (HADG) harmonizes and coordinates development partners' support to the National HIV/AIDS Action Framework and Integrated Annual Work Plan (IAWP).<sup>32</sup> The HADG also provides a platform to enhance peer accountability among the donors.

## Review meetings

These review meetings include Joint Annual Reviews (JARs), Mid-Term Reviews (MTR) and End of Term or Terminal Reviews.<sup>49</sup> Other review meetings include quarterly review meetings held by the executive Committee of the MPF, bi-annual meetings held by the complete MPF, monthly meetings held by the HADG and Health donors group. NAC and the pooled donors also hold quarterly meetings to review progress towards set goals and targets.<sup>32</sup>

## Monitoring and reporting

The Health Systems Strengthening framework is used to monitor health sector performance and is based on the principles of alignment of development partners' operations with the government systems, harmonization, ownership and mutual accountability.<sup>18</sup> Malawi also uses indicators based on the implementation framework developed in line with the Ouagadougou Declaration on Primary Health Care, the Millenium Development Goals (MDGs) and the Malawi Growth and Development Strategy (MGDS) to monitor performance.<sup>18</sup>

The Health Management Information System (HMIS) is the main tool for monitoring the health sector's performance. The HMIS captures data on key outputs within the health sector, detection of cases of EHP diseases and conditions and information on health systems. This data is availed on a monthly, quarterly and annual basis. Population surveys like the Demographic and Health surveys and the Malaria Indicator Survey provide data on key outcome and impact indicators. In regards to HIV/AIDS, NAC is responsible for monitoring performance of HIV/AIDS programs and facilitating the use of these findings to inform policy and program planning in Malawi.

NAC and the MOH coordinate Monitoring and Evaluation (M&E) of the HIV/AIDS response at the national level while the District HIV/AIDS Coordinating Committees (DACCs), District AIDS Focal Person and Community HIV/AIDS Coordinating Committees (CACCs) coordinate at the district level.

## Key issues in the national accountability structures

*There is a general lack of follow-up on issues and sanctions. Whenever issues like drug stock outs occur at health facilities and are made known to the public, for instance through the media, there is rarely a genuine attempt to determine the cause and implement remedial action. Institutions of interest usually put in place 'quick fixes' whose effects are short term [interviewee 3].*

The legal framework in Malawi does not enhance the right to access to information. Although the Constitution guarantees the right to access information, Parliament is yet to enact the access to information bill (first drafted in 2003).

*One interviewee felt that the government deliberately frustrates stakeholders' efforts to access information [interviewee 1].*

Other pieces of legislation yet to be passed include the HIV/AIDS bill (first drafted in 2006) and an act to protect whistle-blowers. The legal framework also criminalizes sex work and homosexuality. There have been cases of arrests, prosecution and imprisonment of men who have consensual sex with other men.<sup>50</sup> Malawi has oppressive legal environments for the sexual minorities which limits access to HIV/AIDS services by men who have sex with men (MSM).

Institutional framework is in place but is somehow inadequate. Laws established the oversight structures as independent entities. The appointment of the heads of these institutions, however, may compromise their independence. Appointments by the President usually take immediate effect which renders Parliamentary confirmation a mere formality.<sup>48</sup> Furthermore, all the institutions set up to enhance accountability receive their funding from the Executive.<sup>48</sup>

*The oversight institutions have limited ability to carry out their mandate due to inadequate funding, inadequate staffing, lack of necessary resources and inadequate capacity to carry out the function.<sup>48</sup> Members of the National Assembly, for example, lack the technical skills to enable them to carry out some of their work [interviewee 2].*

*The various oversight institutions do not interact or engage in a regular manner. Main interactions in Malawi are between the Auditor General and National Assembly; Auditor General and the ACB; and the ACB and the Judiciary. Neither of these institutions have a working relationship with either the CSOs or media. Interaction between the civil society and relevant Parliamentary Committees is sporadic at best [interviewee 2].*

There are power struggles within Parliament. Parliament's oversight function is usually at its best when the opposition party controls the National Assembly. However, the party may use such power and control to paralyse government operations and crucial reform processes.<sup>37</sup>

*There are multiple reporting and oversight structures in Malawi. Some of the donors in Malawi channel their funds through a common pool either through the SWAp mechanism or the HIV/AIDS funding pool. The pool system has created parallel reporting structures. Despite having a report based on the pooled funding, some donors still insist on receiving their own specific reports [interviewee 4]. This can be quite tedious and tasking for staff in the implementing institutions.*

*The oversight structures at the local level lack adequate capacity. The districts have oversight structures such as the District Councils and Councillors. However, effectiveness of these structures is questionable [interviewee 8]. The bodies and individuals do not have full mandate or authority and capacity to carry out their work.*

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<sup>4</sup>These principles are based on the Paris Declaration on Aid effectiveness and the International Health Partnerships and other initiatives (IHP+)

## Other actors

### Development partners

Malawi is highly dependent on donor aid.<sup>37</sup> On one hand, donors in Malawi have helped improve governance and accountability in Malawi by applying meaningful pressure on the government to address misappropriation of funds and other forms of funds; establishing conditions, requirements and restrictions that enhance accountability; and providing financial and technical support. On the other hand, some of their operations have been counterproductive. For example, donors have in some instances established parallel systems to channel their funding instead of strengthening the existing national systems.

### Financial and technical support

Donors provide both financial and technical support to address specific conditions and reinforce health systems. Regarding the Global Fund's investments, some donors helped develop the concept note by providing technical support, others contributed to strengthening internal control systems and promoting accountability. Others yet have established capacity building programs for the Global Fund grant implementers, particularly the PRs.

### Civil society

The democratic transition in Malawi created an enabling environment for civil society operations. Civil society has become stronger and more vibrant over the years.<sup>37</sup> This vibrancy can be attributed to the Constitution of Malawi which guarantees rights and freedoms that are fundamental for civil society work. These include freedom to form associations, freedom of opinion without interference, and the right to hold peaceful demonstrations. The non-governmental organizations act of 2000 regulates civil society operations in the country.

CSOs working in the health sector in Malawi have taken on a more active role in service delivery and/or advocacy – CSOs provide about 37% of health services in Malawi.<sup>51</sup> CSOs also participate in policy-making and decision making processes both at the national and district levels (including at the District Executive Committees (DECs)).<sup>51</sup>

CSOs in Malawi have employed different strategies like networking groups, demonstrations, innovations in their programs, research and strategy papers and presentations to stakeholders.<sup>51</sup>

Since the 2000s, popularity of CSO networks has grown in Malawi – first for their potential to amplify civil society's voice to a variety of potential roles like coordination and capacity building of members, advocacy and sub-granting to member organizations.<sup>52</sup> CSO networks have played a key role in spearheading the HIV/AIDS response among the CSOs and taking on the advocacy role in Malawi. Such networks include Malawi Network of People Living with HIV/AIDS (MANET +) which coordinates all organizations of people living with HIV/AIDS (PLHIV); Malawi Network of AIDS service organizations (MANASO) which coordinates local and international NGOs; and The Malawi Interfaith AIDS Association (MIAA) which coordinates all faith based organizations. Network CSOs have also been pivotal in enhancing accountability among the civil society.

*CSOs within the health sector have also been engaged in lobbying for the increase of the health sector's budgetary allocation to 15% [interviewee 5], in accordance to the Abuja Declaration. In some instances, CSOs lobbied the Parliamentary Committee on HIV/AIDS and Nutrition for an increase in allocations to the HIV/AIDS sector [interviewee 5].*

However, very few CSOs are engaged in monitoring government budgets and expenditures to influence the allocation and spending of funds in favour of people affected by the three diseases.

Most of the interviewees were of the opinion that CSOs are crucial instruments to enhance accountability. However, various challenges have reduced their effectiveness. One key challenge is that a good number of NGOs and community based organizations (CBOs) receive their funding from the National Aids Commission through the pooled funding. Although this access to funding enhances their service delivery, it limits their ability to hold the government accountable.

Although the inclusion of the civil society, and especially those within the health sector, within policy making processes is quite prevalent, the quality of their contribution is questionable. Most CSOs do not have the expertise to fully understand and critic policy; and the policy making processes which is highly technical.<sup>51</sup> In addition, most CSOs in Malawi have limited resources and little to allocate to policy advocacy. Finally, public servants and the private sector view CSOs as not working towards the greater good but for their selfish interests in carrying out advocacy.<sup>51</sup> They are accused of being on a witch-hunt mission rather than promoting transparency and accountability.

## Effectiveness and accountability of the civil society

The civil society formally takes part in the decision-making process at the Global Fund both at the Board and at the country levels. They are also members of country level partnerships. However, but the quality of civil society participation in these processes is questionable.

## Media

Media in Malawi has enjoyed some level of press freedom (scored 49 in the Press Freedom score – 0=best while 100=worst).<sup>53</sup> Malawi has only one TV station Malawi Broadcasting Corporation, which is state-owned. At the end of 2014, 13 independent newspapers, a few magazines and 12 radio stations of which two are state-owned operated.<sup>53</sup> Radio is the primary source of information for most Malawians; print readership is quite low due to the high costs and the English language of publication that only 1% of the population can read. In order to reach a bigger audience, The Nation, one of the independent newspapers, introduced the biweekly Fuko Nation published in the majority Chichewa and Chitumbuka languages and distributed free of charge in rural areas.<sup>54</sup>

Article 36 of the Constitution guarantees the freedom of the press. In addition, Parliament has enacted several laws to activate this right. On the other hand, older liberticidal laws such as the Censorship and Control of Entertainments Act of 1968, Children and Young Persons Act of 1969 and the Penal Code of 1929 are still on the books. Taken together, they prohibit the publication of certain kinds of information e.g. on legal proceedings, on public safety or perceived to undermine government's authority among others. Furthermore, the government is yet to enact a law enhancing access to state information.<sup>53</sup>

*Interviewees held the view that media in Malawi is vibrant and has played a key role in highlighting cases of misuse of power and misappropriation of funds by raising the public's awareness. For example, the media was responsible for highlighting the misappropriation of Global Fund grants by NAC (NACgate scandal) [interviewee 1].*

## Key challenges facing media

Several interviewees raised concerns on the quality of reporting by the media and perceived low ethical standards within the media houses and personnel. Indeed, Malawi's media operates under tough economic conditions, rendering them vulnerable to bribery and political influence. Advertising revenue is critical for the media houses and sometimes lucrative advertising deals may be offered in exchange for positive coverage. There have been cases of the government trying to influence the media. In late 2014, journalists received notebooks with large sums of money during a media workers' reception hosted by the President.<sup>53</sup>

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<sup>6</sup> Abuja Declaration is a commitment by members of the African Union to allocate at least 15% of their annual national budget to improve health outcomes

# Discussion and conclusion

This report increases our understanding of existing structures to ensure accountability of Global Fund's investments in Malawi. The Global Fund has established structures and processes to oversee grant implementation in Malawi, which complement those already established by the country. The report also highlights the role of development partners, civil society and media in enhancing accountability. The accountability framework is clearly in place.

## Effectiveness of the Global Fund's accountability framework

The Global Fund requires the inclusion of representatives of the affected communities and key populations within the CCM. <sup>55</sup> However, little is known on the effectiveness and quality of the representation. Factors that may hinder effective representation include conflict of interest, lack of constituency consultation and the lack of adequate capacity which negatively impacts any form of meaningful participation in the CCM meetings. <sup>56</sup> Members of the CCM seem to rarely provide feedback to their constituencies. AIDS Accountability International suggests that lack of accountability to the constituencies is due to time constraints, additional resources needed for travel and meetings, and hard-to-reach members of the constituencies. These hard-to-reach members may be involved in activities that are criminalized, for example men who have sex with men, and sex workers. <sup>56</sup>

## Effectiveness of the national oversight institutions

Experts recommend the creation or strengthening of oversight institutions with a legal basis, stand-alone institutional placement, transparent appointments, financial autonomy, and accountability and transparency structures. <sup>60,61,62</sup>

Almost all the oversight institutions have a legal basis. However, results from the Africa Integrity Indicators, compiled by Global Integrity in 2016, indicate a gap in the implementation. <sup>59</sup> For instance, although the legal framework favours independence of the Auditor General, Judiciary and Anti-Corruption Bureau, the selection and appointments of senior public officials in these bodies is highly politicized compromising their independence.

**Parliament:** Experts recommend a degree of separation of powers with the Executive, broad formal parliamentary powers, technical capacity and political for the Parliament to be fully effective in its oversight role. <sup>63</sup> Even though Parliament has the power to question the political will on government policies, this process is not always smooth. The President and the ministers provide explanations on government policy, but may not always do so in a timely or comprehensive manner. <sup>64</sup>

**Judiciary:** The Global Integrity assessment revealed that the Judiciary obtained the highest possible score which indicates that it is effective in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is also fair. <sup>64</sup>

**Office of the Ombudsman:** the assessment rated it as effective. Despite the constitutional guarantee of independence, this Office is sometimes subject to undue political influence and may face uncooperative officials. <sup>64</sup>

Others challenges are insufficient full time professional staff and a lack of financial independence. Moreover, the Parliament rarely acts on the Ombudsman's reports.

Norad (2013) argued that there is limited effectiveness and responsiveness in Malawi's public health sector due to weak monitoring and supervision, and the lack of effective sanctions against underperforming staff.

## **Role of the public in enhancing accountability**

The public has a role to play in enhancing accountability. In Malawi, the Constitution and other pieces of legislation empower the citizens to demand for accountability. However, research shows that the public lacks effective channels for communicating their priorities, exercising their rights and ensuring accountability.<sup>65</sup> Furthermore, the public is not aware of the resources availed for health sector nor how these resources are utilized.

# Conclusion and recommendations

The Global Fund rightly stresses representation of important constituencies in the country coordinating mechanism. It should also emphasise the quality of representation especially by the CSOs

## National level

### Recommendation 1: Strengthen existing accountability structures

- Promote the autonomy of the various accountability institutions by ensuring financial independence of these institutions; appointing key officials through a competitive recruitment process; and abolishing unilateral removal of heads of these institutions by the President.
- Increase the effectiveness of the audit system.

## Other actors

### Recommendation 2: reinforce CSOs and media capacity in accountability and health matters

- Reinforce capacity of the CSOs in regards to accountability processes; reinforce the capacity of the media to improve the quality and frequency of reporting on health and financing matters.



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