

EMPOWERING ANTI-CORRUPTION AGENCIES: DEFYING INSTITUTIONAL FAILURE AND STRENGTHENING PREVENTIVE AND REPRESSIVE CAPACITIES

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THE MALAWI ANTI-CORRUPTION BUREAU

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The Malawi Anti-Corruption Bureau (the Bureau) was established under an Act of Parliament called the Corrupt Practices Act of 1995 (the Act). The Act was later amended in 2004. The Bureau is established to be the lead institution in the fight against corruption in Malawi.

The mission of the Bureau is to prevent and reduce corrupt practices in Malawi and its vision is to eliminate corruption in all its forms in order to enhance the socio-economic well-being of all the people of Malawi.

Since its inception in 1998, the Bureau has adopted a broadly two pronged approach in fighting corruption which are enforcement and prevention. This approach involves Investigations, Prosecution, Prevention and Public Education. The Corrupt Practices Act is built on these four operational pillars. Apart from the administration Department the Bureau has therefore four operational departments.

Investigations

The Bureau fulfills its investigative mandate through the investigations Section. Under Section 10 (1) (b) of the Corrupt Practices Act (the Act) the Bureau is mandated to receive and investigate any complaints, report or other information of alleged or suspected corrupt practices or offences under the Act and under any written law disclosed in the course of investigations. The Bureau is further mandated to investigate the conduct of any public officer which in the opinion of the Bureau may be connected with or conducive to corrupt practices and to report to appropriate authority on its findings relating to such public officer. The Bureau is further mandated to inquire into any matter in relation to the exercise of its other functions under the above section.

Prosecution

The Bureau's Prosecution mandate is fulfilled through the Prosecutions Section. The Prosecution section derives its mandate from section 10 which empowers the Bureau to prosecute any offence under the Act subject to the Direction of the Director for Public Prosecution. The Constitution of the Republic of Malawi vests all the prosecution powers on the office of the Director of Public Prosecutions and all other prosecution authorities can only prosecute under the Direction of the Director of Public Prosecutions.

Public Education

The Public Education mandate is fulfilled through the Public Education Section which derives its mandate from the same section 10 of the Act. The section empowers the Bureau to disseminate information on the evils and dangerous effects of corrupt practices on society and also to enlist and foster public support against corrupt practices. The Public Education Section has established and maintains a broad awareness programs targeting all sectors of society. Among other functions the section has been conducting Anti-Corruption Workshops targeting Non Governmental Organisations (NGO's), Community Based Organisations (CBO's) and other target

groups. It has also been running Electronic Media Programs both on TV and Radio, conducting Public campaign meetings across the country advising the public to resist,

Prevention

The Corruption Prevention mandate is fulfilled through its Corruption Prevention Section. The Section derives its mandate from section 10 of the Act. The section is empowered to take necessary measures for the prevention of corruption. Its activities involve examining the practices and procedures of Public and Private Bodies in order to facilitate the discovery of corrupt practices and to secure their revision. It is also mandated to advise institutions on ways and means of preventing corrupt practices, and on changes in methods of work or procedures compatible with the effective performance of duties. All this is done with a view to reducing the likelihood of the occurrence of corrupt practices. The Bureau believes that prevention is far better than cure.

Through the Corruption Prevention Section the Bureau undertakes programs which involve reviewing methods, systems and procedures that are prone or conducive to corruption; advising client institutions on the best practices in preventing, detecting and dealing with corruption; pro-actively implementing strategies for the prevention of corruption; Reviewing draft legislation, or proposals for new legislation that might have areas of concern regarding corrupt practices.

Whilst the Public awareness initiatives that the Bureau undertakes are meant to reorient the mindset it is also mindful that weak Systems present opportunities for corruption. A system is only as good as the people who make it work. But the converse is equally true that people are only as good as the systems they have to work with. If a system is bad because it offers opportunities for corruption, the people who operate the system are likely themselves to become bad. So it makes sense to examine each of these systems and make some changes to the system, or even replace them or remove them altogether, so as to minimize or eliminate the opportunities for corruption that currently exist in it.

Through System Analysis the Bureau analyzes procedures that institutions follow in delivering services, and identifying areas that are prone to corruption and recommend appropriate remedies. The Corruption Prevention Section has established and maintained a vibrant workshop program through which it conducts various types of workshops for both the public and private sectors. These include Managerial Accountability Workshops, Fraud Detection and Prevention Workshops, Investigative Skills Workshops and corruption prevention workshops.

The objective of these workshops is to identify within an organization procedural practices that are vulnerable to abuse and also to sensitize staff at all levels within the organization on the pitfalls in the systems and procedures. This helps managers to identify and control fraud and corruption risks which organizations do face and set the right tone of the organization. With the workshop programs the Bureau has reached a substantial number of strategic organizations particularly in the Public sector. The section also conducts follow ups in the organizations targeted under this program to ascertain progress in implementing the recommendations made to them.

The Corruption Prevention Section has established a program that involves forging collaborative partnerships with strategic institutions providing a vital service to the Public. Such partnerships target particular areas within the target institution where the risk of corruption is very high. The partnerships have clearly defined parameters and are on-going with clearly defined activities and monitoring mechanisms. The Bureau has also in the last 3 years embarked on a program to assist institutions develop and implement Corruption Prevention Policy frameworks as a way of mainstreaming anti-corruption initiatives into their operations. The Bureau recognizes that in order to effectively combat corruption, there is need to empower organizations with the knowledge and appropriate documentation on corruption so that corruption is dealt with from within.

The Bureau through its corruption prevention function is currently in the process of facilitating the development of a National Anti-Corruption Strategy which will serve as a rallying document for coordinating the fight against corruption in Malawi. The strategy is emanating from a Governance and baseline survey which was commissioned in 2006 to measure the perception of the general public on the issues of corruption and also intended to gather baseline information to assist in properly focusing the efforts towards dealing with the problem of corruption. The strategy is being developed through a collaborative and consultative process and is expected to be launched before the end of June 2008.

The concept of Corruption

The concept of corruption is fluid and the difficulty arises because it borders more on people perceptions than on hard and fast definitions of the term. Experience in Malawi has shown that there is a gap between what the public perceives corruption to be and the actual scope which the law has delineated and within which the Bureau operates. The Act therefore attempted to bridge that gap by providing for a definition in Section 3 of the Act. The Act has outlined about 3 elements that constitute a corrupt practice. The first element constituting a corrupt practice has been described as the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any

public officer or any official or any other person in the discharge of the duties of that public officer, official or other person.

Secondly it has described a corrupt practice to mean influence whether or not the use of it leads to the intended result. Thirdly a corrupt practice has been described as constituting the extortion of any advantage. Extortion has been defined as the demanding or receiving by a person in office of a fee or other payment for services, work, supplies or other thing which should be performed, done, delivered, offered, provided or given freely; or the demanding or receiving of a fee or other payment larger than is justified or which is not done.

Based on this definition the act has created about 13 offences listed from section 24 to 32 of the act which include Corrupt practices by or with public officers, Corrupt use of official powers, procuring corrupt use of official powers (25), Misuse of public office (25b), Corrupt Practices in relation to dealing in contracts (25c), Disclosure of interest by public officers (25d), Corrupt transactions by or with private bodies (26), Corrupt transactions by or with agents (27), Corruption of members of public bodies in regard to meetings (28), Corrupt practices with regard to contracts, tenders and bidding at auction sales and finally Possession of unexplained property.(32).

International Anti-Corruption Conventions

The Government of Malawi has signed and ratified the Southern Africa Development Cooperation (SADC) protocol against corruption, the United Nations Convention against Corruption and the Africa Union conventions for Combating Corruption.

Broader National Initiatives

The Government of Malawi has also been undertaking Public Sector reforms that would indirectly contribute to the fight against corruption in Malawi. It is currently working on the Public Service Bill and the Declaration of assets bill to be passed into law. The two laws will contain vital legal provisions that will strengthen the legal framework for dealing with corruption and help in entrenching an ethical culture in the public service which is vital to efforts to deal with corruption.

The Government of Malawi enacted the Money Laundering Act and has established the finance Intelligence Center. This legislation is also vital to the fight against corruption since a lot of the resources that are looted through corruption are laundered.

All in all the Government has made progress in ensuring that there is in place the necessary policy and legal framework which is backed by vibrant programs to fight corruption in Malawi.