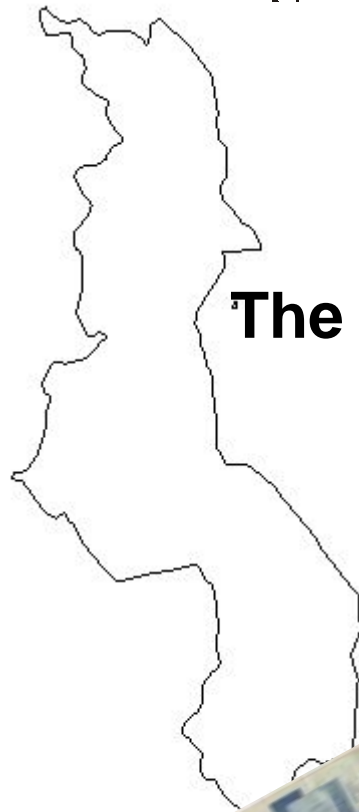


The Loan Contraction Process in Africa

Making loans work for the poor



The Case of Malawi



AFRODAD

THE CASE OF MALAWI

STUDY REPORT

TABLE OF CONTENTS

1	Introduction And Background To The Study	7
1.1	Objectives of the Study	7
1.2	Rationale for the Study	7
1.3	Research Methods	8
2	overview of malawi's Debt Crisis	9
2.1	The Nature of National Debt	9
2.2	Rationale for Borrowing	9
2.3	Existing Loan Agreements and the Conditions Attached	10
2.3.1	<i>Stock of loans</i>	10
2.3.2	<i>Conditions attached to loans</i>	12
2.4	The Relationship between Loans and Grants	13
2.5	Debt Servicing and a Percentage of Total Expenditure	14
3	The Framework Regulating Government Borrowing	15
3.1	Laws that Regulate and Legitimise External Borrowing	16
3.2	Policies that Regulate External Borrowing	16
3.3	Contractual Issues in Project Implementation and Funding	17
3.4	Watchdog Structures and Institutions	17
4	The Role of the IMF, World Bank and Other Donor Institutions	21
4.1	Japan International Cooperation Agency (JAICA)	21
4.2	The International Monetary Fund (IMF)	21
4.3	The World Bank	22
4.4	Donor Influence on Government and National Priorities	23
5	Civil Society Participation in loan contraction and monitoring	24
5.1	Civil Society on Corruption	25
6	Human Rights Obligations	27
7	The Millennium Development Goals	29
8	Conclusions and Recommendations	30
8.1	Recommendations	30
	References And Sources	31

List Of Tables

1	Level of External Debts as at November 2003
2	External Debt Service 1996-2007

LIST OF ACRONYMS

ACB	Anti-Corruption Bureau
ACP	Africa, Caribbean and Pacific
ADF	Africa Development Fund
AfDB	Africa Development Bank
AFRODAD	African Forum and Network on Debt and Development
AGOA	Africa Growth and Opportunity Act (US)
AIDS	Acquired Immune Deficiency Syndrome
CISANET	Civil Society Agriculture Network
CSCQBE	Civil Society Coalition for Quality Basic Education
CSO	Civil Society Organisation
CTB	Central Tender Board
DFID	Department for International Development (UK)
DPP	Director of Public Prosecutions
DSA	Debt Sustainability Analysis
EU	European Union
FIMAG	Fiscal Management, Growth and Development Facility
GDP	Gross Domestic Product
GTZ	German Technical Cooperation
HIPC	Heavily Indebted Poor Country
HIV	Human Immunodeficiency Virus
IBRD	International Bank for Reconstruction and Development (World Bank)
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IMF	International Monetary Fund
JAICA	Japan International Cooperation Agency
MANEB	Malawi National Examination Board
MASAF	Malawi Social Action Fund
MDG	Millennium Development Goals
MEFMI	Macroeconomic and Financial Management Institute of Eastern and Southern Africa
MEJN	Malawi Economic Justice Network
MHEN	Malawi Health Equality Network
MPRSP	Malawi Poverty Reduction Strategy Paper
MRA	Malawi Revenue Authority

NFRA	National Food Reserve Agency
NGO	Non Governmental Organisation
OMO	Open Market Operations
OPC	Office of the President and Cabinet
OPEC	Organisation of Petroleum Exporting Countries
PAC	Public Accounts Committee
PPE	Pro-Poor Expenditure
PRGF	Poverty Reduction and Growth Facility
PRSP	Poverty Reduction Strategy Paper
PTA	Preferential Trade Area
SAP	Structural Adjustment Programme
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development

Acknowledgements

AFRODAD wishes to acknowledge their great debt of gratitude to Dr. Nixon Khembo of the University of Malawi for investing considerable time and effort in the research process of this report.

The report was enriched by the special contributions made by various institutions and individuals. The production of this report would not have been possible without the support of key government institutions of Malawi. We also wish to thank in particular Mr. Collins Magalasi of Malawi Economic Justice Network as the reader. The report benefited greatly from the advice and incisive comments of the AFRODAD Coordinator, Ms. Barbara Kalima. The central financial and technical support of Christian Aid 's staff was invaluable to the project especially that of Kato Lambrechts and Olivia McDonald. The report benefited greatly from the leadership of the Research Coordinator, Charles Mutasa who provided the conceptual framework and professional guidance to the report. Special mention is due to Megan Allardice and Tiri Mutazu, the Research Assistant for editing and proofreading the report.

1. Introduction and Background to the Study

Africa's massive external debt is one of the biggest obstacles to the continent's development. The \$330 billion that African countries owe to foreign creditors represents a crippling burden that fundamentally hampers progress in every sector¹. Africa's debt crisis continues to absorb resources and energies that could be used to tackle urgent social and developmental issues. Debt in Africa has led to plummeting living standards, and retarded progress on all fronts - economic, political, social and cultural, thereby exacerbating long-entrenched problems like poverty and hunger. So many in African rural areas live in abject poverty with lives degraded by disease, illiteracy, malnutrition and squalor so as to deny its victims basic human necessities.

The causes of Africa's debt crisis are varied and complex. A lot of emphasis has been put on external factors to the negation or belittling of internal factors. Notwithstanding the external factors, it is clear that the causes of the debt crisis in many African countries are also attributable to poor borrowing, debt policy and debt management factors. This problem is also a symptom of poor governance in which the underlying premises should be consensus oriented approval mechanisms, equity and inclusiveness in the use of scarce financial resources, effectiveness and efficiency in the use of financial resources, and accountability.

It is in the light of the foregoing that AFRODAD commissioned studies in five selected African countries, including Malawi to critically analyse the role of internal factors in Africa's debt crisis. These studies seek to shade light on the link and contribution of debt management mechanisms to the mounting external debt. AFRODAD believes that if appropriate external borrowing strategies and good internal management of external loan resources were put in place, Africa's external debt would become sustainable. Key to this is the putting up of administrative, institutional and legal reforms to ensure proper management of external loans and project design, implementation and evaluation.

1.2 Objectives of the Study

The overall objective of this study is to ensure that the loans taken by the poor countries are legitimate and serve the basic functions of poverty reduction and development. By this objective the study intends to realign the support rendered by international financial institutions to poor countries with the basic needs of those countries.

The specific objectives of the study are to:

- 1 Challenge African Governments and international financial institutions to become more transparent, accountable and inclusive in the loan contraction and debt management process starting from 2004;
- 2 Raise the awareness of anti-debt campaigners, civil society organisations and the general public in Southern and Eastern Africa and the UK, in the course of 2004, on the need to monitor loan decisions and push for or use existing spaces for civil society participation in the loan contraction and debt management process; and
- 3 Strengthen AFRODAD and Christian Aid's partnership to continue collaborating to achieve their collective goals using their respective strengths and resources in advocacy and research.

1.3 Rationale for the Study

The study is premised on the understanding that the procurement, utilisation and management of public loans and debts are a national and global issue and, therefore,

should be seen to be transparent, accountable, participatory and inclusive. The processes of loan procurement and debt management require legitimacy and systematic planning to be sustainable. By making loans sustainable, governments will have extra revenue to support their social services and goods for development and enhance their people's welfare and reduce poverty. This study constructs a framework for rationalisation of the loan contraction and debt management process in these terms.

1.4 Research Methods

The methodology used in this study was a combination of documentary analysis and fieldwork. Documentary analysis provided secondary data through literature review, constituting the background theoretical and conceptual framework of the study. To collect primary data, key informant interviews, based on interview guides, were conducted. The two methods of data collection thus complemented each other to enhance the quality and integrity of the data collected in the study.

2 Overview of Malawi's Debt Crisis

The national budget is formulated annually by the executive branch of government through the Ministry of Finance and Economic Planning, and then presented to the legislature for approval. Critical points of the national budget known as protected pro-poor expenditure (PPEs) remain constant at 60.3 percent of the total. These include agriculture, water, education, health, gender, youth and community services, police, rural feeder roads and others.

Broadly the budget is formulated within the policy framework laid down in the Malawi Poverty Reduction Strategy Paper (PRSP). The PRSP also serves as donor conditionality for aid. 40% of the budget in Malawi depends on foreign donor funding through balance of payment support, which is currently not forthcoming because of corruption, governance and public expenditure problems that arose between the government and the donors. Donor aid goes into many different sectors of the economy and department for poverty alleviation and development programs. For example, DFID currently supports free primary education through the Ministry of Education, Science and Technology; USAID supports democracy and governance programs through the Church and Society Program of the Livingstonia Synod of the CCAP Church. The Interministerial Committee; GTZ supports decentralisation and local government reforms through the Ministry of Local Government; the British government supports police reforms through the Ministry of Home Affairs; and the EU supports judiciary service through the Ministry of Justice.

2.1 The Nature of National Debt

National debt in Malawi comprises public (Central Government, Local Government, parastatal corporations, Reserve Bank) and private liabilities.² It is debt incurred and repaid by the Government of Malawi on behalf of the Malawian people.

2.2 Rationale for Borrowing

Medium and long term foreign borrowing is for financing essential capital facilities, development projects and programmes, and equipment, where it is appropriate to spread the cost of investment over more than one fiscal year. Foreign borrowing should, ordinarily, lead to increased production and eventual growth of exports, so that the debt service on new borrowing can be paid. Most projects that benefit from externally borrowed funds have a direct bearing on poverty reduction.

Domestic borrowing is for meeting temporary shortfalls in government revenue but should not be to cover fundamental budgetary imbalances. Thus public domestic borrowing is essential to cater for inadequacies of the fiscal adjustments to offset shortfalls in external borrowing. The increase in domestic debt in Malawi has been due to:

- The erratic nature of foreign aid flows;
- Escalation of recurrent expenditure outlays resulting from general and local government elections;
- Withholding of donor aid due to governance issues
- The effects of drought; and
- Inflationary pressures, largely due to the liberalisation of the exchange rate regime and the rise in fuel prices.

Short term borrowing is mainly for export oriented sectors; balance of payments support; replenishment of reserves; unforeseen drastic emergencies with due regard for repayment; financing of the budget; open market operations (OMO) consistent with

monetary objectives; and as a standby facility for critical needs.³

2.3 Existing Loan Agreements and the Conditions Attached

2.3.1 Stock of loans

The debt burden on Malawi can be traced back to the 1970s, with official debt stock in 1978 standing at US\$ 586.1 million (MK 62 712.7 billion). By 1999, the official debt stock stood at US\$ 2.6 billion (MK 278.2 billion) and the official domestic debt stood at US\$ 195.6 million (MK 9 billion), in total representing 156.8 percent of GDP. However, Malawi's external debt amounted to US\$ 2.5 billion (K 267.5 billion) as at 30 November 2003. This debt is owed, largely, to multilateral creditors, which account for 87 percent of the total debt stock. Bilateral and commercial creditors account for 12 percent and 1 percent respectively. The level of borrowing, however, is decreasing slightly, because of improved expenditure patterns. But the level of foreign debt generally is still high due to overspending, inadequate resources, too much borrowing, and macroeconomic instability, among other factors.

Malawi's debt is unsustainable as evidenced by the sustainability ratios assessed by the end of 1999. The ratios are: the debt service ratio of 19% compared to the sustainable threshold of 15%; the net present value of debt to exports ratio of 267% compared to the sustainability threshold of 150%; and the net present value of debt to domestic revenue ratio of 472% compared to the threshold of 250%.

The background that led to Malawi being categorised as a Heavily Indebted Poor Country (HIPC) is revealing of the debt stock in the country. The HIPC initiative, which was launched in 1996 to provide 'debt stressed' countries with an 'exit strategy' towards sustainable debt levels, is currently being implemented in Malawi. The initiative is designed to reduce poverty by allocating resources freed from debt service, to poverty reduction.

At first, Malawi was excluded from the HIPC 1 initiative. The requirements of HIPC 1 were that the ratio of debt to exports of goods and services be between 200 and 250 percent and that the country be the one that has undergone a structural adjustment programme (SAP) for at least six years. Malawi failed to qualify on these criteria.

In April 1999, the Malawi government conducted its first Debt Sustainability Analysis (DSA) with the assistance of the Macroeconomic and Financial Management Institute of Eastern and Southern Africa (MEFMI), which revealed that the country's debt then was unsustainable and, if not corrected, would spill over into the future. The first DSA was followed, in April 2000, by another DSA jointly conducted by the Malawi government, World Bank and IMF, which confirmed the earlier findings. The 2000 DSA showed:

- A debt service ratio of 19 percent, compared to the sustainable threshold of 15 percent;
- A net present value of debt to exports ratio, of 267 percent, compared to the sustainability threshold of 150 percent; and
- A net present value of debt to domestic revenue ratio of 472 percent, compared to the threshold of 250 percent.

Following these analyses, a decision point document which summarised the DSAs was submitted to the IMF and World Bank, enabling Malawi to qualify as a HIPC country in December 2000 and making it eligible for debt relief under the HIPC 2. Thus currently, Malawi is benefiting from interim debt relief which, together with additional bilateral debt relief funds, totals K 4.5 billion per year - about 10 to 11 percent of total expenditure in the next two years. This relief is supposed to enable the government to recycle HIPC funds for poverty reduction activities.

However, it is important to note that,

HIPC debt relief does not involve any new or additional flows of resources – Government is merely able to spend some of its resources that were previously committed to interest on and repayment of loans on poverty reduction activities.⁴

There are about 607 existing foreign loans between the Malawi government and other

Table 1 Level of External Debts as at November 2003 (US\$)

	Amount	Percentage
Multilateral		
IDA	1 622 902.45	74.09
IBRD	3 103.79	0.14
ADF	297 217.91	13.57
AfDB	44 662.20	2.04
EIB	54 385.13	2.48
IFAD	47 690.33	2.18
Nordic	14 061.97	0.64
OPEC Fund	2 163.96	0.10
BADEA	9 421.45	0.43
UNDP	164.52	0.01
PTA Bank	951.05	0.04
IMF	93 849.04	4.28
Sub Total Multilateral	2 190 573.80	87.16
Bilateral		
JBIC/JOEF	199 291.55	71.66
NEC Corporation	1 940.95	0.70
Mitsui	5 166.79	1.86
Banque de France	140.80	0.05
COFACE	396.61	0.14
Credit Nationale	14 313.98	5.15
Hermes	234.35	0.08
ECGD (UK)	-836.51	-0.30
IBFA	18 841.12	6.77
South Africa	1 714.15	0.62
IDC	782.09	0.28
EXIM China	24 135.84	8.68
Kuwait Fund	5 554.37	2.00
NATEXIS Bank/BF	73.18	0.03
De Organismo	6 307.80	2.27
Skandinaviska	63.96	0.02
Sub Total Bilateral	278 121.03	11.07
Parastatal and Commercial		
EIB	20 962.29	46.98
CDC	18 699.15	41.91
BANCO Bilbao-Spain	20.14	0.05
IDC	437.00	0.98
FMO-Netherlands	4 503.44	10.09
Sub Total Commercial	44 622.02	1.78
TOTAL STOCK	2 513 316.85	100.00

financial institutions and each has an agreement. They were contracted from 1968 up to the present. They were contracted from 1968 and up to date. These 607 loans are foreign loans. The creditor's institutions are in 3 types:

(1) **Multilateral loan institutions, which include:**

- IDA (part of World Bank)

- International Bank for Reconstruction Development (IBRD)
- African Development Bank

(2) **European Investment Bank (EIB)**

- International Fund for Agricultural Development
- NODF

(3) **Bilateral loan institutions, which include:**

- Countries like China (Taiwan) Japan, UK, Sweden, Australia, Kuwait, Spain, Netherlands, Italy, France, South Africa and Belgium.

The government gets funds from these financial institutions and governments, which go to various sectors of the economy e.g. Ministry of health, Ministry of Education, Ministry of Agriculture etc. These are the recipients of program funds under the PRGF (from IMF).

As can be seen from Table 1 above, most loans are from multilateral agreements. The World Bank and the IMF are the major lenders to the Government of Malawi. For example, the Fiscal Management Growth and Development Facility (FIMAG), which is a Malawi government and World Bank loan agreement that targets decentralisation, land reform, and government management of funds/budget. There is another Malawi government and World Bank loan agreement that is intended to promote farm production by supporting smallholder farmers with farm equipment through their farm clubs.

Table 2, below, shows the actual and projected movement in debt service values from 1996 to 2007, illustrating the significant drop in the amount repayable as HIPC 2 comes into effect in 1996.

Table 2 External Debt Service 1996-2007 (US\$ million)

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Debt service plus HIPC debt relief/1	85.2	71.1	69.1	105.2	69.9	87.9	86.2	104	124.5	106.5	121.3	117.6
Debt service less HIPC debt relief/2						68.2	57.8	50.8	68.4	43.8	48.1	47.3

Note: 2003 figures are actual from January to November. Thereafter, all figures are projections.

2.3.2 Conditions attached to loans

- Conditions depend upon various donor interests. However, the most common conditions are the following:
- Opening of a bank account so that the money for the project goes straight into this account;
- Government approval through Parliament to procure a loan;
- Availability of project staff;
- Audited accounts of project funds should be produced;
- Maturity period varies from short-term loans to long-term loans. Short-term loans would be 1 year. Medium-term loans are serviced after 1 year. Long-term loan – after 1-40 years obtained from the World Bank, and IMF loans range from 2 – 3 years;
- Interest rates on each loan depend on the creditor. Commercial creditor's interest is high. And interest rates are also fixed when the loan is signed the interest rate agreed upon now will be the same throughout. They vary from 0% - 13% (as the highest);

- Macroeconomic reforms, including privatisation of state owned enterprises; liberalisation of exchange rates, devaluation of the national currency, structural adjustment programmes and fiscal discipline.
- Procurement of some equipment and expertise from the donor country;
- The donors are very strict with their conditions. They make sure that all conditions are met i.e. passing of the authorisation and ratification Bill; and that Government pays a partner contribution of 20%, etc. Only when such conditions are met the donor agencies disburse the resource; and that
- The IMF or World Bank insists that the government's expenditure should not exceed so much and the revenue – expenditure equation should not exceed so much.

Foreign lending institutions are strict with their funds in Malawi particularly because of the higher levels of *corruption* and *mismanagement* in the country (Transparency International 2003), *poor loan prioritization* and *low absorption rates*. The donors are very strict with their conditions, demanding that all of them are met i.e. passing of the authorisation Bill, that Government pays a partner contribution of 20 percent etc. The Danish government for instance, withdrew assistance from Malawi in 2002 because the Malawi government failed to meet with certain conditions. The IMF and World Bank also insist that the government's expenditure and the revenue-expenditure equation not exceed prescribed limits.

Maturity periods vary between short term and long-term loans. Short-term loans would be one year; medium term loans are serviced after one year; and long term loans after one to 40 years (World Bank), with IMF loans ranging from two to three years.

Interest rates on each loan depend on the creditor, with interest rates being fixed when the loan is signed and remaining the same throughout the life of the loan. Interest rates vary from 0 to 13 percent and commercial creditor's interest is usually the highest.

From the Government of Malawi's side, the Public Finance Management Act (2003) Part II – 2 stipulates that,

...when an Act authorizes the borrowing of money and the Minister decides to raise a loan accordingly, the Cabinet shall determine the following matters – (a) the price of the securities (if any); (b) the date or dates on which the money is to be repaid; (c) whether the Government will reserve the right to repay the loan before maturity, and if so, on what notice; (d) the rate or rates of interest to be paid on the amount borrowed; (e) the date or dates from which interest is to be computed and the half-yearly dates on which interest is to be paid; (f) the amount of the loan within the limit set by the authorizing Act; (g) whether or not the Minister may accept subscriptions in excess of the amount of the loan within the limit set by the authorizing Act; and (h) any other special conditions which shall apply to money borrowed in terms of the authorizing Act.

2.4 The Relationship between Loans and Grants

The relationship between loans and grants are multifaceted and complex. Some loans have grant elements i.e. where a total amount of money given is divided into two parts - 50 percent loan and 50 percent grant. Grants can be seen as a form of soft loans, normally spreading repayment in small amounts over a 50-year period, beginning after a ten-year grace period. A grant is most often intended to solve a particular problem. Most of the Government of Malawi's foreign aid is in the form of bilateral grants like

those given by the UK, US, Germany, Japan and Norway.

A loan is an agreement between two parties in which one party asks for money and promises to pay it back with interest. The conditions of payment (period, mode of payment and interest) are agreed upon between the two parties. There are different types of loans operating in Malawi. Where interest is calculated at a reduced rate and a grace period is given the loan is called 'concessionary'. Given that both the principal and an amount of interest must be repaid, loans should be directed towards economic activities that will raise sufficient funds to cover the repayments.

Government concentrates on the type of loans that are attached to grants and then it does not necessarily borrow the funds if the grant element is sufficient to meet the needs of the project. The conditions for such grants are friendly. In the case of the Malawi Social Action Fund (MASAF) loans funded by the World Bank (2003), the government will begin repaying after ten years (in this case 2013).

Grants can be an incentive for Government to procure a loan with the concerned financial institution. However, the government of Malawi recognises the conceptual difference between loans and grants and does not just rush for a loan because it is accompanied by a grant. The government analyses the conditions that are inevitably attached to either grants or loans against the needs of its priority sectors. It seeks to support all the sectors, such as manufacturing, mining, textile, and agro-industry, with the funds realised from the loan or grant. Thus the socio-economic needs and sectoral priorities of the economy also provide an incentive for government to procure a loan.

Government sometimes takes a loan without it being accompanied by any grant elements. Examples are African Development Bank (AfDB) loans and IMF loans.

2.5 Debt Servicing as a Percentage of Total Expenditure

The level of foreign debt in the country is very high, standing at US\$ 2.5 billion. The level of debt is 150 percent of gross domestic product (GDP), which is unsustainable.

The percentage of total government expenditure that goes into debt servicing varies every year but, on average, it spends about 20 percent of its budgetary resources to service debt every year.

3 The Legal, Procedural and Policy Framework

Regulating Government Borrowing

The loan contraction process in Malawi is governed by the 1995 Constitution and national statutes, principally the Public Finance Management Act (2003). The relevant section in the constitution is S180, which states “a loan may be raised by the government under the authority of an Act of Parliament and not otherwise”. The Public Finance Management Act is the enabling law that allows government to borrow externally. This Act governs expenditure on such loans as well and public finances in general. It also covers the fiscal discipline and accountability of the government.

The Ministry of Finance is the only institution mandated to borrow on behalf of government. Each Ministry submits its budget proposal to the Ministry of Economic Planning and Development that, jointly with the Ministry of Finance, looks for money then seeks Parliamentary approval to access it. Public (parastatal) institutions, such as statutory corporations and institutions like the National Food Reserve Agency (NFRA) may also borrow externally; in which case, the government becomes the guarantor of such loans. It is acknowledged that many other organisations receive grants without the knowledge of the government.

The procedure when Government wants to contract a loan is an arduous one. However, donor agencies are very concerned that the correct procedures be followed because they reflect sound management and provide a level of certainty that the government will be in a position to repay the loan. The necessary steps are as follows:

- 1 The Ministry responsible for the project comes up with a project proposal and submits it to the lending institution;
- 2 The lending institution sends a mission to Malawi for appraisal of the project i.e. to check its feasibility;
- 3 Once the lending institution approves the loan, a date is set to process the loan;
- 4 The negotiation process takes place, involving agreement of the terms and conditions – interest, period of repayment etc.;
- 5 A loan agreement is drafted;
- 6 The Minister of Justice then drafts a Loan Authorisation Bill;
- 7 The Attorney General’s reviews the Bill to see that all constitutional and legal requirements have been met and that all domestic regulations have been complied with;
- 8 The Loan Authorisation Bill is sent to and enacted by Parliament
- 9 The Act is sent for Presidential assent;
- 10 Once the President assents, disbursements can begin for the implementation of the project.

This is the legal process that authorises the Minister of Finance to borrow money from the lending institution. The loan is charged on the consolidation fund.

Institutionally, the Cabinet Committee on Economy is mandated to discuss debt or loan issues before they are tabled in Parliament. It is, nonetheless, Parliament that authorises external loan procurement and a Debt and Aid Management Policy is in the process of being formulated by Government. In practice, Parliament has never refused authorisation of a loan proposal. Although it grants authorisation, Parliament has no role in monitoring the implementation of loan-funded projects.

One of the problems is that Malawi public perceives the legislature as not being entirely above corruption. Parliament is expected to be accountable to the people but, since the repeal of the Recall Provision in 1995, there are no clear rules in the Constitution by which the people can hold parliamentarians accountable except through the

election process. The independence of parliament from other branches of government is overshadowed by the way parliamentarians operate in respect of their party interests. Furthermore, because members of the executive are also allowed to be elected members of the legislature, it is easy to observe that the two arms of government overlap and influence each other significantly when conducting their duties and functions.

Interviews with officials at the Ministry of Finance indicate that Malawi has a long way to go in ensuring that loans are used to benefit the poor, mainly because they are not linked to the grassroot problems. They also felt donors lead the government to borrow funds that may not be intended to solve the priority problems. The Ministry officials believe that loans can benefit the poor in Malawi if there is a turnaround in debt management systems. Poor people need to participate in planning and the contraction of loans through a decentralisation programme, whereby government would through district assemblies consult the people on viable projects that require external loans.

3.1 Laws that Regulate and Legitimise External Borrowing

In Malawi, an Act of Parliament is used to authorise and ratify loan agreements between the Ministry of Finance on behalf of the Government of Malawi and the lender. The Act of Parliament is an enabling law in the loan contraction process. As mentioned, aside from the Constitution (1995), the key Act is the Public of Finance Management Act (2003). It lays down the procedures for borrowing in Part 56-(1),

...the Minister is empowered to borrow by way of term loan within Malawi or elsewhere, as the National Assembly shall determine by an authorizing Act, not more than such sums of money as that Act authorizes. Furthermore, (2) prior to raising a loan the Minister shall first – (a) ensure that it is in the public interest to do so; (b) ensure that it is fiscally responsible in accordance with section 12; (c) ensure that it is consistent with Government economic and fiscal policy; (d) satisfy himself that the Government has or is likely to have on current projections the financial ability to meet all the obligations under the loan including future loan payments; and (e) consult with the Attorney General and obtain in writing from the Attorney General, an opinion approving the legal aspects of the loan agreement.

The Local Government Act (1998) also authorises borrowing by local authorities.

3.2 Policies that Regulate External Borrowing

- The Government of Malawi borrows funds through specific policy frameworks. The frameworks include:
- The Debt and Aid Management Policy, which is in the process of being promulgated;
- The National Debt and Aid Policy (2003-2008);
- The Poverty Alleviation Policy (1994); and
- The National Decentralisation Policy (1998).

The irony, however, behind the policy regime on loan procurement in Malawi is that loans have soared in the absence of a “Debt and Aid Management Policy” which, at the time of writing, government was still developing. One wonders whether there is a rationale for delaying the development of such a policy in country that runs its economy largely on *loans* and *grants*. Thus, once again, the urgency for loan procurement and grants supersedes the need to institute effective legal and policy frameworks on debt and aid management.

3.3 Contractual Issues in Project Implementation and Funding

There are provisions in each loan that stipulate when, where and how the government or the lender can cancel or renegotiate the loan if a loan funded project cannot be successfully implemented or some conditions are not fulfilled. The Minister of Finance has the power to go back to Parliament and ask for new negotiations with the lending institutions. If Parliament rejects it, then the lender will have to consider the conditions of the loan, if approached to do so. Such negotiations may focus on interest rates, human rights issues or the maturity aspects of the loan. Long-term loans are given in phases. Therefore, if the first phase is not implemented successfully the lender does not release funds for the next phase. In this case the lending institution monitors the performance of each and every phase of the project. The government might then have to use its own funds for each phase and claim from the lending institution retrospectively. This enables the lenders to investigate how the funds have been used before releasing their contribution.

In summary, if the implementation is not successfully carried out, the following may be the results:

- Project extension for maybe one year;
- Termination of the project or part thereof;
- Donors pulling out;
- Donors suspending funding;
- Incumbent donors being replaced by new donors;
- Government taking over the project;
- Government paying back the funds already used on the project; or
- Investigations being conducted to identify the problems that hindered successful implementation of the project.

If it is a grant that has been misused, the government is asked to pay back the money.

After a national budget, people know how much money will be required from international lending institutions and this enhances public accountability.

Where there are gross irregularities, the amount due to the lending institution by the government may be required to be paid immediately, instead of the agreed dates. This is called accelerating the maturity date of the loan. In practice, however, it is usually the government that fails to pay back the loan on time and the lending institution that has to renegotiate the maturity date of the loan.

3.4 Watchdog Structures and Institutions

The idea of watchdog institutions was used after the regime of Dr. Banda. During his tenure of office, before 1994, Banda used to treat state institutions without impunity, for instance, ADMARC. ADMARC is the linchpin of the Malawi government's relationship with the peasants. The corporation enjoys a monopoly on the purchase of virtually all-marketable peasant produce. The rich farmers, on the other hand, have direct access to the world market through the auction floors. ADMARC buys crops from the peasants at very low prices and sells them at higher prices on the world market to earn large profits. Between 1983 and 1987 profit margins on crop trading averaged 32 percent of net sales. In some years the profit margin has been as high as 42 percent. These profits have not been invested in the peasant sector, but instead have been invested in estate agriculture and industry. In addition, some of the profits have been channelled into unsecured loans to Banda. He wielded great control over the economy, social, cultural and political spheres of Malawian lives.

3.4.1 The National Audit Office

The National Audit Office, and Parliament through the Public Accounts Committee, play a democratic oversight role in the loan contraction process. The National Audit Office makes sure all the conditions in the loan agreements have been met. It audits all the loans that are funded by the donor community. The National Audit Office therefore enhances accountability.

The office of the Auditor General is part of the broad array of civil service institutions in the country. Created by section 184 (1) of the constitution, the Auditor General has powers to 'audit and report on the public accounts of Malawi'. He or she submits public finance reports once every year to the National Assembly to which he or she is accountable through the Minister of Finance.

The Auditor General is appointed by the President and confirmed by the National Assembly by a majority of the members present voting. However, the Public Appointments Committee may enquire at any time as to the competence of the person so appointed to perform the duties of the office or as to their financial probity. The person appointed to the office of Auditor General serves for five years and is eligible for appointment by the President to one further five-year term of office.

This office of the Auditor General promotes financial accountability in public affairs in the country. It has the strength to combat corruption in because it is 'mandated' to do so and it has the requisite 'expertise' to audit state and parastatal accounts and verify assumptions. However, this office is weak because it lacks independence, can't audit presidents, the army, police or embassy accounts, and cannot prosecute suspects. Clearly, the independence of the office is compromised because the Auditor General is a political appointee and may not be adequately protected by the constitution on dismissal.

The Auditor General enjoys the support of the general public through anonymous letters and reports, the courts, the Anti-Corruption Bureau, civil society, the law commission, the human rights commission and government departments. The Auditor General works with these institutions on investigating and prosecuting cases and allegations of corruption. And yet, cases and allegations of official corruption have arisen in Malawi and the Auditor General has recently accepted that this problem starts with the lawmakers in Parliament. In most cases it entails abuse and misallocation of funds, where parliamentarians allocate themselves allowances - which are tax free - in a manner that is not transparent. Press reports about corruption act as sources of vital information about corruption for the Auditor General because 'smoke signals fire'. These reports are fairly reliable.

The Constitution guarantees that, subject to section 6, which mandates the President to remove the Auditor General under specified conditions. Thus, the independence of the Auditor General is threatened because the powers of removal under section 6 of the constitution are vested solely in the President.

Although legally, the Auditor General is supposed to reports to the legislature once every year through the Minister of Finance. Practice has shown that submission of reports by the Auditor General to the legislature is sometimes delayed by several months, particularly when the legislature or its Public Accounts Committee (PAC) is not in session. Of recent , it has been reported that the PAC has just started its meetings after having failed to meet for almost a year.

In his reports, the Auditor General usually refers to 'abuse and misappropriation' of public funds rather that 'corruption'. Once the reports are submitted the legislature debates them and takes appropriate action. This sometimes marks the beginning of long battles in the courts and the daunting challenges of implementing the Auditor General's recommendations in the bureaucracy.

3.4.2 The Public Procurement Process

In Malawi there is no Central Tender Board (CTB) through which public goods and services are tendered for public bidding and procurements. Initially Malawi had a CTB but the government dissolved it after graft allegations rocked the board four years ago. Since then, the government contracting unit, overseen by the Office of the President and Cabinet (OPC), has taken over its functions. This means that all public procurements are now under the direct control of the executive.

The current procedure followed by the contracting unit is that calls for bids are usually placed in the media, through advertisements. However, developments at the OPC contracting unit suggest that the process of public tendering is sometimes influenced by politics. For example:

- Recently about K 400 million worth of government contracts to supply plastic chairs and books to the Ministry of Education, Science and Technology were awarded, under controversial circumstances, to CrissOffset whose Managing Director, Farook Gani, is the younger brother to Altaf Gani, a ruling UDF councillor. In fact, 'CrissOffset got the whole deal despite lower bids from other printers in the country.
- 2003 also saw high ranking UDF officials, including the Attorney General and Minister of Justice, Henry Dama Phoya, getting an K 18 million contract to supply 40 paged note books at a cost of K 17 per book and 20 paged ones at K 7 each. These costs were not in line with prevailing market prices where a 40 paged notebook cost about K 7 and an 80 paged one K 11.

3.4.3 The Public Accounts Committee (PAC)

The Public Accounts Committee of Parliament plays an oversight role. It monitors how the loan itself is spent. The PAC ensures accountability and transparency in expenditure of these public loans. The actual contracting of the loan process, however, does not involve the Public Accounts Committee or the Auditor General's Office.

The PAC is chaired by a member of the opposition in Parliament to provide checks and balances on public finances.

3.4.4 The Anti-Corruption Bureau (ACB)

Corruption in Malawi is a real problem that also affects grant and loan money. Thus, the institution of the ACB is important, as it plays that accountability role and determines whether or not grants and loans have been used legitimately. Thus, as an institution, both government and the donor community support it.

The ACB is a constitutional body mandated by the Corrupt Practices Act (1995) to deal with cases of corruption. This includes cases of corruption involving public loans and grants. The ACB is an institution created by an Act of Parliament - the CPA (1995), which forms the central legal framework for Government's anti-corruption policy. It is also the legal framework that guides donor support for anti-corruption strategies in the country. Law to carry out investigations and prosecutions of corruption cases mandates the bureau.

The Act also provides that "the Bureau shall be a Government Department and the finances of the Bureau shall be charged to the Consolidated Fund". The President appoints the Director, subject to confirmation by the Public Appointment Committee. The Act empowers the ACB to investigate and prosecute corrupt practice but with the consent of the Director of Public Prosecutions (DPP).

Some of the weaknesses that affect the performance of the bureau include lack of resources, a weak Corrupt Practices Act, and no robust strategy and commitment from other institutions to cooperate with the Bureau. Another problem is that top level corruption is usually investigated by the bureau but concluded by other institutions, such

as the courts and the office the Director of Public Prosecution. Thus, the Bureau is limited by the provisions of the Corrupt Practices Act (1995). The Act does not cover certain aspects of corrupt practices such as 'fraud' and 'abuse of office' that the bureau sometimes encounters but has no jurisdiction or authority to investigate, rendering it completely ineffective in these cases.

The CPA provides that "the Director shall be subject to the direction or control of the Minister on all matters of policy, but otherwise shall not be subject to the control or direction of any person in the performance of his professional duties". This requirement to conform with the Minister's guidance and the need to obtain the DPP's consent either to prosecute or discontinue a case makes the ACB dependent on the direction of central government and the office of the DPP

The Bureau cooperates with a number of partners, including the courts, the Auditor General, the Ombudsperson, the Police, the Director of Public Prosecutions, the Malawi Revenue Authority (MRA), the Department of Immigration, UNICEF, Malawi National Examination Board (MANEB), and civil society. These cooperating institutions support the Bureau by providing vehicles and through whistle blowing and anonymous letters and reports. The Bureau works through a forum with civil society organisations but the forum is perceived as 'having no teeth to bite'.

Within less than a year of its launch, between March 1997 and January 1998, the ACB received a total of 3 100 written reports and complaints of corruption, although in the next four years, the figure dropped to less than 1 500 each year. So far, twelve investigations have been completed and are awaiting the DPP's consent for prosecution or discontinuation. In Lilongwe (capital city) fifteen cases have been referred to court, while in Blantyre (commercial city) they are fifteen cases and in Mzuzu (municipality) four cases before the courts.

There is a need in future to develop a board and participatory strategy, reform the Corrupt Practices Act to include such grey areas as 'fraud' and 'abuse of office', and restructure the anti-corruption institutions in the country. What has come out of the ACB of late is an admission, during an awareness workshop with the media, by ACB Deputy Director, Alexis Nampota, that the most important way to fight corruption is by raising the values of transparency and accountability as major themes of democracy and good governance. According to ACB's technical advisor, Paul Russel, the "overriding aim of the ACB is prevention of corruption; hence, it should not be judged by the number of people arrested for corruption and taken to court." In fact, he argued that arrests and prosecutions are a sign of failure and weakness in the broader system.

4 The Role of the IMF, World Bank and Other Donor Institutions

Most loans are from multilateral agreements. The World Bank and the IMF are the major lenders of loans to the Government of Malawi. For example, the FIMAG (Fiscal

Management Growth and Development Facility), which is a Malawi government and World Bank loan agreement, which targets decentralisation, Land Reform, Government Management of funds/budget. There is another Malawi government and World Bank loan agreement, which is intended to promote farm production by supporting smallholder farmers with farm equipment through their farm clubs.

Abuse of donor funds and corruption cases have had a negative impact on Malawi's macroeconomic fundamentals and external loans. The IMF, the World Bank and other donors have been helping put pressure on the government to conclude the backlog of corruption cases that they perceived as sitting idle in the court's archives. President Muluzi has crushed with the Bretton Woods institutions, bilateral donors, and civil society over his government expenditure mismanagement through expensive inter-district countrywide entourage travel in which he addressed rallies at an estimated cost of K6.1 million each⁵.

The Government, with support from bilateral and multilateral cooperating partners such as GTZ, JICA, CIDA, the World Bank, UNICEF and EU, MASAF and NGOs have implemented a number of programmes to cover urban and rural water supply and sanitation, water quality, monitoring and environmental protection.

4.1 Japan International Cooperation Agency (JAICA)

JICA is one of the major bilateral donors in Malawi. Together with others such as Canadian International Development assistance (CIDA), it has funded a number of projects in Malawi form of grants and loans. A number of construction projects have been put through the financial support of JICA. These include the International Airport, satellite earth station for telecommunication, the Mangochi Bridge across the Shire River that makes access to Mozambique possible. However, JAICA is not very strict on projects but is normally interested in agriculture. It is observed that, if they see the crops growing then they are satisfied. However, where they offer budgetary support, they are strict. Japan accounts for more than 70 percent of total bilateral support to Malawi and the agency is at liberty to either initiate or react to a proposal for loan contraction by Government.

4.2 The International Monetary Fund (IMF)

For the last decade, the IMF had a patchy relationship with the government of Mr. Bakili Muluzi over extra-budgetary spending on goods and services that was not pro-poor and resulting in government borrowing that kept interest rates very high. The Malawi government has a record of failing to avoid slippages in implementing agreed programmes. The IMF has always complained of lack of discipline in Malawi's public sector finances and it did suspend Malawi's poverty reduction programme in 2001 despite a looming famine. Currently, hopes are high that things will be different with the new government of Mr. Bingu wa Mutharika.

Since late 2000, the IMF had provided Malawi with about US \$30 million in financing. "This amount was equally divided between emergency assistance related to the 2002 drought and loans from the IMF's Poverty Reduction and Growth Facility (PRGF) in support of the government of Malawi's economic programme. Regrettably, Malawi's PRGF arrangement has not moved forward in recent months mostly because of government spending that was outside the 2003/04 budget (July-June) and the supplementary budget approved by parliament in March 2004," the IMF noted.

The IMF staff team hopes that they would work with the new government of Mr. Bingu wa Mutharika toward achieving macroeconomic stabilization, sustainable growth, and a reduction in poverty. The government aims to reduce public expenditure and domestic borrowing in order to correct the fundamentals for macroeconomic growth. In this process the IMF hopes to provide low-cost lending to Malawi, form the basis for further external debt relief under the Heavily Indebted Poor Countries Initiative (HIPC), and

help unlock donor budgetary support.

In their Economic Programme, the IMF put conditions such as telling the government not to borrow domestically. The IMF supports the PRGF and approved about US\$ 58 million in December 2000 to support economic and structural reforms in Malawi. To provide civil society with a window of opportunity, IMF concessional lending to Malawi is based on the participatory Poverty Reduction Strategy Paper (PRSP) process and the general poverty reduction framework. The IMF is also free to either contact Government to consider initiating a loan contraction process or wait for government proposals.

4.3 The World Bank

The role the World Bank plays can be either a proactive developmental role or a reactive one.

Often the government takes the lead and approaches the Bank after identifying problem areas in which project work needs to be carried out. The Bank then mounts a project identification mission from Washington. This mission works with the Minister of Finance and the Ministry responsible for the project. They also hold consultative workshops with all relevant stakeholders in the civil society. A project concept document (the project profile) is then prepared. When this is complete, the enabling law is passed by Parliament, the loan agreement is signed and funds are disbursed for project implementation.

In proactive mode, the local Bank staff approaches the government. It first identifies the problem areas and then requests Government to write to the Bank requesting assistance. In this way, the Bank initiates the loan contraction process, as was the case with MASAF.

In either case, after a mission from headquarters in Washington is mounted following initial contacts between Government and the World Bank, a project concept document is prepared. More missions are sent to continue the negotiation process. This process includes discussions on the credit amount required, the actual procurement process and how the money will be spent and paid back.

When all terms and conditions are agreed upon, a Debt Credit Agreement is signed. In all the negotiation processes, the contact point is the Ministry of Finance, which is mandated by S56 of the Public Finance Management Act (2003) to borrow funds for government. Usually the World Bank allows a 40 year payment period plus a grace period of ten years. The interest rates on each loan are between 0.5 and 0.75 percent per annum.

In this process, there can be consultation with civil society. The structural adjustment credit programmes and the Malawi Poverty Reduction Strategy Paper (MPRSP), for example, were very consultative in design. Each had a steering committee, which included members of the civil society and implementation of the activities under these programmes is by the civil society. Another example is the Emergency Drought Recovery credit programme, which was designed during the hunger crisis in Malawi, although civil society was only involved at the implementation stage.

The World Bank is willing to negotiate certain terms and conditions on its loans but there have been no cases where Parliament has not passed a Loan Authorisation Bill. Likewise, so far, there has not yet been any overt uprising against the Bank's policies in Malawi.

Traditionally the World Bank gives loans, not grants but, depending on the circumstances for which the funds are required, the Bank can sometimes give grants. An example is the Emergency Drought Recovery Credit Loan of US\$ 50 million in 2001. The Bank came to a decision that US\$ 21 million of the necessary funds should be in

the form of a grant because the purpose of the loan was to cope with a disaster that had hit the country. In the case of the Multisectoral HIV/AIDS project, Government wanted a loan to help fight the AIDS Pandemic but the World Bank decided to give the government a grant of US\$ 35 million.

One problem in dealing with the World Bank is the requirement for Government to contribute some resources - called 'counterpart funds'. The rate is currently at 10 percent but the government operates on a very tight budget and often is unable to come up with the required counterpart funds. Failure to do so can result in resources not being disbursed. There is a need for more flexibility by the World Bank on the issue of counterpart funds. However, although the Bank is strict on these procedures especially on economic programmes, there is usually room for negotiation as long as the correct procedures are followed. This highlights another, internal problem, which is that the Malawi government does not have good negotiators and sometimes loan conditions are just accepted without proper negotiation.

4.4 Donor Influence on Government and National Priorities

According to the budget, the greatest portion of national funds goes to the social sector in response to the poverty in the country. If people are to contribute to the productive sector, they have to be educated, and in good health, among other things.

When Government asks for a loan, it gives clear details of the purpose of the loan. If the interest of the lending institution approached is not in that particular area, the loan may not be given. Thus, although Government's priority depends upon the focus of that particular year e.g. poverty reduction or elections, donors also have an influence on the allocation of funds depending on their interest.

For grants, priority between short and long term investments is an issue. Short-term projects tend to be prioritised; both because long-term projects require a lot of funds and the results take a long time to be seen. Where some individual Ministers would sometimes like to see resources going into the productive and infrastructure sectors in the form of long term funding, the preference is often for short term, social projects. like digging bore holes, building schools and health centres.

Donors do influence the allocation of funds given as loans. The productive investment sector gets priority in loan disbursements because the donors know that, whatever happens, the sector will generate income that will ensure the donor is repaid. These are normally hard loans for roads and building infrastructure.

The scales of their input also increase the influence that donors have. In Malawi, 80 percent of loans for productive investments come from donors, while Government allocate 20 percent and even this comes indirectly from the World Bank or the IMF through the PRGF.

The government is planning to bring all the donors together under a 'basket funding' approach, where each donor will chip in with their support, as was done with the AIDS programme where many donors came in and agreed to support projects jointly. This approach will have the advantage of enabling Government to implement what it wants although it is acknowledged that the donors will have their own view.

5 Civil Society Participation in loan contraction and monitoring

Historically, the concept of civil society in Malawi has been highly problematic. The euphoria of national independence in 1964 overshadowed the important need to cultivate a civil society that would effectively contribute to political decisions free of

state control. Prior to 1994, under Kamuzu Banda's regime Malawi exhibited an unusual degree of totalitarian control for an African country, with rigid control of all institutions of political and civil society. On March 18, 1990, police shot dead more than 20 protestors in the capital, Lilongwe, in an incident that showed both the ruthlessness of the Malawian state and the level of popular dissatisfaction⁶. Despite this, the US has consistently voted in favour of loans to Malawi in the IMF and World Bank. Africa Watch has also heard independent accounts of US embassy officials attempting to raise human rights concerns with the Malawian government. While these efforts are commendable, it is unfortunate that they should coincide with a large increase in military assistance to Malawi and the rescheduling of bilateral debt.

In March 1992, the Catholic Church in Malawi had their Lenten letter read in all its parishes throughout the nation. In it, they outlined the roles and responsibilities of elected leaders, as well as citizens. In addition, they condemned the lack of democracy in the country. The Church of Central African Presbyterian (CCAP) on the other hand formed an umbrella organization known as the Public Affairs Committee (PAC). PAC played a crucial role in the drafting of the new Constitution, particularly the Bill of Rights and guiding the Civil Society through a turbulent period. In post-Banda era, the PAC has continued to entrench human rights and fight corruption, especially the abuse of public funds by government. For instance, the PAC was successful in resisting Muluzi's regime from acquiring expensive cars for the cabinet while the populace is languishing in poverty. The British Government which is one of the major donors was appalled by the Government's plan to purchase the latest Mercedes Benz models for 36 ministers and their deputies at a cost of MK 200 million (US \$2.5 million). It was only after the British warned that it would withdraw all its development aid that the Government backed down.

It was after 1994 multiparty elections that Malawi's constitution was changed and created space for civil society groups. International and local civil society movements have condemned international lenders for insisting that the heavily indebted Government of Malawi continues to make debt repayments to rich countries and the IMF and World Bank, despite its humanitarian crisis. The World Development Movement 2002 report detailed a catalogue of disastrous IMF enforced policies that undermined Malawi's ability to feed its people. It blamed the privatization of the food production and distribution system (notably the Agricultural Development and Marketing Corporation - ADMARC), removal of agricultural subsidies to small farmers and deregulation of price controls on staple foods such as maize - policies that enabled Malawi to avoid famine in the past. The price of maize increased 400% between October 2001 and March 2002 as a result of the policies. A number of peaceful demonstrations by civic groups against draconian economic reform policies imposed by the World Bank and the International Monetary Fund (IMF) have been held.

In 2002 the IMF was widely condemned in Malawi for recommending the sale of Malawi's strategic maize reserves just before a crop failure occurred. 'The Agriculture Minister Mr. Aleke Banda reported that the IMF had encouraged the government to sell at least part of the reserve in 2000 to pay off a one-year commercial loan taken in 1999 to establish the reserve. Likewise, President Muluzi also said the IMF and the World Bank 'insisted that, since Malawi had a surplus and the (government's) National Food Reserve Agency had this huge loan, they had to sell the maize to repay the commercial banks.' However, the IMF representative, Mr. Girma Begashaw denied the allegations arguing that as IMF they did not have expertise in food security policy. He further argued that the government had cut the reserve by two-thirds on the basis of inaccurate crop estimates possibly from a consultant hired by a European Union project.

Most citizens feel that the state lacks trustworthy, hardworking and committed leaders in politics and work organisations, due to recruitment through bribery, and nepotism.

Although they are keen to contribute to the national development, they say that they are constrained by greedy leaders, absence of political tolerance among citizens and over dependency on donors.

The key civil society players in loan procurement and utilisation in Malawi are the Church and the Malawi Economic Justice Network (MEJN) – a network of up to 71 CSOs formed in 2000 after a meeting of 27 CSOs in which civil society reaffirmed its commitment to economic governance. The interests of the Church in Malawi include social, economic and political justice; welfare and development, while the basic interests of MEJN are in:

- Coordinating civil society involvement in policy formulation on economic governance;
- Building economic literacy and the capacity of civil society;
- Coordinating civil society efforts in the budget cycle processes of consultations, analysis, monitoring, evaluation and reviews; and
- Coordinating civil society in debt policy formulation and implementation.

MEJN works to make sure that government policy is instituted to benefit the poor and to promote the participation of civil society in programmes aimed at enhancing people's welfare and development, and sustainable debt management.

The opportunity for civil society and popular participation in the loan procurement process exists in Malawi. The donors allow civil society to take part in anything to do with poverty reduction in Malawi. The MPRSP of 2002 states that civil society must be involved in negotiating 'agreements' for the HIPC initiative. Thus, the civil society in Malawi was involved, however marginally, in the PRSP process, the blueprint for IMF concessional lending. One of the biggest hurdles in democratising the policy making process has been that civil society capacity building in Malawi leaves a lot to be desired especially in the area of economic analysis. Few CSO activists are endowed with the economic analysis required to effectively sit with economists in the Finance ministry and give meaningful contributions. Thus, although civil society should be involved in the loan contraction process especially in regard to external borrowing they currently do not do so, mostly due to lack of capacity.

5.1 Civil Society on Corruption

The ACB Director, Justice Michael Mtegha, feels that civil society has a major role to play in the fight against corruption. He says, "I must emphasise that no implementation of a national or regional anti-corruption programmes can succeed without the active participation of a well informed civil society."

Since the advent of multiparty democracy in 1993, the civil society in Malawi has increasingly raised its voice on matters of public interest, including corruption, and has exerted force on the state. The Constitution under its Bill of Rights (chapter iv) guarantees freedoms and rights that facilitate the growth of CSOs in the country. However, not many of the civil society organisations are effective in their functions and duties because of deficiencies in areas such as finance, personnel, technical expertise and equipment. This is the case because most of these organisations are donor-dependent. Donor funds in Malawi are most readily available when it is time for an election. In the interim, many civil society organisations are left to fend for themselves, hence the dying off of many such organisations in between major political events.

The state also contributes to the demise of civil society organisations perceived to be 'politically' opposed to it. For example, the state banned a civic education newsletter funded by GTZ a couple of months ago. The state has also banned a huge project which the British Department for International Development (DFID) was about to

launch on Human Rights, accusing DFID of sponsoring NGOs that are critical of Government. In addition, the state has also embarked on creation of its own civil society organisations to counter those that criticise its agenda.

7 Human Rights Obligations

A rights based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards

and operationally directed to promoting and protecting human rights. During the Dr. Kamuzu Banda days, most people thought that governance was the sole responsibility of the state and its institutions. Today, it is widely recognized that in a good society, a healthy, flourishing democracy requires good governance; a process that is more inclusive, participatory, transparent, accountable and responsive than in the past.

Essentially, a rights based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The principles include equality and equity, accountability, empowerment and participation. A rights based approach to development includes the following elements:

- Accountability;
- Empowerment;
- Participation; and
- Non-discrimination and attention to vulnerable groups.

7.1 Accountability

Rights based approaches focus on raising levels of accountability in the development process by identifying claim holders (and their entitlements) and the corresponding duty holders (and their obligations). In this regard, they look both at the positive obligations of duty holders (to protect, promote and provide) and at their negative obligations (to abstain from violations). They take into account the duties of the full range of relevant actors, including individuals, states, local organisations and authorities, private companies, aid donors and international institutions.

Such approaches also provide for the development of adequate laws, policies, institutions, administrative procedures and practices, and mechanisms of redress and accountability that can deliver on entitlements, respond to denial and violations, and ensure accountability. They call for the translation of universal standards into locally determined benchmarks for measuring progress and enhancing accountability. During his 30years rule, Dr. Banda confused matters by treating most state assets as his personal property, while claiming that he held it in trust for the people of Malawi. He built 11 sumptuous official residences across Malawi with government funds and luxuriously furnished them (for example, the Sanjika Palace on the outskirts of Blantyre and Mthunthama House in the capital) and then rented the properties to the state. In a country plagued by unprecedented poverty, malnutrition, and acute unemployment, it is obscene that the available resources were allocated to the pet projects of one man for 30 years.

For all human rights, states must have both the political will and the means to ensure their realization, and they must put in place the necessary legislative, administrative, and institutional mechanisms to achieve that aim.

While primary responsibility under the human rights system lies with individual states, the international community is also duty bound to provide effective international cooperation, *inter alia* in response to shortages of resources and capacities in developing countries.

The way Malawi's debt is managed now as opposed to Banda's time suggests that there is some level of accountability although there is lack of involvement by civil society in debt management and lack of accessibility of information by the public.

7.2 Empowerment

Rights based approaches also give preference to strategies for empowerment over charitable responses. They focus on beneficiaries as the owners of rights and the directors of development, and emphasize the human person as the centre of the development process (directly, through their advocates and through organizations of

civil society). With Banda's totalitarian rule, human rights were a foreign thing for most Malawians and empowerment was a mirage. President Muluzi has been much more affable and humane, though other aspects of his rule reflected well-learned lessons from Banda's personal rule and aggrandizement.

The goal is to give people the power, capacities, capabilities and access needed to change their own lives, improve their own communities and influence their own destinies. The principle of empowerment is still lacking in the whole debt question, as is the case with accountability.

7.3 Participation

Rights based approaches require a high degree of participation, including from communities, civil society, minorities, indigenous peoples, women and others. Loan procurement and debt repayment affect the daily lives of people yet most African governments deny them the chance to know about them. Citizens must be well informed about debt issues and repayment problems that affect their education, health and social services. According to the UN Declaration on the Right to Development, such participation must be "active, free and meaningful"; mere formal or "ceremonial" contacts with beneficiaries are not sufficient.

Rights based approaches give due attention to issues of accessibility, including access to development processes, institutions, information and redress or complaints mechanisms. This also means situating development project mechanisms in proximity to partners and beneficiaries. Such approaches necessarily opt for process based development methodologies and techniques, rather than externally conceived 'quick fixes' and imported technical models. People should through civic organizations and their parliaments contribute to loan procurement and external debt issues. Malawi is still picking up on these elements.

7.4 Non-discrimination and attention to vulnerable groups

The human rights imperative of such approaches means that particular attention is given to discrimination, equality, equity and vulnerable groups. These groups include women, minorities, indigenous peoples and prisoners, but there is no universal checklist of who is most vulnerable in any given context. Rather, rights based approaches require that the question 'who is vulnerable here and now?' be answered locally. Development data need to be disaggregated as far as possible, by race, religion, ethnicity, language, sex and other categories of human rights concern.

An important aspect of rights based approaches is the incorporation of express safeguards in development instruments to protect against threats to the rights and well-being of prisoners, minorities, migrants and other, often domestically marginalized, groups. Huge external debt service by government is done at the expense of providing health, education and social welfare to its people. Furthermore, all development decisions, policies and initiatives, while seeking to empower local participants, are also expressly required to guard against simply reinforcing existing power imbalances between, for example, women and men, landowners and peasants, and workers and employers. Women and children are the most affected by huge national debt service more than men. The introduction of social safety nets resonates with the rights to a reasonable standard of living, food, housing, health protection, education and social security.

8 The Millennium Development Goals

The turn of the millennium saw much activity related to establishing monitorable global benchmarks for tackling poverty. At the 2000 UN Millennium Conference, all donor and aid recipient governments agreed to tailor their future policies and expenditure priorities to meet a setoff development targets drawn from key commitments

made at high level UN thematic conferences during the 1990s. The donor community, including the multilateral agencies of the UN, encouraged developing countries, especially low-income ones to put poverty reduction on top of their development agendas.

The origin of the Millennium Development Goals (MDGs) is to be found in the United Nations' Millennium Declaration that was adopted on 8 September 2000 by all of the 189 member states (147 of which were represented by their heads of State or Government). These goals were set for the year 2015 with reference to the international situation prevalent in 1990.

The United Nations Secretariat subsequently drafted a list of eight objectives, each with a set of targets and specific indicators. The first objective is to halve the proportion of the world's people living in extreme poverty and suffering from hunger.

The full list of MDGs is:

- 1) Eradicate extreme poverty and hunger
- 2) Achieve universal primary education
- 3) Promote gender equality and empower women
- 4) Reduce child mortality
- 5) Improve maternal health
- 6) Combat HIV/AIDS, malaria and other diseases
- 7) Ensure environmental sustainability
- 8) Develop a global partnership for development

Despite rapid advances by some countries that do show that MDGs are achievable, Malawi is yet to mobilise resources, political and financial support to meet specific global challenges, especially the fight against HIV/AIDS and weak fragile economy.

Looking at all basic social indicators of development and poverty reduction in Malawi, it is apparent that the MDGs will not be achieved by 2015 unless much deeper and correct reforms are undertaken in the aid and debt regime, the public sector and governance and development paradigm.

9 Conclusions

This study has demonstrated that in a country with only a fledgling democracy and weak institutions of governance, accountability in terms of how the grants and loans are used remain solely focused on lenders and not on the legitimate beneficiaries viz the Malawian people. This erodes both the legitimacy and the sustainability of the loans, and the effectiveness of the grants in poverty alleviation and development. Thus

the United Nations Millennium Goals, which member states set to achieve by 2015, remain far-fetched for Malawi.

Recommendations

We, therefore, make the following recommendations:

- The loan contraction process and debt management need to be more open, transparent, accountable and democratic;
- The allocation of loan and grant funds need to be driven by the socio-economic priorities and needs of the recipient country, rather than by donor/lender interests and negative politics;
- There is a need for the strengthening of institutional capacity for the civil society and the state, so as to engage in an effective process of loan negotiation with lenders many of whom understand the local conditions; priorities and objectives;
- State should give due recognition to the role-played by the civil society by establishing broad parameters in which civil society and its organisations can exist. It should broaden the distribution of information to grassroots people.
- NGOs need to identify obstacles to people's participation in development and define appropriate strategies for people's participation. They should build people's capacity to formulate and analyse development programmes, loans and grants. This is one way of enhancing popular participation.
- State should give due recognition to the role-played by the civil society by establishing broad parameters in which civil society and its organisations can exist. It should broaden the distribution of information to grassroots people.
- Enact legislation that will require the executive bodies responsible for dealing with external debt to make debt information accessible to the public.
- Give Parliament and other watchdog bodies a formal and substantive role in approving and monitoring all external loans.
- Establish structures or processes outside parliament through which citizens can influence public loan decisions.

References and sources

ADF (1989) "General Conditions Applicable to Loan Agreements and Guarantee Agreements" adopted by the Board of Directors at its 111th meeting, Abidjan, 23 November 1989 (selected sections).

Websites

resbank.malawi.net

www.worldbank.com.

Interviewees

Dr M. Mkwezalamba, Country Office Economist, World Bank

Chaudley Msosa, Economist

Mr Z.T. Soko, Director of Debt and Aid Management

Mr S. Nkhata, Assistant Director of Debt and Aid

Mr Elija Ligomeka, Principal Economist, Ministry of Finance

Mr Mabvuto Bamusi, Deputy National Coordinator, MEJN

Mr Mwabutwa, Economist

L.S Simwaka, Senior Economist

Mr C.K Chiunda, Deputy Budget Director (Monitoring)

Mr Gomani, Deputy Auditor General, National Audit Office

Mrs Katopola, Parliamentary Draftsperson, Ministry of Justice

Mrs. D. Banda, Deputy Director, Ministry of Finance

Endnotes

¹ Melly.P. and Ette. M. (2001) Debt Relief in News Africa magazine, March 12, 2001.

² Draft National Debt and Aid Policy 2003-2008 p3.

³ Ibid. p3-4.

⁴ Gondwe, T. and Zeleza, A. (2003) p3.

⁵ Chronicle Newspaper (Malawi) **November 25, 2002**

⁶ Human Rights Watch; www.hrw.org/reports/1990/WR90/AFRICA.BOU-05.htm