



REPUBLIC OF MALAWI

**A REPORT ON THE REVIEW
OF PUBLIC SERVICE SYSTEMS OF
ALLOWANCES, EMPLOYMENT
CONTRACTS, PROCUREMENT,
AND ON THE CONDITIONS OF
SERVICE AND RESTRUCTURING**

*By
The Public Service Systems
Review Taskforce*

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REPUBLIC OF MALAWI



HIS EXCELLENCY

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PRESIDENT OF THE REPUBLIC OF MALAWI



THE PUBLIC SERVICE
SYSTEMS REVIEW
TASKFORCE

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ACRONYMS/ ABBREVIATIONS

ACB	:	Anti-Corruption Bureau
ADMARC	:	Agricultural Development and Market Corporation LTD
CEO	:	Chief Executive Officer
CCM	:	Cotton Council of Malawi
COMESA	:	Common Market for Eastern and Southern Africa
CSMT	:	Central Medical Stores Trust
DHRMD	:	Department of Human Resource Management and
DSC	:	Department of Statutory Corporations
DoB	:	Department of Builds
ECAM	:	Employers Consultative Association of Malawi
EGENCO	:	Electricity Generation Company (Malawi) Limited
ESCOM	:	Electricity Supply Commission of Malawi
GCU	:	Government Contracting Unit
GoM	:	Government of Malawi
HR	:	Human Resources
HRM	:	Human Resources Management
MACRA	:	Malawi Communications Regulatory Authority
MASM	:	Medical Aid Society of Malawi
MDAs	:	Ministries, Departments and Agencies
MDF	:	Malawi Defence Force
MERA	:	Malawi Energy Regulatory Authority
MGDS	:	Malawi Growth and Development Strategy
MIM	:	Malawi Institute of Management
MIPS	:	Malawi Institute of Procurements and Supplies
MoE	:	Ministry of Education
MoF	:	Ministry of Finance
MoH	:	Ministry of Health
MoJ	:	Ministry of Justice
MoU	:	Memorandum of Understanding
MP	:	Member of Parliament
MPSR	:	Malawi Public Service Regulations
MSME	:	Micro, Small and Medium Enterprises
MNCS	:	Malawi National Council of Sports
NAO	:	National Audit Office
NCIC	:	National Construction Industry Council
NCST	:	National Commission for Science and Technology
NHBG	:	National Herbarium and Botanical Gardens
NOCMA	:	National Oil Company of Malawi
OPC	:	Office of the President and Cabinet
ORT	:	Other Recurrent Transactions
OVP	:	Office of the Vice President

PE	:	Personal Emoluments
PED	:	Performance Enforcement Department
PFMA	:	Public Finance Management Act
PHAMAM	:	Pharmaceutical Manufacturers Association of Malawi
PSIP	:	Public Sector Investment Programme
PPD	:	Public Procurement and Disposal of Assets Act
PPDA	:	Public Procurement and Disposal Authority
PSA	:	Public Service Act
PSC	:	Public Service Commission
PSIP	:	Public Sector Investment Programme
PSR	:	Public Service Regulations
RA	:	Roads Authority
RBM	:	Reserve Bank of Malawi
RF	:	Roads Fund
RFQ	:	Request For Proposals
SADC	:	Southern African Development Community
SDI	:	Staff Development Institute
SFFRF	:	Smallholder Farmers Fertiliser Revolving Fund
SOE	:	State-Owned Enterprises
SPC	:	Secretary to the President and Cabinet
TEVETA :		Technical Education and Vocational Training Authority

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Disclaimer: The Taskforce takes full responsibility for any remaining errors of fact and interpretation in this report.

EXECUTIVE SUMMARY

On 19th February, 2021, His Excellency Dr Lazarus McCarthy Chakwera, President of the Republic of Malawi, appointed a Special Taskforce to comprehensively review the three government systems of allowances, procurement, and employment contracts and submit recommendations for their reform to the President within three months. The Taskforce was chaired by the Right Honourable, Dr Saulos Klaus Chilima, Vice President of the Republic of Malawi, in his capacity as Minister responsible for Public Sector Reforms.

The Taskforce worked in plenary and in sub-committees, namely: allowances, employment contracts, conditions of service, procurement, and restructuring. The sub-committees were set up to enable the gathering of information and data, conduct focused analysis, and engage with stakeholders. A small team of five members was selected to consolidate the reports from the sub-committees into one document.

The main methods used by the Taskforce to collect information included: review of relevant legislation and documents, including audit reports; court judgments; investigative reports and literature from other jurisdictions; review of public submissions and consultations with a range of stakeholders; mapping of allowances, conditions of service, and employment contracts; and analysis of data on budgets, allowances, and procurement.

OVERALL OBSERVATIONS

The Taskforce found endemic abuses of allowances, procurement, and employment contracts across the public sector, and that most control measures for curbing “wastage and abuse” of tax-payers money have collapsed. The fundamental weaknesses include the following:

- *Legal and Policy Framework*- laws and regulations that are outdated, inadequate, and inconsistent with the current Constitutional dispensation (for example, Public Service Act, 1994; Malawi Public Service Regulations, 1991).
- *Systems, Processes and Procedures*- lack of adherence to regulations and procedures; weak enforcement of rules and sanctions when officers fail to comply; no reward for compliance; and lack of support for enforcement.
- *Human Capacity* - Poor selection and deployment of authorizing officers; lack of knowledge of regulations; not following procedures (for example, ignoring audit queries); weak enforcement of mandatory training for public officers; and poor or lack of enforcement of performance management systems.
- *Structures* - Uncoordinated oversight structures; lack of a national body to

coordinate, oversee, and harmonize conditions of service across the public service; and incomplete, slow and partial devolution.

- *ICT Infrastructure (Management Information System)* - under-utilization of the IFMIS system, so that budgets are formed outside the system; manual authorization for some financial transactions, for example travel allowances; manual systems in the procurement approval processes.
- *Moral Values, Ethics, Integrity and Discipline* - Moral decay across the public service and in all sectors; poor discipline and lack of adherence to integrity, and respect for ethics and values among public officers.
- *Equity* - remuneration in the Public Service is not fair and in keeping with the principle of equal pay for work of equal value, as provided for in the Constitution, the Public Service Act and the Employment Act.

KEY FINDINGS AND RECOMMENDATIONS

ALLOWANCES

- Allowances make up substantial proportions of the personal emolument (PE) and Other Recurrent Transactions (ORT) budgets. In 2019/20 financial year, allowances in the approved budget totalled MK79 billion, representing 17% of personal emolument and 8% of the ORT budget.
- Despite the fact that Malawi adopted a 'clean wage' policy in 2004 for the civil service, thus consolidating all the allowances into one wage, many allowances have been introduced for some MDAs and not for others, creating inequalities in benefits.

Subsistence Allowances

- Subsistence allowances for travel are the most prone to abuse. In the 2019/20 financial year, MK27.4 billion was approved for subsistence allowances, but what was actually spent was MK 33.7 billion. Over 88% of these allowances are spent by central government officers.
- A sample of audit queries from 9 ministries between 2017 and 2020 revealed that claims for subsistence allowances totalling MK1.3 billion were made for activities or travel that did not take place, for unauthorised activities, overlapping activities for the same claimants, and where cash was paid but

recipients did not sign for it. This amount is just the tip of the iceberg, as the Auditor General's reports show year-on-year abuses of these allowances across all MDAs.

Recommendations:

- Implement full-board facility for local travel, with effect from 1st July 2021 for Grades E and above, and transition all others to full-board, according to grade, with effect from 1st April 2022. This will serve to disincentivise the use of allowances for personal gain, while making sure that public officers on duty are properly accommodated.
- The Department of Human Resource Management and Development (DHRMD) should negotiate with hotels, motels, and lodges for special government rates for full-board accommodation for all public officers, including ministers, with maximum rates for lunch and dinner as part of the full-board regime, which should exclude the cost of laundry and alcohol.
- Controlling Officers must ensure that all full-board invoices from hotels, motels, or lodges are paid within 30 days. They should be held accountable for failure to settle bills, and appropriate sanctions applied.

Sitting Allowances in the National Assembly

- The overall bill of sitting allowance for MPs is around MK598,300,000 per annum. However, MPs are elected and paid to sit and to conduct parliamentary business of making laws, exercising oversight, and representing their constituents. Therefore, paying sitting allowances in order for them to fulfil these responsibilities amounts to double payment, because they receive a salary. Furthermore, these allowances are paid in advance and not recovered when MPs are absent. Parliamentary staff also receive sitting allowances when serving parliamentary committees, although this is not provided in their conditions of service.

Recommendation:

The Parliamentary Service Commission should remove the double payment of sitting allowances for Members of Parliament and parliament staff since this is double payment as they are already paid a salary and other allowances.

Sitting Allowances in Parastatal Boards

- Board members of parastatal organisations receive both sitting allowances and honoraria, as appreciation for their services and they also have their expenses

paid. Payment of the sitting allowances for each meeting can create perverse incentives in some boards to meet more regularly than is needed, in order to maximize the sitting allowances.

- There is abuse of Transport and Travel allowances among *Ex Officio* board members, who are civil servants, when they claim this allowance but use government vehicles and fuel.

Recommendations:

- To remove incentives for frequent board meetings in parastatals, board members should not receive sitting allowances per meeting, but they should instead receive annual honoraria, which can be paid in instalments.
- Payment of Transport and Travel allowances to *Ex- Officio* officers using government vehicles and fuel should stop immediately.

Risk Allowance

- Risk allowance in Malawi is paid to health workers whose jobs are perceived to put them at higher risk of infections. It is paid according to grade, and includes those with desk jobs. However, all health workers already receive top-up allowances (52% of their salary) for 'bed-side' risk and as a retention measure, so the risk allowance is a form of double payment, and likely to cost the government in excess of MK8 billion in the current financial year.

Recommendations:

- No public officer should be paid risk allowance because most professions have some level of risk. Furthermore, health workers already receive lump sum Top-up Allowance for the risk associated with bed-side work.
- Where particular professions have special needs that require consideration, these should be considered as part of the conditions of service.

Poor Enforcement and Lack of Accountability

- Lack of adherence and enforcement of standard procedures was found to be a major cause of the abuse of allowances. This is largely due to lack of accountability of Controlling Officers and public officers, which rises from a culture of lack of application of sanctions for wrongdoing and the lack of a performance management system.

- Without strong accountability mechanisms, sanctions for non-adherence to rules and regulations are never applied, and those who try to enforce rules and procedures are not supported by the system and do not have protection from higher authorities.
- The main system of checking non-adherence is the audit function, yet audit outcomes are never taken seriously or acted upon. Of the 908 audit queries raised by the Central Internal Audit Unit between 2017 and 2020, only 14 (1.5%) were resolved.

Recommendations:

- With immediate effect, the Secretary to the President and Cabinet (SPC) should enforce action on audit queries by Controlling Officers and apply sanctions for lack of action, using the reports received from the Secretary to the Treasury, the Auditor General and the Director of Central Internal Audit Unit. Failure to do so should attract disciplinary action.
- The Auditor General and Director of Central Internal Audit Unit should immediately submit all audit queries not acted upon for the past three years to the President, for the respective Controlling Officers to act within 30 days or face sanctions.
- The Taskforce recommends that the Public Finance Management Act should be amended in order to empower the Secretary to the Treasury to surcharge the public officer who has caused the loss of public funds and property, in order to recover the loss and attach personal liability to the officer concerned.

Performance Management

- The Malawi Public Service's performance and productivity is low, and cannot support the achievement of Malawi's ambitious development goals and Malawi 2063 vision. Some of the reasons for underperformance in the public service include:
 - Lack of alignment between results to be achieved by the individual officer and results to be achieved by MDAs;
 - Lack of alignment between performance management and financial management;
 - Weak rewards and sanctions, and poor conditions of services.
- The government has put in place a number of performance management systems, but these systems appear not to be working. One of the reasons is that there appears to be weak performance appraisal for the SPC and all Controlling Officers at the top of the civil service and a public perception that ministers do not have robust performance goals.
- Weak performance appraisal systems do not only lead to poor productivity,

but they also encourage impunity such as abuse of allowances and other malpractices.

Recommendations:

- To demonstrate strong leadership from the top and the value that the government places on performance appraisals, the President should introduce performance appraisals of the SPC and the Deputy Secretary to the President and Cabinet, supported by independent external evaluators to ensure that all key responsibilities outlined in the PSA, PFMA, and other laws are addressed in the appraisal, with the first round to be completed by 1st June 2022.
- SPC should implement annual performance appraisals for Controlling Officers in line with Performance Contracts of MDAs and in particular, adherence to set regulations and procedures governing allowances, other financial management issues, action on audit findings and ability to take disciplinary action on officers where acts of conduct have been committed.
- The President should introduce, and lead a system for annual public participation in the appraisal of Ministers. Public participation in the hearings should be done through radio, television and other digital platforms.

EMPLOYMENT CONTRACTS

Legal Framework

- There is conflict between the Public Service Act (1994) and the relevant legal legislation governing appointments in many parastatals. Specifically, Section 6 of the Public Service Act, which gives powers of appointment to the President for Grades E and above, has been used to appoint or recruit officers into parastatals, contrary to the recruitment procedures and authority in the respective parastatal's enabling Act.
- Malawi Public Service Regulations (1991) are outdated and not in line with the current constitutional dispensation, developments in employment and labour jurisprudence in many aspects.
- Despite having clear procedures and authority in the administration and management of employment contracts in the public sector, there is poor enforcement of existing laws and regulations.

Recommendations

- OPC and MoJ should review the legal framework to ensure consistency between the public service and the relevant statutes by December 2021.
- With immediate effect, appointments in parastatal organisations should be done by the appropriate authority, as provided for in the specific parastatal's

Act, unless the Act specifically provides that the appointment or recruitment of any of its staff will be made by the President. All appointments and recruitment must adhere to the existing laws.

- DHRMD and the Department of Statutory Corporations should develop clear guidelines, defining recruitment processes and oversight for employment contracts for staff on Grades E and above, both in parastatals and civil service, based on the current legislation.

Disparities in Contracts

- Presidential appointments are placed on employment contracts for a specified period, which averages 36 months. However, some contract holders, such as personal assistants and diplomats who previously were not in the civil service, are absorbed into the civil service upon the expiry of their contract. This amounts to back-door entry into the civil service, and demoralizes civil servants. It also skews human resource planning, causes budget slippages, and politicizes the public service.
- Officers appointed on fixed-term contracts to fill certain position such as assistants to Ministers or valet to a President are attached to specific grades in the civil service salary structure. However, over time these appointees are arbitrarily given higher grades during the course of their service, without following procedures, contrary to the Public Service Act.

Recommendations

- Presidential appointees on employment contracts for a specified period, such as personal assistants and diplomats who are not career civil servants, and non-statutory political appointees such as Special Presidential Advisers, should not transition into the mainstream civil service. Furthermore, the length of employment contract should be aligned to the terms of office of their principals, be it the President, Vice President, Ministers, and Deputy Ministers, as the case may be.
- The law has provided for the President to appoint people with rare skills and to fulfil the required gender quotas. The DHRMD or the recommended Public Service Commission should develop operational guidelines for implementing these appointments and the 40/60 gender quotas.

Processes and Procedures

- There is evidence of cases in the civil service and parastatals, including the Foreign Service, of recruitment of unqualified candidates to positions whose qualifications are clearly provided for by the law.
- Recruitment or appointment without following set procedure has also been a challenge in the civil service and parastatals in Malawi. This comes in the form of either appointment by exercising power *ultra-vires* or recruitment or appointment to a given position which go against the prescribed process.

- There is also evidence of political influence in the appointment/recruitment processes due to politics, cronyism, favouritism or/and corruption. It seems that some people are determined to put their candidates in certain positions, regardless of what the laws provide for. In addition, there is evidence of senior staff transferred to lower jobs or given no work at all.

Recommendations:

- By end of June 2021, the respective boards and DHRMD should terminate all irregular contracts, including those of people recruited without following government-approved procedures, without appropriate qualifications, and political appointees who were absorbed into the civil service, as well as those who are past the retirement age.
- OPC, DHRMD and MDA's should discontinue immediately the practice commonly known as "Quarantine", "Guantanamo Bay" or "Warehousing", where officers are deployed without being assigned to appropriate functions, but still get free remuneration.
- Controlling Officer should follow appropriate procedures for addressing indiscipline and under-performance, including termination of services as provided for in the Employment Act (2000).
- DHRMD should provide guidelines for redeployment or redundancy. All affected officers must have their cases resolved within three months.
- The reasons for transfer or exigencies have to be stipulated in the letter of posting; and DHRMD should develop proper guidelines for posting and redeployment of public officers.
- DHRMD and the Ministry of Foreign Affairs should ensure that the review of the MPSR includes clear guidelines on the eligibility, recruitment, and selection of diplomats to serve in Malawi's Foreign Missions, and that the placement of diplomats in foreign missions is aligned to the Government's foreign policy strategic goals.

Oversight

- There is lack of coordination among oversight institutions, which oversee the management of employment contracts in the public service. This has perpetuated disparities across the public service.
- Some board members of parastatal organisations lack the appropriate expertise and skills to offer effective oversight.

Recommendations

- To ensure distributive justice and equity, OPC should create a National

Remuneration Directorate under the Public Service Commission, which should harmonize remuneration, benefits, and conditions of service across the public service.

- DHRMD should enhance the capacity of and coordination among oversight institutions including boards of parastatals.
- DHRMD, DSC, and National Audit Office should carry out Human Resource audits in the parastatals, the entire civil service, including the foreign mission.
- SPC should take action on existing HR audits by NAO and performance appraisals by Performance Enhancement Department.

CONDITIONS OF SERVICE

Salaries

- Salaries are lowest in the civil service and highest in parastatals, including state-owned enterprises. In particular, the current gross salary of the lowest paid employee in the civil service of MK115,521 per month and the entry salary of a fresh graduate of MK282,370 per month are far below the minimum needs basket of an average family of six (6) people, estimated at equivalent of K300,000 gross salary per month according to the Center for Social Concern by 61.5% and 5.9%, respectively.
- Paying public officers salaries that are below the minimum needs basket violates their right to fair remuneration as is provided under section 31 (1) of the Constitution.
- There are huge disparities in salaries in the public service paid for work of equal value especially between the civil service and the parastatals. There are also huge disparities among the parastatals. The disparities violate the principle of equal remuneration for work of equal value as is provided under section 6 (1) of the Employment Act (2000) and section 8 of the Public Service Act (1994).
- Most civil servants, especially in the low cadres, lack decent housing accommodation and face transportation challenges to and from work.

Recommendations:

- The Taskforce recommends rationalization of salaries and benefits across the public service, in order to promote fairness and the principle of equal pay for work of equal value as required by the law.

- Improve the salaries of public servants so that the lowest paid employee should receive a salary which responds to the Basic Needs Requirement.

Motor Vehicle and Fuel Entitlement

- There is significant wastage in the utilization of motor vehicle and fuel entitlements across the board.
- Officers on Grade C and above are entitled to motor vehicles with engine capacity of not more than 3500cc (usually Toyota Prado TXL) and monthly fuel of 500 litres. There are 68 employees in Grades C and above.
- The government spends MK4.07 billion every year on fuel alone.

Recommendation:

- Downgrade motor vehicles for Grade C officers to 2500cc (e.g. Toyota RAV 4, Nissan X-Trail, or their equivalent). Introduce Motor Vehicle Ownership bank loan scheme backed by the government for Grade D, gradually offering the scheme to lower grades. This revision will result in savings of more than MK12.0 billion in annual vehicle purchase costs and more than MK956.4 million in annual fuel costs.

Education Benefit

- All parastatals pay 100% of school fees for up to two (2) children (below the age of eighteen (18)) for members of Executive Management, at international private schools within Malawi. The choice of school is left to the discretion of the individual employee or the board. The benefit is given irrespective of the performance of the institution and whether or not it is financially sound.
- Parliament pays schools fees within Malawi for up to three (3) children below the age of twenty-two (22) of the Clerk of Parliament.
- Recommendation: Abolish the school fees benefit in public institutions to achieve parity in the public service. Entitlements in current contracts should run their course before effecting this change in policy, but any new contracts from the date of approval should be under these revised conditions.

Performance Management System

The Taskforce identified the following issues under performance management systems:

- There is poor implementation of performance management in the civil service.
- Performance appraisal is not linked to the systems of rewards and sanctions.
- There is inadequate strategic alignment of employees' performance to national priorities through their MDA strategic plans.
- There is lack of integration between the employee performance management system and the organisational performance system, which operate as two separate systems.
- The Performance Management System is practically dysfunctional and ineffective, despite the existence of the Performance Enforcement Department (PED).

Recommendations

- Enforce the Performance Management System (PMS) in the Public Service.
- Strengthen PED and the performance management system with Controlling Officers and heads of institutions taking the lead in management, reward and/or disciplining of officers.
- Implement outstanding human resource audit recommendations by National Audit Office.
- Make enforcement of the PMS a key performance framework for all Controlling Officers and heads of institutions.
- Introduce rewards and sanctions scheme (cost-saving or surplus schemes) aligned to performance management system.
- Controlling Officers must enforce adherence to Institutional Service Charters.

Medical scheme policy

- Currently the Government provides 100% medical insurance coverage for employees in Grades A to C and contributory medical insurance coverage for employees in Grades D to H in ratio of 10:90.

Recommendation:

- Roll out contributory medical insurance coverage to all civil servants commencing immediately with coverage for employees in Grade I in the first year.

Discipline, Grievance Management and Code of Ethics in the public service

- The Malawi Public Service Management Policy (2018 - 2022) acknowledges that there is erosion of discipline in the public service due, among other things, to:
- failure in the enforcement of regulations, ethics and sanctions.
- Appointment to senior positions of inexperienced and/or unqualified individuals.
- lack of a step-by-step manual on decision-making and enforcement of disciplinary rules.

Recommendations:

- Disseminate widely current Human Resource and Development Procedure Manual.
- Regularly train senior managers and supervisors in discipline and grievance management, labour relations and the legislative framework on labour relations.
- Compile all disciplinary acts and penalties in a Disciplinary Action Booklet.
- Develop a step-by-step manual on the enforcement of discipline based on the principles of natural justice.
- Revive and strengthen institutional Appointments and Disciplinary Committee.

Irregular Appointments and Promotions

- There are many challenges in the appointment, promotion and deployment of senior public servants particularly from Grades E and above and in the appointment of members of the Board of Directors of parastatals.
- This has led to perceptions that those appointments are not meritorious especially where the appointee is not a career civil servant.

Recommendation:

- The appointments of public servants should be based on competitive selection procedures managed by the Public Service Commission whose establishment is recommended in Chapter 6 of this report.

- Appointments must be based on competitive selection procedures.
- Finalise the establishment of Malawi School of Government.

PROCUREMENT

Paper-based Manual System for Public Procurements

- The public procurement system is riddled with wrong-doing at all stages resulting in reduced competition, failure to maximize value for money for the tax payer and collusive practices. This is mainly because the system is paper-based and manual, which provides opportunities for malfeasance to pervade the system. Automation of the procurement system is urgently needed and is long overdue.

Recommendations:

- PPDA should expedite the roll-out of electronic procurement system, complete with modules on e-market to enable procuring and disposing entities to 'window' shop, compare prices, source and receive quotations, identify beneficial owners of bidding entities, and contract management among other modules.
- All procuring and disposing entities should migrate to e-procurement system by December 2022.

Failure to Consider Past Performance of Contractors and Suppliers

- Decisions to award contracts in the public procurement system are made without due regard to previous performance of the bidding entities that are not new in the public procurement system. Consequently, contractors with a track record of bad performance, such as late delivery or late completion and poor quality of public works, continue to be awarded contracts, sometimes aided by collusive practices with personnel in the public service. In the procurement of complex services and works, open competition with no rewards for good past performance or sanctions for bad past performance leads to poor quality and low value for money.

Recommendations:

- The Public Procurement and Disposal of Public Assets Act (2017) (PPD Act) should be amended to make it mandatory for procuring and disposing entities to include "past performance" criterion in bidding document and ensure that it puts on record performance of each contract so that it may be applied in future

award of contracts especially for works contractors and consulting engineers.

- PPDA should develop regulations with detailed guidance on the application of this criterion in ways that its application does not unduly disadvantage or advantage any suppliers.
- Furthermore, PPDA should introduce a regulation obliging all procuring entities to file at PPDA reports on contract performance of all contractors and suppliers engaged by them so that a database can be accumulated to be used in decisions to award contracts in future as well as for other oversight functions.

Challenges of the Principle of the 'lowest evaluated bid'

- The public procurement law requires procuring and disposing entities to award contracts on the basis of the 'lowest evaluated bid' principle. However, this principle does not always obtain good value for money for the tax payer. Award of contracts to unrealistically low bids, despite the Public Procurement Regulations guiding on how to deal with the same, have resulted in works projects being abandoned because of insufficient funds to see through the projects or costly delays on project delivery and upward cost variations. Under-budgeting, bad project planning and poor initial designs of works projects or lack thereof often result in upward cost variations so much so that in the end the contract sums surpass even the bids that were seemingly most expensive at the time of the evaluation. Furthermore, there is evidence that the principle in itself incentivizes collusion among groups of suppliers and contractors to rig the procurement by pricing bids in ways that cut out competitors and between public officers and the suppliers or contractors especially on budgeted cost estimates for the procurement.

Recommendation:

- The PPD Act should be reviewed to replace the principle of 'lowest evaluated bid' with that of 'most economically advantageous bid'. Comparative evidence of procurements by multilateral institutions show that competitive procurements achieve more efficient outcomes when tenders are evaluated on the basis of this principle.

Cartels and Procurement Monopolies

- Cartels and procurement monopolies exist in Malawi's public procurement system as a direct and logical result of several factors, including a very weak legal framework for registering economic enterprises that does not capture beneficial ownership of the businesses. Other factors include political

interference in procurements on behalf of bidding entities; and lack of enforcement of applicable laws and regulations to ensure competition in tendering.

- Firstly, there are beneficial owners with multiple registered companies and interlocking directorships. In some procurements, such companies pretend to compete against each other in ways where it does not matter which company wins. They are often aided by procuring and disposing entities by wrongful use of the procurement method of 'Request for Quotations' (RFQ). Such monopolies in public procurement exist in the agricultural, the pharmaceutical and road construction sectors among others.
- Secondly, some procurement monopolies arise from the malfeasance of bid slicing which avoids the PPDA threshold for prior review and enables procuring entities to award slices of the bid to the same contractor/supplier repeatedly. This is a common practice in parastatal organisations and District Councils.
- Thirdly, procurement monopolies arise from abuse of the single source procurement method which is initiated by MDAs and often fuelled by high level political interference. Consequently, contracts are awarded to preferred companies without competition and at prices much higher than market prices.

Recommendations:

- PPDA should develop bidding documents that require all bidders to disclose beneficial owners of the bidding entities.
- E-Government should make interoperable the management information systems of the PPDA, Registrar General and Malawi Revenue Authority.
- PPDA should be capacitated quickly with enough personnel to enable them to monitor and carry out post-procurement audits to identify bid slicing practices for procurements that do not meet prior review requirements and punish perpetrators of the malfeasance as per the law.
- Provide a framework for political leaders in government to sanction their agents and followers who motivate breaches and abuses of the single sourcing method.

Management Override in Procuring Entities

- In most ministries, departments, and agencies (MDAs), procurements are managed by inadequately skilled public servants with relatively low strategic and economic skills and insufficient knowledge about business competition and incentives. In worse scenarios, procurement function is managed by personnel

who do not have procurement related qualifications. Even where procurement personnel are technically competent and qualified, they occupy positions that are lowly graded in the public service structure, with the best cases being in middle management. Thus, in most MDAs, procurement is regarded as a support rather than strategic role. Technically sound decisions of the Internal Procurement and Disposal Committee (IPDCs) and procurement officers are vulnerable to management override. The combination of low skills and low grading appear to incentivize management personnel, including controlling officers, to trump over the decisions and recommendations of the IPDCs whose members simply sit back for fear of reprisals and charges on insubordination.

Recommendations:

- A functional review of MDAs should be carried out by DHRMD focusing on the procurement function to ensure that senior positions such as Director and Deputy Director of procurement are established in the MDAs and facilitate their filling. Furthermore, procurement officers should be required by law or regulations to submit reports on breaches of procedures and distortion of outcomes of procurement evaluation teams to the PPDA and the Malawi Institute of Procurement and Supplies (MIPS).
- Government, through DHRMD, should ensure that procurement positions in MDAs are filled with personnel with the right qualifications and where positions don't exist, they should be created as a matter of urgency and be filled accordingly. MIPS should enforce the MIPS Act and ensure that it acts on MDAs that fill procurement positions with personnel having irrelevant qualifications.

Preferential Procurement

- The Taskforce identified three facilities for preferential procurement, all in law. These are procurement from 'Indigenous Black Malawians' (section 44(10)), from Micro, Small, and Medium Enterprises '(section 36) and Domestic Preference (section 44(6&7)) of the PPD Act. For procurement from Indigenous Black Malawians the law requires "prioritization of all bids to give preference 60 per cent indigenous black Malawians and 40 per cent others for national competitive bidding". The Taskforce observed problems of application as the law targets individuals while bids are submitted by firms. Further, the law appears to focus on number of bids which may in the end not achieve the spirit of the drafters. The other problem is that the provision talks of prioritization of bids instead of contract awards to indigenous black Malawians.
- For Domestic Preference, the Law allows application of a margin of preference to locally manufactured goods and local contractors. For a contractor to enjoy the domestic preference, it must demonstrate to the satisfaction of the entity that at least fifty-one percent is owned by Malawian Nationals.
- The Taskforce also noted that there are framework agreements in the

pharmaceutical sector which are based on a 2019 Memorandum of Understanding between the Government and the Pharmaceuticals Manufacturers Association. The MoU is in a way meant to operationalize the domestic preference. However, the way it has been operationalized breaches core principles of sound procurement especially 'value for money' as prices of products reach as high as 140 per cent above market prices and well beyond the 15 per cent margin of preference; and the principle of competition as prices for products are fixed by the association for all its members without regard to costs of production. Under the MoU, the Government, through Central Medical Stores Trust is restrained from purchasing from alternative sources in the spirit of 'Buy Malawi Strategy' and to support industrial development. The MoU clearly permits collusion among the manufacturers which has led to price fixing.

Recommendations:

- Section 44(10) of the PPD Act should be amended to accord preference to Malawians based on proportion of the monetary value of the procurements rather than number of bids and to focus on firms or businesses rather than individual persons. Further, the amendment should ensure that it removes all ambiguities and other issues in the provision so that implementation is not derailed by challenges emanating from interpretation.
- As regards the Framework Agreements in the Pharmaceutical sector, the Taskforce recommends that the MoU between Government and PHAMAM should be terminated forthwith as it causes downstream breaches of the procurement statute as well as making public hospitals procure at exorbitantly high prices. The Central Medical Stores Trust (CMST) should be allowed to enter into Framework Agreements devoid of oligopolistic fixing of prices through open competition but ensure proper implementation of the 15 per cent price margin of preference for local manufacturers.;
- For objectives on developing industrial capacity of local manufacturers, Government should develop projects and incentives to be implemented by the Ministry of Industry and outside the public procurement system. The drugs budget should not be used for industrial capacity development although it may still be used to advance other government objectives such as creation
- of employment through proper application of domestic preference as recommended above.

Unplanned projects

- The Taskforce found that politicians tend to push for commencement of infrastructural projects when the designs and budget are not ready. Such projects commence without proper procurement and contracting formalities,

and impose financial obligations on the government that do not meet even the minimum requirements of the 'value for money' principle.

Recommendations:

- The Ministry of Finance and the Ministry of Economic Planning and Development should review processes and procedures for the development of the Public Sector Investment Programme (PSIP) to ensure that the process is sufficiently consultative and inclusive and that the criteria for selecting projects into the PSIP is transparent. Once settled, the only projects to commence every fiscal year should be those listed in the PSIP. This will also ensure that public officials take the preparation of the PSIP seriously as it will become the only guide of projects to be implemented over a period.

The Role of Consulting Engineers in infrastructure projects

- Over the past 25 years, civil works of sub-standard quality have been blamed on contractors and public officials. However, most of these works are supervised by consulting engineers who are recruited to represent the entity in ensuring that the works are executed in accordance with the contract. Evidence points to collusion among contractors, engineers, and public officials, as well as lack of expertise to adequately represent the client.

Recommendation:

- Consulting engineers should also be made liable for any poor works rendered to the public sector. PPDA and the National Construction Industry Council (NCIC) should come up with regulations guiding the conduct of consulting engineers with clear penalties for failure to execute contractual obligations diligently. The consultant should be obliged to share the responsibility for poor works.

Streamlining the Procurement Approval Process

- The Taskforce found multiple approval points for public procurement, some of which cause unnecessary delays. In particular, the approval by the Office of the President and Cabinet, which is represented on the PPDA board, is unnecessary since it comes after the PPDA has given a 'No Objection'.
- The Taskforce observed that approvals by the PPDA and the ACB are provided for by the law while those by the Government Contracting Unit (GCU) and the OPC are not, but were introduced administratively.

- The Taskforce observed that the administrative vetting authorities wields vetoing powers over decisions made by the statutory authorities. In fact, the circular issued in July 2020 by the Secretary to the President and Cabinet makes this position clear.

Recommendations:

- The circular requesting procurements to be approved by the OPC should be withdrawn and reissued to be in line with the PPD Act.
- Only authorities statutorily mandated to review procurements should be involved in the procurement processes. Thus, the administrative roles of the Ministry of Justice (MoJ) and GCU should be revised immediately to streamline them and properly limit them to advising and supporting procuring entities in contracting and contract management.
- In compliance with the procurement regulations (s.141), the roles of MoJ and GCU should be done within the stipulated three months of entering a contract to avoid re-opening upstream procurement processes.
- The GCU's role in contract negotiations, drafting and management is critical as most MDAs do not have posts and skilled personnel for these tasks. The Taskforce recommends that the GCU should be properly and adequately capacitated to assist MDAs in contract negotiations, drafting and management. This role should be legislated.

RESTRUCTURING THE PUBLIC SERVICE

Definition of the Public Service(s) and the country's system of Government

- Although the Constitution outlines the "State" in Sections 1, 2 and 3, it falls short of providing a definition for "government", and of the "public service". This omission creates tensions and lack of clarity in the definitions provided in the other legal instruments, and affects how different "public" sector institutions relate to each other in the delivery of services. This blurs lines of accountability.

Recommendations

- Amend the Constitution to provide a clear definition of "government" and its organs. This definition is necessary in order to provide proper alignment of public service institutions.
- Revise the Public Service Bill (2019) to provide the definitions of both 'state' and 'government', as well as their separate organs which jointly constitute the public service

- Amend the Constitution to introduce a chapter on the public service which should provide a clear definition and structure of the public service(s) in relation to the organs and institutions of the State and Government
- Hold a Constitutional Conference within the next 24 months, followed by a referendum within 12 months after the conference to resolve the issue of the type of government system that Malawi should use.

Headship of the Public Service

- Section 16 of the Public Service Act (1994) states that the SPC shall be the head of the Public Service. Section 20 of the Public Service Bill (2019) places the SPC as head of a broadly defined public service, effectively making the SPC the head of the Judicial Service, the Civil Service, Parliamentary Service, as well as constitutional (state) bodies. The Taskforce found these provisions to be inconsistent with Section 94(4) of the Constitution, which only provides for the Secretary to the Cabinet (not Secretary to the entire Executive, as defined in Section 9 of the Constitution).
- The Taskforce observed that placing the entire public service under the headship of the SPC (refer to Bill), who is Secretary to Cabinet (refer to Constitution) in effect extends the powers of the Secretary to Cabinet beyond Cabinet responsibility, and contradicts the principle of Separation of Powers.

Recommendations

- Within the next 12 months, amend the Constitution to create the Public Service Commission as a State body outside the Executive, which oversees the management of the Public Service and reports to the Head of State.
- Amend Section 92(4) of the Constitution to create the position of Secretary to the President and Cabinet, rather than Secretary to Cabinet.
- Amend Chapter 20 of the Constitution to provide that the SPC shall be head of the Civil Service.

Size and Character of the Public Service

- The Taskforce concluded that there are no clear written guidelines for determining the appropriate structure and size of the public service. In relation to Constitutional provisions for the three branches of the Government, for instance, there are no economic constraints against increasing the number of constituencies; no limitations on the size of the Cabinet, or determining its exact portfolios; and no upper limits are set on the numbers of Supreme Court and High Court judges. These gaps have adverse implications on the structure, size and stability of the Public.

Recommendations

- Amend Section 76(2) of the Constitution, to provide that the number of constituencies shall not exceed 200.
- Amend Section 93 of the Constitution to stipulate the exact list of government ministries, guided by the principles of national policy stipulated in Section 13 of the Constitution. In line with that section, 21 ministries should be the maximum number, and the number of deputy ministers should be limited to five.
- In view of the proposal to create a Court of Appeal, amend Section 105(1) of the Constitution to limit the number of Supreme Court judges to nine, inclusive of the Chief Justice, and amend Chapter IX to create the position of Deputy Chief Justice.

Human Resource Development

- Human resource development functions for the public service are spread across more than one institution – DHRMD, the Ministry of Labour, TEVETA, higher education institutions, and technical and vocational education institutions – without proper coordination. The establishment of the proposed Public Service Commission and the Department of Public Service Management under it will resolve some of the coordination challenges.
- The Ministry of Labour has an Internship Programme that places university graduates in government ministries, departments, and agencies. The programme provides a unique opportunity for human resource development and for managing vacancy rates in the Public Service. However, it is not institutionalized.

Recommendations

- Create a Directorate of Skills Development in the Public Service Commission to run the Internship Programme as one of its key functions.
- Carry out an institutional assessment of Technical Education and Vocational Training Authority (TEVETA) with a view to move it to the Ministry of Education together with technical and vocational education

Decentralization and Devolution

- Despite the existence of an elaborate legal and policy framework, and notwithstanding some limited progress made and acknowledged, the Taskforce concluded that devolution has been slow and partial. Moreover, local authorities lack human resources, finances and competences to be effective in the delivery of the devolution mandate. There is also evidence that staff are transferred between districts, and between local and central government, which

contradicts the principle that staff should be recruited by specific authorities.

Recommendation:

- Fast-track complete devolution, as follows:
 - (i) The delivery of public services should be a local government function.
 - (ii) The Central Government should only focus on: (a) Policy-making; (b) Capacity building; (c) Resource mobilization; (d) Monitoring of programmes, setting standards and quality control; and (e) Harmonization of terms and conditions of service across the Public Service.
 - (iii) The Staff Development Institute and the Malawi Institute of Management should design and implement specialized training and capacity building programmes for local authorities focusing on, inter alia, human resource management, financial management, governance and managing for development results.

The Governance and Management of SOEs

- Malawi's current legislation provides a reasonably adequate framework for safeguarding government interests in state-owned enterprises (SOEs) and protecting public money. The creation of "private" state-owned companies and, more particularly, their legal interpretation as investments outside the scope of government control, despite being owned by the State, create enormous risks of asset stripping and contingent liabilities on the State contracted without its authorisation. The Taskforce further noted that the constitutions of the boards of directors of SOEs are not based on standard or common principles.

Recommendations

- The creation, merging and dissolution of SOEs should be the express responsibility of line ministries.
- Policy formulation and direction for specific SOEs should be the express responsibility of the governing boards of SOEs, in consultation with line ministries
- Further review should be undertaken to examine the relevance of the DSC and the proposed state corporations' policy, in view of the fact that the legal and regulatory instruments are adequate for providing the appropriate governance and financial management of SOEs.



PART A:
**GENERAL
OVERVIEW**

**CHAPTER 1:
INTRODUCTION**

1.0 Background and Taskforce Assignment

On 19th February, 2021, His Excellency Dr Lazarus McCarthy Chakwera, President of the Republic of Malawi, appointed a Special Taskforce chaired by the Right Honourable, Dr Saulos Klaus Chilima, Vice President of the Republic of Malawi, in his capacity as Minister of Public Sector Reforms. The Taskforce was mandated to comprehensively review three government systems of allowances, procurement, and employment contracts and submit recommendations for their reform to him within three months. The President's broad-brush instructions to the Taskforce were as follows:

"To clean up the system as a whole, we must conduct a comprehensive review and overhaul of the three government systems of allowances, of procurement, and of employment contracts. That is the public sector reform that this country needs most urgently...The recommendations must include any legislative changes we must make in our laws at one of the sittings of Parliament this year so that our laws protect the interests and resources of the public, not the rubble of public servants who use broken systems to loot and use bad laws and contracts to keep their jobs in the system and keep looting. The recommendations must also include a restructuring of the civil service to be more efficient and of civil servants' conditions of service so that the good people in the system are well supported and not able to use poor pay as an excuse for wasting, abusing, and stealing public resources"

[HE Dr Lazarus McCarthy Chakwera, President of the Republic of Malawi, February, 2021]

1.1 Taskforce Terms of Reference

Based on these instructions the Taskforce developed six broad terms of reference for its work, as follows:

- a. Review and recommend an appropriate System of Allowances for the Malawi Public Service.
- b. Review and recommend an appropriate System of Procurement for the Malawi Public Service.
- c. Review and make recommendations on the System of Public Service Employment Contracts.
- d. Review and make recommendations on the Conditions of Service in the Public Service.
- e. Review and make recommendations on commensurate package for the Public Service.
- f. Review and make recommendations on institutional restructuring of the Public Service.

Due to the nature of the components of this assignment, the Taskforce focused on the entire public service as opposed to only the civil service. The wider public service plays a major role in national development through delivery of services and creation and maintenance of an environment necessary for the private sector to thrive.

1.2 Contextual background

The Malawi Public Service is currently regulated primarily by the Constitution (1994), the Malawi Public Service Regulations (1991), the Public Service Act (1994), the Public Finance Management Act (2003), and the Public Procurement and Disposal of Assets Act (2016). There are also various other statutes, policies, and regulations (see *Appendix 2*). All these provide for a public service that is professional, responsive, accountable, impartial, efficient, and effective. A comprehensive review of the government systems was critical at this time, to enhance the quality of the public services delivered to the public.

Malawi recently launched the Malawi Vision 2063 (MW2063), a blueprint for national development. To deliver the Vision, the country needs a highly motivated and diligent technocratic and professional public service. The vision correctly recognises that an effective, efficient and dynamic public sector is a critical enabler of development delivery. The national development ambition cannot be realized with broken, inefficient, and ineffective public service systems.

Broken systems manifest in varied ways. For example, despite the implementation of various reforms in the civil service to ensure fair and competitive recruitment, there have been cases of maladministration, such as individuals exercising power ultra-vires, political influence and corruption in the recruitment processes, and nepotism in promotions. There have been cases of officers being handpicked without going through fair and competitive processes of recruitment. Public Service systems for determining remuneration and benefits operate in disjointed and unprofessional ways, and have given rise to palpable disparities in remuneration across the public service. This has led to a deficit of distributive justice and equity in the system.

These malpractices are compounded by a resilient culture of corruption, graft, and theft of public resources in the country. While corruption cases have been recorded every year, there have been prominent incidents that highlight its scope and depth. Recently, the abuse of COVID-19 resources, where it is estimated that nearly 80% of MK6.2 billion meant for the response to the pandemic was used in allowances, led to an outrage in the country and prompted the formation of this Taskforce.

The overall impact of abuses of public funds is measured not only in terms of the financial losses and the public services and development programmes forgone, but also by the lack of performance in government as officers “chase allowances” when they should be working. The International Monetary Fund estimates that reducing

corruption in Africa could lead to a GDP growth of between 1-2 percent per year.ⁱ If Malawi's economy is to grow sustainably and equitably, to realise the ambitions of Malawi 2063 Vision, the country needs to stop the draining of public funds by having strong political will, robust public finance management regulations, and intolerance of corrupt practices across all sectors and at all levels.

1.3 Approach and Methodology

The Taskforce deployed a methodological approach that had six core elements. These included division of work, data collection and analysis, plenary sessions, writing camp and validation and adoption of the report. This section describes each of these elements and how they were tackled.

Division of Work

During its first meeting, the Taskforce considered the broad Terms of Reference that the President had spelled out in his commissioning speech. The Taskforce created subcommittees to enable in-depth analysis of the core components of the review, as identified by the President. Members of the Taskforce either volunteered or were assigned to a sub-committee based on their competences, interests and skills.

Five subcommittees were created as follows: Allowances; Conditions of Service; Employment Contracts; Public Procurement; and Public Service Restructuring. Each sub-committee was supported by members of the secretariat that were drawn from various ministries, departments and agencies.

The sub-committees were responsible for carrying out research and analysis, producing findings and outlining proposed recommendations. They were also responsible for presenting their findings and recommendations to the plenary sessions of the Taskforce for peer review.

Data Collection and Analysis

The aim of the review was to generate in-depth understanding of the practices in the various systems, in relation to the sets of laws, rules and regulations governing these systems and make necessary recommendations. Therefore, the Taskforce adopted qualitative methods to collect primary and secondary data and information. In a few instances, as dictated by the analysis, secondary quantitative data was also collected and analysed using basic arithmetical operations. Three main methods were used to collect data and information: review of documents, consultations with stakeholders and call for submissions from the general public. These methods are explained further in the following sections below.

a) Review of documents: The task force collected and reviewed a large number of documents on the topic areas of the review. The documents included legislation

and regulations governing the systems under review, government circulars, audit and other oversight reports, other official and independent reports, published and credible print and electronic media entries, grey literature and relevant scholarly literature. Comparative information from other jurisdictions was collected through systematic internet search as well as direct requests made by the taskforce to relevant authorities. Appendix 3 contains all the documents reviewed and referenced throughout the report.

b) Consultations with stakeholders: The Taskforce carried out consultative sessions with a range of stakeholders using different methods, including online facilities mostly Zoom and MS Teams Meetings, physical group interviews as well as single member key informant interviews. Stakeholders made presentations and answered questions from members to affirm or clarify facts and to provide insights to the Taskforce in its diagnostic work. *Appendix 2* provides a list of stakeholders that interfaced with the Taskforce.

c) Call for public submissions: Through the Office of the Vice President, the Taskforce issued a call to the general public to submit their views on any or all of the public service systems under review. The Taskforce also sought information from targeted key informants through emails sent to reviewtaskforce@ovp.gov.mw, or through the Malawi Public Sector Reforms Facebook Page: <https://www.facebook.com/MalawiPublicSectorReforms>, WhatsApp, and Twitter handle (@the_reforms). The Taskforce wanted to understand how members of the general public interpreted the problems in the systems under review, based on their own perceptions and information, and how they thought the problems could be addressed. The Taskforce received 374 submissions through the secretariat and also through individual members. Many people also expressed themselves on the issues under review and made their own recommendations through social media, which ultimately ended up at the Taskforce's forum. The Taskforce reviewed and analysed all of these inputs.

Data analysis: The main method used to analyse the data in this review was analytic comparison. Prevailing practices in the systems or components under review were compared or contrasted with the ideal situations as contained in the respective laws and regulations. Laws, regulations and practices in one domain, for example in parastatals, were compared with those in other domains of the public service such as civil service. Similarly, laws, regulations and practices prevalent in Malawi were compared and contrasted with those obtaining in other jurisdictions such as South Africa, Ghana, and Kenya, or against international best practices. In carrying out these analyses, the Taskforce paid attention to contextual similarities and differences, to ensure that comparison and contrasting were done on and for variables that were comparable.

Plenary Sessions of the Taskforce

The Taskforce held plenary sessions every fortnight from its first meeting, chaired

by the Vice President. During these sessions, the Taskforce settled methodological issues, and tracked progress on each component. The sessions also served as a peer review mechanism and enabled debate on emerging findings and recommendations as well as keeping all members of Taskforce abreast on work under all the components of the review.

Writing Camp

The Taskforce went on a one-week retreat to enable members of the subcommittees to physically work together and finalize writing of their components reports. Each component report then was presented and peer reviewed in plenary sessions. During these sessions, Taskforce members with divergent views on the findings and recommendations presented were encouraged to table their arguments, leading to revisions and consensus.

Consolidation, Validation and Adoption of the Report

The Taskforce identified five members to serve as a consolidation team. The team put together the various component reports into one report, which was validated and adopted by the Taskforce.

1.4 Limitations

Overall, the process of reviewing the government systems proceeded smoothly. However, the Taskforce experienced some challenges that included the following:

- a) Minimal international bench-marking: The Taskforce relied on comparative literature and did not make any study visits to gather information on practical experiences in other countries.
- b) This report does not quantify systematically in monetary terms the abuse and waste that happens through allowances, procurement, irregular employment contracts and related conditions of service. This is because the Taskforce collected data from a purposively chosen sample of stakeholders and the primary objective of the review was to understand the practices and behaviours, their motivating factors, and the weaknesses in the laws and regulation that collectively are responsible for the malfeasances in the systems. Thus, most of the issues identified are indicative, rather than the totality of all abuses and amounts misspent.
- c) Another limitation is the lack of detailed institutional analysis. Given the limited time available to the Taskforce (90 days), no detailed institutional review and analysis could be conducted. The data analysed in this report are therefore only partial.

Despite these challenges, all efforts were made to ensure that the assignment was concluded successfully and that its core objectives were accomplished in the most

efficient, effective, consistent and professional manner.

1.5 Structure of the Report

This report is organised in three parts. **Part A** provides a background and introduces the report. **Part B** presents findings and recommendations and **Part C** presents an implementation plan and appendices.

Part A has Chapter 1 and provides the general overview. It presents the Taskforce's Terms of Reference, the contextual background to the work of the Taskforce, the technical approach and methodology, and the limitations and challenges faced during the assignment.

Part B presents analysis of the key findings and relevant recommendations arising from the findings. It has six chapters. Chapter 2 focuses on the review of system of allowances. The chapter starts with a mapping of allowances to indicate the types, purpose, and rates of allowances, followed by a review of the legislation, regulations and policies governing the allowance system; and the guidelines, procedures and practices in the administration and management of allowances that are applicable in the public service. The chapter also provides a problem analysis that identifies root causes of the abuses of allowances and recommends measures to address them. For the purposes of comparison, the chapter explores alternative practices in the administration and management of allowances in other public sector institutions in other jurisdictions. Based on that analysis, appropriate recommendations are proffered for a system of allowances to be used in the Malawi public service.

In Chapter 3, the report provides a review of the system of employment contracts. It examines the existing employment policies, legislation, regulations and practices on employment contracts. It assesses types of contracts based on existing recruitment procedures and placement of officers in the Public Service and recommends appropriate recruitment procedures and practices for employment contract.

Chapter 4 reviews conditions of service and recommends some fair, equitable and competitive conditions to help attract and retain a competitive and highly motivated work force which is efficient and effective in the delivery of public services and commands public confidence and respect. The Chapter reviews the existing policies, legislation and regulations on conditions of service and shows the existing disparities in the public service. It compares conditions of service in a selected number of public sector institutions to illustrate the points and form a basis for recommending appropriate changes to the conditions of service in order to manage, attract and retain the best talent. The Chapter puts special focus on the disparities between and within the civil service and the parastatals in employment, wages, and benefits for employees in the same job grades.

In Chapter 5 the report reviews Malawi's public procurement system in terms of its institutional framework, law, rules and regulations and practices and makes recommendations for an effective, efficient and value-for-money-oriented procurement system for the country. Specifically, the analytical work in this Chapter focuses on

- i) Examining the institutional framework for public procurement, based on the 2017 Public Procurement and Disposal of Public Assets Act (PPDA Act) to determine if it is fit for purpose;
- ii) Reviewing procurement methods used in the public service and their vulnerabilities to loss and wastage of public money;
- iii) Identifying ruses or schemes for malfeasance in public procurement and the incentives that drive them;
- iv) Reviewing the functional competence of the PPDA and the Anti-Corruption Bureau (ACB) to exercise effective oversight over public procurements, to ensure value for money;
- v) Reviewing approaches, effectiveness and efficiency of contract management to avoid budget overruns; and
- vi) Examining the provenance and administration of rewards and sanctions applicable to procurement entities, their officers, and suppliers.

Appropriate recommendations are made on all these areas.

Chapter 6 focuses on proposals for restructuring of the Malawi Public Service. The general objective of the chapter is to review and recommend an institutional restructuring of the Malawi Public Service, in order to re-establish a rationalized and right-sized Public Service that effectively enforces its laws, procedures, policies, and contracts. The ultimate objective is to have a technocratic and professional public service that is efficient and effective in the delivery of its services, is duly accountable to the public, and delivers development. The Chapter reviews the legal and policy frameworks for the current structure of the public service, identifies gaps therein, and makes appropriate recommendations for resolving them. It further makes proposals for aligning the public service structure and size to the national vision and key service delivery imperatives, and recommends an appropriate operational model.

Chapter 7 presents the Conclusion. Here the Taskforce notes that for meaningful change to occur it should start from the top leadership. The principals in the three branches of Government should drive it. Mindset change should start with the top managers in public institutions in order for the lower ranks to follow. Without the top managers being exemplary, no junior will point in the need to change. The Taskforce further observes that a number of recommendations it has made have legal implications, or require that some laws be amended. It is therefore imperative that the guidance of the Attorney General be sought at all times in the process of their implementation. Furthermore, the implementation success of the majority of the recommendations will depend on the performance of the national economy.

Growing the economy, minimizing wastages and leakages will be key to the success of the proposed reforms.

Part C contains a Chapter 8 containing the Action Plans and Appendices. The report has four appendices as follows:

Appendix 1, i.e. 1.1. and 1.2, containing names and details of the Taskforce members, and members of the Secretariat, respectively

Appendix 2: List of institutions and individuals consulted by the Taskforce during data gathering exercise

Appendix 3: List of names of individuals consulted per institution and date of consultation

Appendix 4: List of key documents consulted

Appendix 5: Additional tables and figures.



PART B:

ANALYSIS AND DISCUSSION OF KEY FINDINGS

This section presents analysis, key findings, and recommendations on each component of the review, namely: allowances, contracts, conditions of service, procurement, and restructuring.

CHAPTER 2: SYSTEM OF ALLOWANCES

2.1. Background and Problem Statement

This chapter addresses the system of allowances in the Malawi public sector. Previous studies have shown that abuse of allowances is entrenched throughout the Malawi Public Service. A 2012 study examining abuse of allowances in public service in Malawi, Tanzania, and Ethiopia reported that malpractices were widespread in the public sector,ⁱⁱ such as claiming subsistence allowances without travelling and un-necessary organisation of activities away from the duty station. The study also found that subsistence allowances made up about 22 percent of a Malawian civil servant's salary and that the total allowances bill for domestic and international travel was as high as nine percent of the national budget. Similar findings have been confirmed in other studies.ⁱⁱⁱ Subsistence allowances for local travel are most prone to abuse than allowances for international travel. Most common occurrences of abuse include: receiving allowances without travelling; claiming full daily subsistence from more than one meeting in a single day; and claiming allowances for unauthorised activities.

2.2. Objectives of the Review of Allowances

The overall objective of reviewing the system of allowances was to identify and address the causes of financial abuses in the Malawi Public Service, and make recommendations to minimize them.

Specifically, the Taskforce:

- a. Reviewed the existing legislation, regulations and policies governing the allowance system;
- b. Conducted mapping of the different types of allowances in the public service to identify their purposes;
- c. Reviewed guidelines, procedures and practices in the administration and management of allowances that are applicable in the public service;
- d. Undertook a problem analysis to identify root causes of the abuse of allowances and recommend measures to address them;
- e. Explored alternative practices in the administration and management of allowances from other public sector institutions and other jurisdictions, and;
- f. Made recommendations for a system of allowances to be used in the Malawi Public Service.

Allowances are commonly categorised into two: i) remunerative (for example, housing, fuel, professional, top-up, medical and honoraria) which enhance the salary and are often fixed; and ii) work-facilitating allowances, to compensate employees for costs related to work, for example daily subsistence allowances (DSA) paid when an officer is required to work away from their usual duty station. While remunerative allowances can be abused, they are less likely to be manipulated or changed because of their fixed nature. Work-facilitating allowances, on the other hand, are not monthly fixed payments and can be paid or withheld for various and miscellaneous reasons.

2.3. Legal and Policy Framework

The Malawi Public Service Regulations (1991) provide guidance on the various allowances paid in the public service. The Public Service Act (1994) grants authority to establish and manage the different types of allowances in the Public Service to the Department of Human Resource Management and Development (DHRMD), which is under the Office of the President and Cabinet. The provision of allowances is stipulated in the laws of Malawi (see Table 1) as well as in the Constitution, which guarantees the right of every individual to fair and safe labour practices and to fair remuneration (section 31). The Constitution also compels the State and responsible officers to exercise “*transparency, personal integrity and financial probity and which by virtue of their effectiveness and transparency will strengthen confidence in public institutions*” (section 13 (o)).

Table 1: Laws and Regulations on Administration and Management of allowances

Primary Legislation	Policies and Regulations
<ul style="list-style-type: none"> • The Public Service Act, 1994 • The Malawi Public Audit Act, 2003 • Employment Act, 2000 • The Public Finance Management Act, 2003. 	<ul style="list-style-type: none"> • Malawi Public Service Regulations (MPSR) 1991. • Malawi Public Service Commission Regulations (1989) • Treasury Instructions, 2004. • The Malawi Travel Policy for the Public Service, 2007 • Circulars from DHRMD and <i>Secretary to the President and Cabinet</i> (SPC) (see list in Appendix 1) • Terms and Conditions of Service for Parliamentary Service, 2017. • Public Service Management Policy, 2018-2022. • Conditions of service for Judicial Officers and Conditions of Service of Members of staff of the Judiciary.

2.4. Findings: Mapping of Allowances

This section presents the allowances that are available in the public service. Table 2 shows the work-facilitating and remunerative allowances.

Table 2: Allowances in the Public Sector

Work-facilitating Allowances	Remunerative Allowances	
Meal	Special Housing	Security
Incidental	Top-up	Leave grant
Sitting	Non-practicing	Professional
Honorarium	Entertainment	Risk
Field	Responsibility	Student
Communication (Telephone, Internet)	Education	Hardship, Rural hardship
Facilitation	Children (Foreign Office)	Children Education Support
Duty	Fuel	Cell phone purchase
	Group Medical Insurance	Motor Vehicle Maintenance
	Transport	Guest House
	Constituency	Utility
	Hospitality	Furniture
	Christmas present	Gardening tools
	Hard and soft furniture	Security
	Household help	Cleaning material

The Taskforce noted that most remunerative allowances in Table 2 apply to a few Ministries, Departments and Agencies (MDAs) because they were specifically requested by the particular MDAs and approved by the Office of the President and Cabinet (OPC) and Treasury. This is despite the fact that Malawi adopted a 'clean wage' policy in 2004 for the civil service. As a result, inequalities in remuneration for work of equal value across MDAs have been introduced, in contravention of section 8 of the Public Service Act (1994) and the Malawi Employment Act (2000). The work-facilitating and remunerative allowances for the civil service are presented in Tables 3 and 4, respectively.

¹Clean wage is the concept in compensation and benefit for employees where all allowances are amalgamated under one head

2.4.1. Allowances for the Civil Service

Table 3: Work Facilitating Allowances in the Civil Service

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Daily Subsistence allowance (Local travel)	Accommodation and meals not provided.	20,000-60,000
	Incidental: where accommodation, Bed and Breakfast, is provided.	4,000-7,000
	Incidental: Full-board stay, not more than 5 nights.	500-2,000
	Field Allowance. For each additional night beyond the initial 5 days spent outside the duty station.	2,500-6,000
	Meal allowance: Working outside duty station for 8 or more hours, but not including overnight stay.	800-2,500
External travel allowance	Where accommodation, meals and incidentals are not covered	\$180-\$300
	Top Up Allowance: To cover incidentals for fully funded travel for a maximum of 21 days per year.	\$50
	Transit Allowance: To cover nights spent in transit, excluding nights spent in an aircraft.	25% of applicable rate
Cellular Phone handset	Phones purchased once every two years for designated officers.	250,000-350,000

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Mobile phone airtime	Mobile Phone Airtime (monthly)	21,000-50,000
Honorarium	One-off allowance payable for special assignments whose duration is of not less than two weeks.	150,000-300,000
Locum	Paid to health workers who fill gaps due to inadequate health workers in health facilities.	4,800-35,000
Ministry of Education		
Field allowance	For students training as teachers	20,000
Mentorship honoraria	For head teachers and teachers at Teacher Training Colleges (Monthly)	2,000
Ministries of Agriculture/ Irrigation and Water Development/ Departments of Parks, Wildlife, Geological Surveys		
Monthly Field Allowance	For frequent field duties for periods of at least a month.	25,000-45,000
Office of the President/Office of the Vice-President and State Residences.		
Duty Allowance (Monthly)	Working odd hours including weekends, depending on urgency of work and workload	72,000-130,000

Table 4: Remunerative Allowances in the Civil Service

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Leave Grant	Annual grant to assist officers while on leave	31,000-112,000
Student Allowance	Payable to student interns employed in the civil service during vacation	8,563-34,214
Acting Allowance	Allowance payable to an officer formally appointed to act in a higher post that is temporarily vacant subject to a minimum of 30 days	Difference between substantive salary and entry salary for the higher grade
Group Medical Insurance	MASM medical cover for civil servants (depending on grades)	90% of Executive scheme for officer, to 100% of VVIP plus for dependants.
Fuel Allowance	Paid to Grades A to E	250 to 2,500 litres
Domestic Worker Allowance	Allowance for domestic workers (cook and gardener) for officers in Grades A and B	Equivalent to Salary for Grade Q for each domestic worker entitled
Monthly Top-up allowance for health workers	Paid to health workers in contact with patients as a retention measure	25,000 - 405,000
Risk allowance for health workers	Risk allowance for health workers according to grade.	20,000-60,000
Ministry of Justice		
Non-Practising (Monthly)	To retain and motivate non-practising lawyers working in the main-stream civil service and Diplomatic Missions.	250,000

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Telephone allowance	Telephone allowance for lawyers (Monthly)	30,000
Departments of Climate Change and Meteorological Services and Civil Aviation		
Duty/ Professional Allowance	Monthly allowances payable to civil servants who perform duties of a professional nature	8,250-12,000
Ministry of Education		
Rural hardship allowance	Paid to teachers that are stationed in rural areas	10,000
Office of the President, Office of the Vice-President, and State Residences		
Electricity		17,000-36,000
Water		15,000-29,000
Annual clothing allowance		154,000-203,000
Honoraria for Traditional Leaders	Payable monthly	5,000-100,000

In the Ministry of Health, health workers currently receive Top-up, Professional and Risk allowances, while the only applicable remunerative allowance for teachers is rural hardship. Other remunerative allowances for teachers stipulated in the Government Teaching Service Regulations (2001) such as Responsibility (Cap. 44), Acting (Cap.46), Professional (Cap. 49) and Housing (Cap. 50) have never been effected.

2.4.2. Allowances for the National Assembly

The National Assembly has its own system of allowances set by the Parliamentary Services Commission and approved by the House itself (see Table 5).

Table 5: Allowances for Parliamentary Staff

TYPE	RATIONALE	RANGE (MK unless specified otherwise)
DUTY FACILITATING ALLOWANCES		
Daily Subsistence Allowance (DSA) within Malawi	When accommodation and meals are not provided	32,000-75,000
	Full-board provided. Incidental is 25% of DSA	12,500-18,750
	Meal allowances: when only bed and breakfast are provided	15,000
External Travel Allowances	Daily subsistence	\$130-\$470
	Telephone allowance, depending on grade	\$20-\$120
Communication Provision	Cell phone (replaced every two years)	100,000-1,200,000
	Cell phone airtime	Grade NA1 post-paid; All-20,000-30,000
	Landline monthly bill	10,000-35,000
	Internet credit for Grades NA1- 4	104,000
REMUNERATIVE ALLOWANCES		
Fuel Allowance	For Grades NA5/F and upwards	100 litres-600 litres
Group Medical Insurance	For officers, spouse and up to 4 legal dependents < 21 years.	100% (staff and spouse) 90%, dependents
Leave Grant	Payable once a year, depending on grade	55,000-135,000

TYPE	RATIONALE	RANGE (MK unless specified otherwise)
Residential Security	Grades NA3 and above have 24-hour security, Grade NA4 receive a monthly allowance	60,000 per month for Grade NA4
Non-Practicing Allowance	For Parliamentary Counsel	250,000
	Telephone allowance	30,000
Hardship Allowance	Payable to Table Clerks, employees who record and publish the daily proceedings of the House,	5,000
Transport Provision	Motor Vehicle Provision	Grade NA1, Four-wheel drive car and Saloon vehicle
		Grade NA2, 1 Four-wheel drive vehicle
		Grade NA3, 1 Saloon
		Commuter transportation
Children Education Support for the Clerk	School fees, up to 3 of children below 22 years	Based on invoice

The types of allowances for Parliamentary staff are generally similar to civil service allowances, except for Risk and Meal allowances, which Parliamentary staff do not receive. Parliamentary staff have slightly higher subsistence allowance rates than the civil service, although the bands overlap (see Table 5). For external travel allowance, the highest amount is \$470, compared to USD \$300 in the civil service. The Clerk of Parliament receives a Children's Education Support allowance, which appears to have no upper limit, and does not exist in the civil service.

2.4.3. Allowances for the Members of Parliament

The Taskforce estimated that, on average, a Member of Parliament (MP) gets more than MK2,750,000 per month in remunerative allowances, and over MK4,400,000 for the Speaker, not including salaries (see Table 6). The subsistence allowances for MPs are generally higher than those of civil servants. For example, the minimum

local subsistence rate for an MP is MK60,000, which equals to the maximum rate for a civil servant (see Table 6). Maximum rate for external travel allowance for MPs is more than double the maximum for the civil service (\$650 v \$300).

MPs receive either house allowance if they are living in their own homes or house rent, paid directly to landlords if they are in rented accommodation. MPs also receive a sitting allowance every time they attend a plenary or committee meeting. The only other institutions where this allowance exists is in boards of parastatals. It is worth noting that while MPs attend plenary committee meetings as part of their normal work board members of parastatals do not.

Table 6: Allowances for Members of Parliament

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
WORK-FACILITATING		
Travelling on Duty Within Malawi	Daily Subsistence allowance (DSA) where accommodation is not provided	60,000-90,000
	Per Diem for incidentals (on full-board)	10,000-12,000
External Travel	Subsistence Allowance: to cover costs of accommodation, meals and incidentals	\$130-\$650
	Top Up Allowance for fully funded travel	\$130
	Telephone Allowance	\$80-\$120
Sitting	When attending Plenary or Committee Meetings	20,000-23000
Presiding Allowance	For Speaker, Deputy Speakers, Leader of Opposition for when they are presiding in the House Chamber.	90,000

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Transport and Travel	Mileage claims at 60% of fuel pump price per kilometres for travel to attend plenary sessions and Committee Meetings of the National Assembly	60% of fuel price per kilometre
Mobile Telephone		38,400
REMUNERATIVE ALLOWANCES		
Fuel	Monthly fuel allowances	600 litres - 1,500 litres
Motor Vehicle Maintenance	Monthly allowance vehicle for maintenance	500,000
House Rent	Paid directly to landlord, where the National Assembly is unable to provide an institutional house.	550,000-850,000
Guest House (Speaker only)	Guest house rent in Blantyre	350,000
	Guest house rent in Mzuzu	550,000
Housing Allowance	Monthly allowance to MPs where the National Assembly is unable to provide an institutional house and the Member opts to stay in his or her own house	400,000-450,000
Special housing	Monthly allowance to assist with accommodation in the constituency	120,000
Constituency	Monthly allowance for MPs for constituency work	700,000

NAME OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Utility	Monthly, non-taxable for water, electricity and phones	285,000-855,000
Hospitality	Monthly non-taxable for entertainment	210,000-525,000
Furniture	Once every 5 years, purchase of personal furniture	500,000-1,500,000
Monthly Security	For the Speaker, Deputies and Leader of Opposition	100,000

2.4.4. Allowances for Cabinet Ministers and Deputy Ministers

Allowances for Ministers and Deputy Ministers are presented in Table 7. They are generally comparable to those of Members of Parliament.

Table 7: Allowances for Ministers and Deputy Ministers

TYPE OF ALLOWANCE	MINISTERS	DEPUTY MINISTERS
House rentals/allowance	1,200,000	1,200,000
Hospitality	500,000	500,000
Airtime (paid by ministry)	100,000	80,000
Mobile phone (procured by ministry)	500,000	500,000
Temporary accommodation	Full board	Full board
Constituency Allowance (for MPs only)	700,000	700,000
Security Allowance	400,000	400,000
Settlement Allowance (paid once per term of 5 years)	4,000,000	4,000,000

TYPE OF ALLOWANCE	MINISTERS	DEPUTY MINISTERS
Utility Allowance	500,000	500,000
Additional fuel allowance (paid together with salary)	400,000	400,000
Motor vehicle maintenance allowance (for MPs only)	500,000	500,000
Official vehicle	Toyota Prado	Toyota Prado TX

2.4.5. Allowances for the Judiciary

Subsistence allowances for Judiciary support staff are generally comparable to those of civil servants (Table 8). Their respective ranges overlap almost entirely, but the maximum rate for Judiciary support staff is smaller than for the civil service (MK55,000 versus MK60,000). The rates for external travel allowance are higher for Judiciary support staff, compared to civil servants. In addition, Judicial support staff get a telephone allowance (\$60-\$100, depending on grade), which does not exist in the mainstream civil service.

Table 8: Allowances for Judiciary Support Staff

TYPE OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
WORK FACILITATING		
Daily Subsistence Allowance (DSA): Travelling on duty within Malawi	Where bed and breakfast are provided.	4,000-8,000
	When using own accommodation	20,000-55,000
	Occasional meal allowances	2,500-5,000
External travel allowances	Full DSA (accommodation, meals and incidentals)	\$130-\$470
	Telephone allowance	\$60-\$100

TYPE OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
REMUNERATIVE ALLOWANCES		
Fuel allowance		250 litres - 350 litres
Medical Insurance	Group medical cover- officers, spouse & dependents	50% cover
Leave Grant		31,000-96,000
Non-Practising	For lawyers working in the Judiciary.	250,000
Transport	When Grades J and below are required to travel on duty	Decided by Registrar
Disturbance Allowance	Permanent move from one duty station to another	5% of Annual Salary
	Move from one house to another within duty station	3% of Annual Salary

Subsistence allowances for Judicial Officers are generally comparable to the civil servants and also dependent on job grade (Table 9). However, the maximum amount for the external travel allowance is higher at \$500 compared to \$300 for the civil service. Judicial Officers, like the support staff, receive a telephone allowance when they travel abroad in the range of \$60-\$80. Their remunerative allowances include Judge-In-Charge, furniture, relocation, medical insurance and security.

Table 9: Allowances for Judicial Officers

TYPE OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Travelling on Duty Within Malawi	Where only accommodation is provided	20,000-30,000
	Where officer uses own accommodation	20,000-60,000
	Incidentals allowance where full-board is provided	3,000-5,000
	Occasional meal allowances	8,000-10,000
Duty Telephone	Daily allowance payable to Judicial Officers eligible to stay in a hotel	2,000
External Travel Allowance, while travelling on duty abroad	For accommodation, meals and incidentals	\$200-\$500
	Telephone allowance	\$65-\$80
Transport and Travel	Payable when a judicial officer is required to use a personal vehicle on official duties	Car: 60% of fuel pump price per kilometre; Motor cycle 30% of fuel pump price per kilometre; Bicycle, K2000 per month
REMUNERATIVE ALLOWANCES		
Group Medical Insurance	Medical cover for officers to cover medical expenses.	Registrar to Chief Justice: 100% cover for the employee, spouse and 3 dependents; Below Registrar level: 50% for the employee, spouse and 3 dependents
Leave Grant		50,000-150,000
Non-Practising	Paid to non-practicing lawyers	250,000

TYPE OF ALLOWANCE	RATIONALE	RANGE (MK unless specified otherwise)
Judge-in-Charge	Monthly allowance for a Judge in Charge of a registry	Determined by the Responsible Officer
Settlement Allowance	Permanent move from one duty station to another or from one house to another within duty station	50,000-200,000
	Move from one house to another within one year	150,000-400,000
Furniture Allowance (Once in four years)	New furniture	400,000-700,000
	Used furniture where a fully furnished house was provided	Purchase at 10% of the original Price
Security Allowance	Monthly allowance for security of Judicial Officers for Grades E and Below. (Chief Justice, Justice of Appeal, Judge of High Court Registrar/Chairperson/Senior Deputy Registrar are provided with official security)	30,000-60,000

2.4.6. Allowances for Parastatal Organisations

This review studied a number of government companies and parastatals. In this section, results are reported for the following:

- a) Two state-owned companies: Electricity Generation Company (Malawi) Limited (EGENCO) and the Electricity Supply Commission of Malawi (ESCOM);
- b) Two regulatory commercial parastatals: Malawi Energy Regulatory Authority (MERA) and Malawi Communications Regulatory Authority (MACRA); and
- c) Three subvented parastatals: Cotton Council of Malawi (CCM), National Herbarium and Botanical Gardens (NHBG) and National Commission for Science and Technology (NCST).

Table 10 and Table 11 show the different allowances in these parastatals and gov-

ernment companies for the highest and lowest officer grades. The allowances vary in the different parastatals. For example, electricity, incidental and facilitation allowances are given by some parastatals and not others. Rates for subsistence allowance also vary by parastatal. Comparison between parastatals and the civil service shows that both external travel allowances and subsistence allowances are different, and higher for parastatals.

Table 10: Allowances for Highest Grades in Selected Parastatals Organisations

ITEM	EGENCO - Chief Executive Officer	MERA- Chief Executive Officer	ESCOM -Chief Executive Officer	MACRA - Director General	Cotton Council of Malawi - Executive Director	National Commis- sion of Science & Tech- nology -Director General	National Herbar- ium & Botanical Gardens - Director General
External Travel							
Africa - US Dollars	340	350	340	450	350		200
Outside Africa - US Dollars	340	350	340	450	350		300
Fully fund- ed (Top up) - US Dollars	140	75	140		150		50
Internal travel							
Hotel accommodation							
Daily Sub- sistence Allowance (accommo- dation not provided)	50,000	66,000	56,000	90,000	55,000	45,000	35,000
Meal allow- ance	15,000	15,000	16,000		10,000	6,000	12,250
Incidental allowance						10,000	

ITEM	EGENCO - Chief Executive Officer	MERA- Chief Executive Officer	ESCOM -Chief Executive Officer	MACRA - Director General	Cotton Council of Malawi - Executive Director	National Commis- sion of Science & Tech- nology -Director General	National Herbar- ium & Botanical Gardens - Director General
Leave Grant	300,000	200,000	200,000		105,000		
Facilitation allowance						35,000	
Fuel Allowance - Litres	600	700		600	500		
Electricity allowance - Units (per month)	3,000	1,400	3,000				
Airtime allowance	600,000	150,000			90,000		
Mobile phone	650,000	800,000		2,250,000	400,000		

Table 11: Allowances for Lowest Grades in Selected Parastatal Organisations

ITEM	EGENCO	MERA	ESCOM	MACRA	Cotton Council of Malawi	National Commission for Science & Technology
External Travel						
Africa - US\$	300	200	300	320	300	
Outside Africa - US\$	300	200	300	320	300	
Fully funded (Top up) - US\$					150	

ITEM	EGENCO	MERA	ESCOM	MACRA	Cotton Council of Malawi	National Commission for Science & Technology
Internal travel						
Daily Subsistence Allowance	18,000	30,000	19,000	35,000	30,000	25,000
Meal allowance	4,000	7,500	4,000		4,500	3,000
Incidental allowance						8,000
Electricity allowance - Units (per month)	1,000	400	800			
Mobile telephones						
Cell phone allowance (Airtime)	50,000	30,000		37,500		
Mobile phone handset	80,000	160,000		150,000		
Leave Grant	50,000	142,857	50,000	100,000	60,000	50,000

2.4.7. Allowances and Honoraria in Parastatal Boards

Members of Board at parastatals receive sitting allowances per sitting, honoraria per annum, and the board chairs also receive cell phone allowance. The rates vary by whether the parastatal is a commercial, semi-subservent, or fully subservent organisation (see Table 12).

Table 12: Allowances for Board Members of Parastatal Organisations

TYPE OF ALLOWANCE	COMMERCIAL	SEMI SUBVENTED	FULLY SUBVENTED
Sitting Allowance (per month)			
Chair	70,000	50,000	35,000
Member & Ex-Officio	60,000	40,000	30,000
Honoraria (per annum)			

TYPE OF ALLOWANCE	COMMERCIAL	SEMI SUBVENTED	FULLY SUBVENTED
Chair	600,000	500,000	300,000
Member & Ex-Officio	500,000	400,000	250,000
Cell Phone Allowance (per month)			
Chair	42,000	30,000	25,000
Member & Ex-Officio	Nil	Nil	Nil

2.4.8. Remunerative Allowances for the Reserve Bank of Malawi

Allowances at the Reserve Bank of Malawi are generally much higher than those of other state bodies and the civil service (see Table 13). They also include allowances not seen in the civil service or other state -owned entities (for example, gardening tools and household cleaning).

Table 13: Remunerative Allowances for Reserve Bank Management (Grades 12 to 3a)

TYPE OF ALLOWANCE	PURPOSE	GRADE	AMOUNT IN MK (UNLESS SPECIFIED)
Housing	Accommodation	Grade 12	Free
		Grade 11	Free
Utilities	To pay for water	Grade 12	Free
		Grade 11	Free
		Grade 10	N/A
Medical aid		Grade 12	Free
		Grade 11	Free
		Grade 10	Free
		Grade 3a to 8	Contributory
Hard furniture	Bought by the Bank	Grade 12	90,000,000
		Grade 11	80,000,000
		Grade 10	N/A

TYPE OF ALLOWANCE	PURPOSE	GRADE	AMOUNT IN MK (UNLESS SPECIFIED)
Soft furniture	Paid in cash every 2.5 years	Grade 12	9,072,922
		Grade 11	6,979,652
		Grade 10	N/A
Transport allowance	Monthly	Grade 12	715,369
		Grade 11	536,526
		Grade 3a to 10.	53,652 to 447,105, according to grade.
Phone (handset)		Grades 10 to 12	Free
Airtime (Annual)		Grade 10	Unlimited
		Grade 8-9	1,080,000
		Grades 5a-7	240,000 to 480,000
Household help	4 workers 3 workers 3 workers	Grade 12	436,845
		Grade 11	322,752
		Grade 10	322,752
Household cleaning	Annual	Grade 12	4,880,850
		Grade 11	2,695,269
Leave grant		Grade 12	545,600
		Grade 11	498,800
		Grade 3a to 10	109,200 to 467,700, dependent on grade.
Garden tools	Annually	Grade 10	2,818,858
		Grade 7-8	2,049,097
		Grade 6-7	999,931

TYPE OF ALLOWANCE	PURPOSE	GRADE	AMOUNT IN MK (UNLESS SPECIFIED)
Security	Security	Grade 10	Alarm and 2 guards
		Grade 6-9	Alarm only
Official vehicle		Grade 10	GX (116 million)
		Grade 7-8	TX (90 million)
		Grade 6-7	Toyota Corolla (30.5 million)
Club membership		Grade 10	Paid membership
		Grade 8-9	Paid membership
Christmas gift		All grades	400,000

The Taskforce received the Human Resource Policies and Procedures for Reserve Bank staff but not the schedule of allowances for local or external travel.

2.4.9. Subsistence Allowances for the Malawi Defence Force

Subsistence allowances for the Malawi Defence Force (MDF) are generally in line with the rates prevailing in the civil service. For fully funded external travel, Private to Colonel ranks receive US\$50, while Brigadier and above receive US\$60. For local travel, where there is no military billeting, officers are entitled to accommodation in hotels paid for by MDF, and subsistence allowance for lunch, dinner and incidentals as shown in Table 14. Other ranks are entitled to daily subsistence allowance to cover accommodation, lunch, dinner, and incidentals as follows:

Table 14: Selected Allowance in the Malawi Defence Force

TYPE OF ALLOWANCE	PURPOSE	GRADE	AMOUNT IN MK (UNLESS SPECIFIED)
Travelling within Malawi	Subsistence allowance per night, where only accommodation is provided	Brigadier and above	25,000
		Major to Colonel	20,000
		2/Lieutenant to Captain	15,000
	Where accommodation is provided	Warrant Officer I	12,000
		Private to Warrant Officer Class II	5,000
	Where accommodation is not provided daily subsistence allowance to cover accommodation, lunch, dinner, and incidentals	Warrant Officer I	45,000
		Sergeant to Warrant Officer II	35,000
		Private to Corporal	25,000
External Travel	Fully funded trip	Brigadier and above	US\$60
		Private to Colonel	US\$50
Field Allowances		Second Lieutenant to General	45,000
		Sergeant to Warrant Officer I	40,000

TYPE OF ALLOWANCE	PURPOSE	GRADE	AMOUNT IN MK (UNLESS SPECIFIED)
		Private to Corporal	35,000

The Taskforce was informed that the subsistence allowances for the Malawi Police Service are similar to those paid by the civil service.

The foregoing comparative analysis demonstrates that across the three arms of government, there are some differences in the types and levels of allowances. Among the work-facilitating allowances, there are differences in sub-sistence allowances provided, especially between the Civil Service and parastatals, and also with the National Assembly. Commercial parastatals generally have higher rates, compared to subvented parastatals and the civil service. MPs have the highest rates for subsistence allowances. Sitting allowances are listed only for MPs and parastatal board members. However, there is evidence that Parliamentary staff also receive sitting allowances when Parliament is sitting, although this is not listed in their conditions of service. The findings also reveal that the structure of allowances in the Reserve Bank of Malawi is very high and completely detached from those in the rest of the public service.

Remunerative allowances in the civil service are concentrated within a few MDAs. Risk allowance is only paid to health workers, together with a lump sum top-up allowance, which can be as high as 52% of their salary.

2.4.10. Systems of Allowances in Other Jurisdictions and Sectors

The Taskforce undertook a comparative analysis of the systems and procedures of allowances in a selected number of countries and two private entities in Malawi. This was done to isolate best practices that can be proposed for adoption in Malawi to improve the current systems. The Taskforce looked at the allowance systems and procedures for South Africa, Rwanda, Kenya, Botswana and the United Kingdom of Great Britain and Northern Ireland. The emphasis of the analysis was on local and external travel allowances, sitting allowances for Members of Parliament, and risk allowance. On the private sector, information on allowances was obtained from the National Bank of Malawi and the Standard Bank. The findings are presented in the following sections.

Republic of South Africa

In the Republic of South Africa, employees in the public service qualify for a guaranteed package that includes a basic salary, an annual service bonus (1/12 of basic annual salary), an employer contribution to the Government Employees Pension Fund (GEPF) and a flexible package, which can include car allowance, medical scheme, housing allowance, and a flexible non-pensionable cash allowance. Most benefits

and allowances incur taxes. The following general principles apply in relation to travel allowances:

- a. All travel must be in line with institutional policy and mandate. Approving Officer must be satisfied of the necessity of the trip.
- b. First consider other forms of meeting, e.g. virtual, and the financial implications of the trip.
- c. Observe cost-containment in Treasury Instructions- e.g., no more than 3 officials per meeting/trip.
- d. Prohibition of double payment of travel expenses - Additional allowances claimed for a fully funded trip are recovered from salary of the traveller.
- e. Use of authorised travel management companies is encouraged to benefit from best deals.

For local travel, accommodation is paid directly to the hotel by the officer's department. Uniform rates of daily subsistence allowance apply, regardless of grade of the officer. Where an officer does not wish to claim actual expenses, they receive a flat rate of US\$30. An incidental allowance of US\$9 is paid for those opting for full-board accommodation. Generally, fuel and travelled costs are reimbursed on actual expenditure basis, otherwise they are subject to taxation. The rate of allowances for external travel is dependent on the destination.

In South Africa, health workers do not receive a risk allowance, but they receive a scarce skills allowance. In addition, those in rural areas receive a rural hardship allowance. Teachers receive a housing allowance or a state guarantee for a house loan.

The salaries and remuneration of MPs are set by the Independent Commission for the Remuneration of Public Office Bearers. At the time of the review, the allowances provided included travel allowance, relocation, and public office allowance to cover the cost of running an office. Roughly, 50-80% of these allowances are subject to income tax, unless members can account for expenses through the production of receipts. Members of Parliament do not receive sitting allowances.

Republic of Rwanda

The Republic of Rwanda operates an almost full-board system - the maximum allowance for accommodation and dinner is US\$50, with small amounts for incidentals (US\$7.2 -US\$10). The system assumes that lunch is provided during the meeting. Public officers obtain local purchase orders from their home department before going on a mission. The external travel allowance is dependent on the destination country. Public officers also receive housing and transport allowances, with senior officers receiving, in addition, allowances for telephone, internet, mobile phone, and entertainment. Housing allowance is taxed at 20% of total employment income,

while motor vehicle benefit is taxed at 10% of the officer's total income.

Health workers in Rwanda do not receive risk allowance. However, they receive a performance-based grant. Teachers receive housing allowance, transport allowance, government contribution for social security and medical care. MPs receive salaries and allowances, but do not receive sitting allowances for attending plenary or committee meetings.

Republic of Kenya

In the Republic of Kenya, allowances for the whole public service are determined by the Salaries and Remuneration Commission (SRC). Remunerative allowances for civil servants include housing, transport and professional allowance. Daily subsistence allowances for local travel is taxable and paid within the range US\$38 to US\$198, depending on the grade of the officer. The first KES 2,000 (equivalent to US\$18) is non-taxable, but the rest is taxed unless the Commissioner is satisfied that the allowance is solely reimbursement for expenditure incurred.^{viii}

Health workers who are exposed to medical risk in the course of their duties receive risk allowance (medical risk allowance). In addition, health workers receive extraneous or non-practising allowance. Teachers receive housing, commuter, and hardship allowances as well as medical insurance and leave grants. There are other allowances including transfer, responsibility, special duty, interpreters, and readers' allowances that teachers can apply for.

MPs in Kenya receive a salary in remuneration and sitting allowances for which there must be evidence of their participation in the plenary or Parliamentary Committees. This allowance is taxable.

Republic of Botswana

In the Republic of Botswana, officers receive an imprest for subsistence allowance for local travel with overnight stay. This covers accommodation, food, plus a small incidental allowance. Alternatively, they can pay with personal funds and claim reimbursement on return. For external travel, the rates are dependent on the destination country as well as the allowance rates of the host country. The officers are paid roughly between 25% and 100% of the local host's per diem, depending on what the host is providing (meals only, accommodation, or accommodation plus meals). Other allowances apply, such as scarce skills allowance and an optional medical scheme where the government pays 50%. Cash allowances and non-cash benefits are taxable. Health workers who are exposed to medical risk receive a risk allowance. The Taskforce did not identify any specific teachers' allowances.

MPs in Botswana receive sitting allowances for attending the plenary and Parliamentary Committee meetings. According to the Botswana National Assembly's Salaries and Allowances Act of 1988, ordinary members were entitled to receive sitting allowance equivalent to US\$6.5 per day, while ministers and deputy-ministers were receiving equivalent of US\$4.4 per day. The 2019 amendment of the Act revised the rates and now all members receive sitting allowance which is equivalent to \$41 per day, while the Speaker of Parliament receives the equivalent of US\$55 and the Deputy Speaker receives the equivalent of US\$45.

United Kingdom of Great Britain and Northern Ireland

In the United Kingdom of Great Britain and Northern Ireland (UK), government departments and agencies reimburse staff only for actual and necessary expenses incurred in the course of official business, on production of receipts. Departments and agencies must ensure that their rules provide for claiming recompense, including verification and authorisation. Value for money principles apply. For foreign travel, departments may agree on a fixed rate for subsistence with Her Majesty's Revenue and Customs.

The UK does not provide risk allowances for health workers, even those working directly with patients who are infectious. Health workers can get mortgage facilities at discounted rates from specialist lenders. Teachers do not get any allowances, apart from their salaries, but they too may benefit from discounted mortgage rates from specialist lenders.

Since 2010, the Independent Parliamentary Standards Authority (IPSA) sets parliamentary pay and allowances following a scandal on expenses that eroded the public's trust. MPs are entitled to salaries; Payment Additional Expenditure (PAE) allowance when they are working away from their main home; Incidental Expenses Provision (IEP) allowance for running an office; and Communication Allowance for communicating with their constituencies. Members of the House of Lords are not salaried. They can opt to receive up to £305 per day attendance allowance, plus travel expenses and subsidised restaurant facilities.

2.4.11. United Nations Harmonised Daily Subsistence Allowance

Through Circular PRO/300/RC of 28 June 2018, development partners in Malawi, under the coordination of the United Nations Development Programme, made proposals for Harmonised Daily Subsistence, Fuel and Transport allowances, applicable for Malawi Government officers attending donor-funded events and missions in the country. These proposals were, however, not signed by all donors and furthermore, they were rejected by the Malawi government. The proposed harmonised allowances had the following guiding principles:

- The necessity and duration of an event/mission must be obvious and justifiable.
- Events shall be located in the city/district/area where majority of participants reside.
- Where possible, the organizing institution shall use its own or Government or donor venues, offices or meeting rooms to minimize costs.
- Only participants duly invited or delegated and actually present are eligible for reimbursement.
- Accommodation is only provided when returning home for the night is not reasonable.
- Participants shall not receive sitting allowance.
- Participants shall not receive payments for performing duties during the event (workshop facilitating, presenting papers etc.) for which they receive a salary.
- Participants shall not receive allowances from other sources for costs covered by the development partners.

The circular recommended a maximum of MK60,000 for full-board accommodation at a hotel, where dinner is a maximum of MK6,000. Where full-board accommodation is not provided, a total of K30,000 can be given, broken down as MK4,000 for lunch, MK6,000 for dinner, and K20,000 for accommodation and breakfast). Incidental allowance is capped at MK1,000. The Taskforce observed that these proposed rates do not meet the cost of decent accommodation and meals outside many duty stations and may be in contravention of the Malawi Public Service Act (1994), sections 14 (b) and (d): *“The management of the public service shall be based on modern and appropriate human management concepts and techniques within a framework which meets the basic requirements for ... (b) concern for the welfare of public officers, as employees” ... and (d) administration of staff regulations with sensitivity to the social and economical impact of such administration on the individual public officer.* Furthermore, the rates for UN staff are much higher than the proposed levels, ranging from US\$133 to US\$236 in different districts and particular hotels in Malawi. This double standard is not acceptable as it borders on unjustified discrimination, and has been a bone of contention between development partners and the Government of Malawi. The development partners have also agreed a harmonised allowance system for Members of Parliament, which includes sitting allowance.

2.4.12. Allowances in the Private Sector

The National Bank of Malawi and Standard Bank use full-board system when officers spend nights away from the duty station. Previously, the National Bank of Malawi had a system of travel allowances, but this was stopped because of abuse. In both banks, all travel has to be included in the department’s annual budget. There are strong incentives for managers to minimise cash transactions and to control expenditure (for example through a bonus system), and sanctions against over-expenditure

(poor performance appraisal report, no bonus nor pay increase). Below are some of the generic principles applied when officers travel:

The banks pay the hotels directly. Banks negotiate rates with a range of hotels to cater for accommodation requirements for officers at different grades.

If officers do not want full-board accommodation, subsistence allowance rates are low (K15,500-K30,000), to act as a deterrent.

Claims for reimbursement or expenditure reports must be accompanied by receipts.

2.4.13. Conclusions on Mapping of Allowances

In conclusion, through this mapping of allowances, the Taskforce has demonstrated the similarities in work-facilitating allowances, such as local travel subsistence allowance, across the civil service, the Army, Judiciary, and the Parliamentary Service, but differences were observed with allowances for MPs and some parastatals. It was also noted that past attempts to introduce harmonised donor daily subsistence rates did not succeed, in part because the proposed rates were too low. Nevertheless, harmonization of allowances across the Public Service is desirable on the basis that public officers of the same grade should be treated equally, when it comes to work-facilitating allowances. Recommendations for the harmonization of remunerative allowances are covered in the Chapter on Conditions of Service.

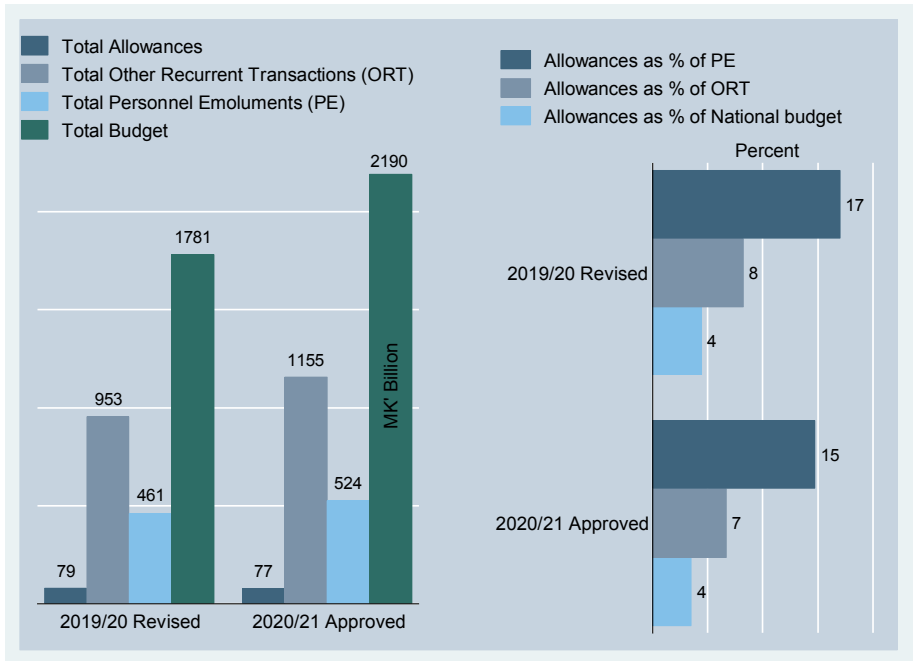
2.5. Analysis of Data and Audit Queries on Allowances

This section aims to quantify the magnitude of abuse of the public service allowance system. The Taskforce looked at the total value of allowances in the national budget in absolute terms, relative to the operational budget of the government, referred to as Other Recurrent Transactions (ORT), and relative to the Personnel Emoluments (PE) budget for the 2019/20 and 2020/21 financial years.

Allowances as a Proportion of Government Budget

Allowances, both remunerative and work-facilitating, totalled MK79 billion in the 2019/20 FY (representing 8% of the revised ORT budget and 17% of revised PE budget) and MK77 billion in the 2020/21 FY (representing 15% of approved ORT budget, 7% of the approved PE budget) (see the Figure 1). Approved budgets are those that were passed by the National Assembly, while revised budgets are amounts that were actually spent. In 2019/20, the approved budget was MK1.74 trillion and the revised budget was MK1.78 trillion.

Figure 1: Value of Allowances in National Budget, 2019/20-2020/21 Financial year



Subsistence allowances for internal travel comprised MK27.4 billion in the 2019/20 FY approved, and what was actually used was MK 6.3 billion more. In 2020/21 FY, MK 32.3 billion was approved by Parliament as subsistence allowance in the budget. The percentage share of subsistence allowances for the majority of the MDAs is between 0.1 to five percent of the total, except for the Ministry of Education at 12% in 2019/20, compared to 11% for National Assembly and 7.8% for the Ministry of Agriculture.

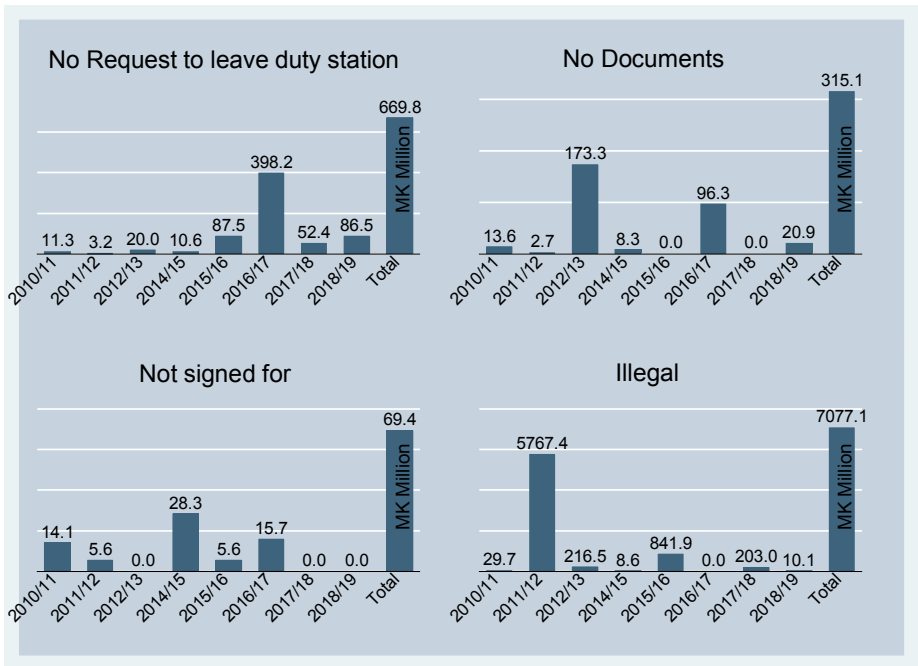
A comparison between central and local government level shows that subsistence allowances are much higher at the central level, comprising 88% of the total subsistence allowance budget, compared to 12% at local government level. This huge disparity may reflect various factors such as different mandates of the two levels, where the central level has an oversight role over the district level, necessitating some level of travel to districts. Other factors include partial devolution and insufficient fiscal decentralisation as well as unnecessary travel for work that could be undertaken by district-level officers.

The above figure show that allowances have huge absolute value and they are a sizeable proportion of the national ORT and PE budgets. The central level has over seven times the subsistence allowances allocation of local governments. The following sections address magnitude of waste in these allocations.

Unresolved Audit Queries and Amounts

Figure 2 shows the National Audit Office’s unresolved queries for samples of data from 28 MDAs on subsistence allowances between 2010 and 2019. These data were compiled from publicly available reports published by the National Audit Office website. The Taskforce deliberately extended the review period to start from 2010, since this was the genesis of recorded grand theft by public officers.

Figure 2: Audit Queries for Subsistence Allowances



Data source: National Audit Office Reports, 2005-2018/19

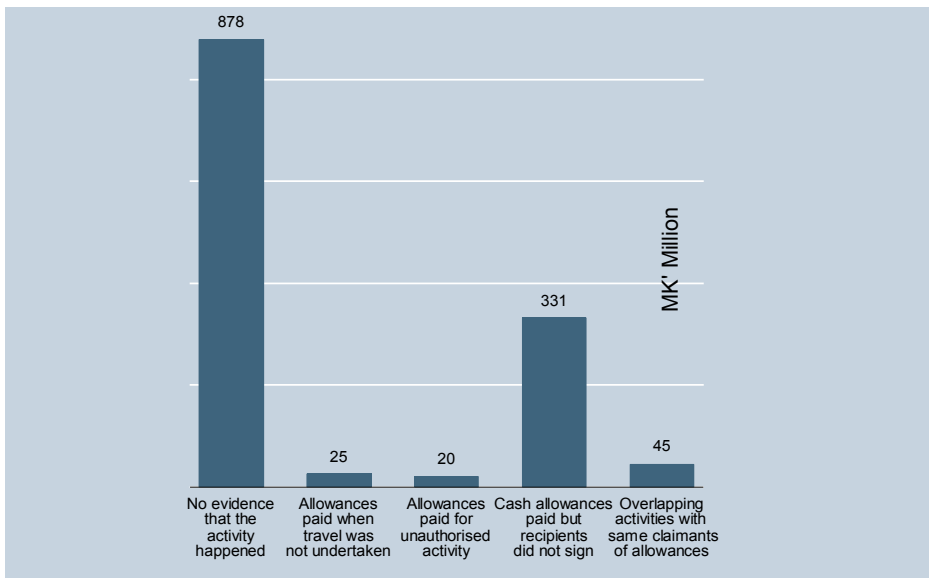
The types of audit queries and amounts found from the sampled data were as follows:

- “Illegal allowances” had the highest value, at MK7.08 billion;
- Queries related to “No request to leave duty station” were second highest at MK668.8 million;
- “No documents support travel” came third at MK315.1 million; and
- Allowances collected for staff, but “not signed for” by the intended recipient were fourth at MK 69.4 million.

It is worth emphasising that the National Audit Office takes samples from MDAs and the queries are typical examples rather than total of the level of abuse of allowances.

To further illustrate the point, the figure below presents key audit queries by the Central Internal Audit Unit (CIAU) in the Ministry of Finance for nine sampled MDAs for 2017-2020 (see Figure 2.3) amounting to MK1.3 billion. The major difference between the National Audit Office and CIAU is that CIAU reviews a large sample of data and thus their overall amounts of anomalous allowances may be larger. For both units, the data are drawn from samples and not a total of all irregular or illegal allowances.

Figure 3: Sample of Internal Audit Queries in 9 Ministries - 2017-2020



Data Source: Personal communication, Central Internal Audit, Ministry of Finance

As shown in Figure 3, the largest amount was for the query by the CIAU was on “no evidence that the activity happened”, where the sample data showed that MK878 million was abused. Other queries were as follows:

- Where cash drawn for other officers, but “recipients did not sign any documentation,” the amount was MK331 million;
- “No evidence that travel had taken place”, worth MK25 million and
- MK45 million paid for “overlapping activities with the same claimants”.

The figures confirm the observation that abuse of allowances is a major problem and that such claims comprise a large proportion of the national budget. The problem could be worse since audits do not capture the justification of allowances for an activity, so some allowances with good documentation may be irregular or outright fraudulent. The Taskforce was unable to make projections of the total amounts misspent, as such an exercise would require significant human resources and time. Given that almost all MDAs appear to have challenges in respect to irregular, illegal, and unauthorised allowances, it is obvious that if these results were extrapolated to all MDAs and across all activities, the magnitude of the loss would be huge.

2.6. Problem Analysis of the Abuse of Allowances

The Taskforce undertook a problem analysis to understand the root causes and consequences of the abuse of allowances. The results of the analysis are presented in Table 15. Six key themes of the root causes were identified, which are as follows: systems, processes and procedures; enforcement and accountability; legal and policy framework; capacity development, selection and effective deployment; moral values, ethics, integrity and discipline; and conditions of service. The recommendations focus on daily subsistence allowances, external travel allowances, meal allowance, sitting allowance, and risk allowances. Although classified as a remunerative allowance, risk allowance is included in the recommendations because of the controversy surrounding it. All other remunerative allowances, including recommendations for the conditions of service theme are addressed in the Conditions of Service Chapter.

A major limitation of this analysis is that without full knowledge of the total amount that is abused or stolen, it was not possible to do a cost-benefit analysis of the proposals. Among other things, the Taskforce would have needed full data on all abuses (not just audited sample data), but this is not possible without auditing each MDA and each expenditure.

Table 15: Findings of Problem Analysis: Problems and Consequences

Problem	Causes	Consequences
<p>Illegal payment of allowances</p> <ul style="list-style-type: none"> - Trips not undertaken, - Not obtaining authorisation for trips - Claiming more days than the activity requires - Unqualified officers attending training/ events - Sending large delegation to events than is needed - Going out of the duty-station for activities that can be done in the office. <p>Attending multiple workshops</p> <ul style="list-style-type: none"> - Collecting full DSAs from multiple workshops in a single day (double dipping). <p>Collecting DSAs from other MDA's output For example, auditors requesting DSAs from offices they audit.</p> <ul style="list-style-type: none"> - MPs requesting allowances from institutions that they visit to conduct their oversight functions. <p>Favours and victimisation</p> <ul style="list-style-type: none"> - Using allowances to gain favours or to victimise others 	<p>Systems, Processes and Procedures</p> <ul style="list-style-type: none"> - Failure to comply with authorization and processing of payment for travel. - 'Request to leave Duty Station' forms not filled and approved - Group approval which compromises personal accountability. - Back-to-the-office procedures not abided by <p>Enforcement and accountability;</p> <ul style="list-style-type: none"> - Non-adherence and non-enforcement of standard procedures - Lack of accountability of Controlling Officers; No action on audit queries - Lack of protection for Controlling Officers enforcing the rules - System of individual performance appraisals has collapsed. <p>Legal and policy framework;</p> <ul style="list-style-type: none"> - Weak sanction, weak legal framework; No legal framework for internal audit - Disciplinary procedures in Malawi Public Service Regulations (1991) not well-aligned with the Constitution of Malawi and other laws; 	<ul style="list-style-type: none"> • Low productivity as officers are constantly travelling or in workshops • Funds used for illegal allowances instead of development programmes or ORT • Lack of trust among donors and the public • Increase in inequalities between officers by whether or not one has access to allowances.

Problem	Causes	Consequences
<ul style="list-style-type: none"> - Non-delivery on work plans to justify out-of-duty station retreats 	<ul style="list-style-type: none"> - Old Treasury Instructions -weak penalties and very low fines Capacity development, selection and effective deployment; - Lack of knowledge and skills; Lack of induction - Poor orientation of controlling officers and others - Appointment of managers without leadership qualities - Ineffective processes of appointing Controlling Officers and directors Moral values, ethics, integrity and discipline; - No moral teaching; degradation of families and family values, - Poor transition to multi-party democracy - focus on rights without responsibilities - Greed, get-rich quickly mentality Conditions of Service - Low salaries; subsistence used to supplement salaries. - Low rates of DSA to fully meet the cost of travel outside the duty station; number of days are padded to obtain additional DSA. 	

2.6.1 Systems, Processes and Procedures

Travel allowances

A major root cause identified by the Taskforce is the failure to comply with requirements for authorisation and processing of payment for travel. Requirements include having the activity in the work plan; ensuring that the requested amount is consistent with what was budgeted for the activity; that the "Request to leave Duty Station" forms are duly filled and approved; that all back-to-the-office procedures are abided by, including recording in register for any allowance taken. In addition, it was established that the manual systems and procedures make this work difficult. Currently, the IFMIS is not used to facilitate activity-based budgeting, implementation and monitoring but rather, it focusses on high level MDA results and budget information. Other systemic procedural challenges include lack of staff supervision and mechanisms for strict adherence to work plans; not adhering to the travel policy where the Office of the President and Cabinet approves, on a case-by case basis, requests for double rate allowances. "Request to Leave Duty Station" forms for group approval were introduced, but these compromise individual accountability for out-of-duty station travel.

Recommendations for Local Travel Allowances

Currently, the system provides for both full board and incidental allowance and daily subsistence allowance offered as cash with rates ranging from MK20,000 to MK60,000 that are dependent on grade. The problem with this current system is that subsistence allowances are paid directly into a travelling officer's bank account, but if the officer does not travel or there are delays in the trip, the money is not always returned to government.

The policy regarding workshops within the country is that these should take place where the majority of the participants are resident in order to avoid unnecessary travel and subsistence expenses. The policy also provides that officers attending workshops in locations outside the duty-station are eligible to receive daily subsistence allowances. One consequence of this policy is that workshops are sometimes organised a few miles from the boundaries of the duty-station district, so that allowances are paid.

To curb the appetite for subsistence allowances and unnecessary local travel, the Taskforce recommends as follows:



Recommendation 2.1: Implement full-board facility for local travel, with effect from 1st July 2021 for grades E and above, and transition all other ranks to full-board according to grade with effect from 1st April 2022. This will eliminate or at least reduce chasing of allowances for personal gain, while making sure that public officers on duty are properly accommodated.

- The Department of Human Resource Management and Development should negotiate with hotels, motels, and lodges special government rates for full-board for public officers including ministers, with maximum rates for lunch and dinner as part of the full-board regime, excluding laundry and alcohol.
- Introduce IFMIS-generated Local Purchase Orders (LPO) for hotel/motel/lodge accommodation bookings, and engage service providers so that payment is made after being invoiced.
- Controlling Officers must ensure that all full board invoices from hotels/motels/lodges are paid within 30 days and they will be held accountable for failure to settle bills, with sanctions following.
- Review the Incidental Allowance Rates attached to full board regime and adjust them accordingly.

The main advantage of a full-board regime is that it disincentivises unnecessary travel, thus potentially improving productivity and reducing wastage of financial resources. The Taskforce is of the view that this policy may result in some savings of around MK3-5 billion (see Appendix 5X, which is a scenario of realistic full-board allowances, based on more realistic, affordable travel patterns).

Meal allowances are offered to officers who work outside the duty station for more than eight hours but do not spend a night. There is a practice, however, of paying meal allowances within the duty station without travel which is against the regulations. The Taskforce makes the following recommendation:



Recommendation 2.2: Stop illegal payment of meal allowances for meetings held at the duty station, and enforce strict adherence to all established procedures for meal allowance, with immediate effect.

Recommendations for External Travel Allowances

This review found that there exists a practice of case-by case selective approval

of increased external travel allowances, such as double rate, by the Office of the President and Cabinet for destinations that are assumed to be very expensive. There is also disparity according to grade in external travel allowance rates for people travelling to the same destination, which is an unfair practice. In addition, top-up allowances for fully-funded trips were abolished in a circular from the Office of the President and Cabinet issued in October 2014 (“External Travel by Government Officials,”). Despite the ban, there are some occurrences of public officers receiving top-up allowances for fully-funded trips, including those self-identified by the officer.

Other important issues which affect the budget of MDAs and may also affect productivity are large, unjustified sizes of delegations on external trips and unreasonably long durations. In order to bring fairness, objectivity, and cost-containment, the Taskforce recommends the following:



Recommendation 2.3: Abolish case-by-case system of approving the special rates for external travel by the Office of the President and Cabinet, in order to bring fairness and remove unjustified distinctions. Revise rates in line with the standard cost of living in each destination country, and introduce uniform rates for all officers including ministers, in line with the UN system of travel.

- Furthermore, all external travel, whether funded by the government or other agencies, should be fully justified and the Controlling Officer must be convinced that other modes of participation (for example, virtual) have been considered and found to be sub-optimal.
- All Controlling Officers must adhere to limitations on the frequency of trips, size of the delegation, and number of days spent outside the country, as contained in the Circulars from DHRMD.
- Controlling Officers should enforce non-payment of top-up allowances for fully-funded trips, as stipulated in the Circular from OPC on external travel, which is dated October, 2014.

Sitting Allowances

Sitting allowances are paid to Members of Parliaments (MPs) and board members of parastatal organisations. MPs are elected and paid to sit and to conduct their parliamentary business of making laws, exercise oversight, and representing their constituents. In this case, paying sitting allowances in order for members to fulfil these responsibilities amounts to double payment because they are paid a salary. The overall bill of sitting allowances paid by the National Assembly is MK598,300,000 per annum. Furthermore, these allowances are paid in advance and not recovered when MPs are absent. Parliamentary staff also receive sitting allowances when serving parliamentary committees.

The Taskforce was told that some parliamentary staff claim sitting allowances whenever they support parliamentary committees, even though this is not part of the system of allowances within the Parliamentary Service Commission. The review on payment of sitting allowances in other jurisdictions showed a mixed picture, with countries such as the South Africa and Rwanda, and the United Kingdom of Great Britain and Northern Ireland not paying sitting allowances to Members of Parliament.

Recommendations for Sitting Allowances

The Taskforce, therefore, recommends the following:



Recommendations 2.4: The Parliamentary Service Commission should remove the payment of sitting allowances for Members of Parliament and parliament staff since this is double payment as they are already paid a salary and other allowances (see Table 6).

Board members of parastatal organisations receive both sitting allowances and honoraria as appreciation for their services and they also have their expenses paid. Payment of the sitting allowances for each meeting can create perverse incentives in some boards to meet more regularly than is needed in order to maximize the sitting allowances. Oversight visits to parastatals and other institutions by MPs are unstructured and often involve large numbers of MPs which puts strain on the institutions' budgets, yet these should be in Parliament's budget. Another issue identified by the public is the potential conflict of interest which may arise when MPs are paid allowances for parliamentary hearings by the institutions that they are visiting to perform oversight functions.


There is abuse of Transport and Travel allowances among Ex Officio board members who are civil servants when they claim this allowance and yet they are using government vehicles and fuel.



Recommendation 2.5: To remove incentives for frequent board meetings in parastatals, board members should not receive sitting allowances per meeting, but they should receive annual honoraria, which is paid quarterly. Board members will still receive T&T, where applicable. Payment of T&T to *Ex- Officio* officers using government vehicles and fuel should stop immediately. The practice of parastatals financing oversight visits by parliament should be stopped. Instead, parliament should plan and provide for such oversight visits in their own budget. DSC should provide guidance on procedures for oversight visits requested by parastatals.

Recommendations for Risk Allowance

Presently, risk allowance in Malawi is paid to health workers whose jobs are perceived to place them at higher risk of infections. This allowance is paid to health workers according to job grade, and includes those with desk jobs. All health workers already receive top-up allowances (52% of their salary) as a retention measure, so the risk allowance is a form of double payment. Considering that every profession can be considered to be hazardous, and that every prospective employee is fully aware of the risks in their chosen profession, the Taskforce makes the following recommendation:



Recommendation 2.6: No public officer should be paid receive risk allowance because most professions have a level of risk. Furthermore, health workers already receive lump sum Top-up Allowance, equivalent to 52% of their basic salary for the risk associated with bed-side work as described in Table 4.

Where particular professions have special needs that require consideration, these should be considered as part of the conditions of service.

2.6.2 Enforcement and Accountability

Lack of adherence and enforcement of standard procedures was identified as a major cause of the abuse of allowances, largely due to lack of accountability of Controlling Officers and public officers. This is attributed to an ingrained culture of failure to apply sanctions for wrongdoing and the lack of a performance management system. The Taskforce noted that the system of individual performance appraisals for Controlling Officers and other officers had collapsed. Without strong accountability mechanisms, sanctions for non-adherence to rules and regulations are never applied, and those who try to enforce rules and procedures are discouraged because they do not have protection from those above them. The main system of checking non-adherence is the audit function, but audit outcomes are never taken seriously or acted upon. Of the 908 audit queries raised by the Central Internal Audit Unit between 2017 and 2020, only 14 (1.5%) were resolved. The Public Audit Act (2003) covers the work of the National Audit Office only and does not include the internal audit function.

Recommendations on Action on Audit Queries and Accountability.

The Taskforce recommends the following, to strengthen action on audit queries and accountability:



Recommendation 2.7: The Auditor General and Director of Central Internal Audit Unit should submit all audit queries not acted upon for the past three years to the President, with immediate effect, for Controlling Officers to act within 30 days or face sanctions.

Recommendation 2.8: The Minister of Finance and the Secretary to the Treasury should revive the independent audit committees by 1st October 2021, comprising of knowledgeable and competent individuals, with clear Terms of Reference and budget, to enforce action on audit findings by Controlling Officers in order to strengthen the accountability and bring citizen participation into the process. This action should become part of the performance indicators of the Secretary to the Treasury.

Recommendation 2.9: With immediate effect, the Secretary to the President and Cabinet (SPC) should institutionalise enforcement of action on audit queries by Controlling Officers and apply sanctions for lack of action using reports received from the Secretary to the Treasury, Auditor General and the Director of Central Internal Audit Unit. Failure to do so should attract disciplinary action.

Action on audit queries should form an important part of the performance appraisal of the Controlling Officers, and the SPC should submit periodic reports on audit queries to the President to strengthen enforcement.

Recommendations 2.10: The SPC and the Secretary to the Treasury should exercise their powers with regard to ensuring action by Controlling Officers on all financial irregularities, in line with the Public Finance Management Act (2003), sections 11, 87 and 88, and the Public Audit Act (2003), to hold Controlling Officers and any senior public officer accountable for non-adherence to financial rules and regulations and loss of government money due to negligence of duty. The SPC and the Secretary to the Treasury should be held accountable if they fail to exercise their powers in ensuring compliance by the Controlling Officers.

Recommendation 2.11: Considering the importance of the position of the Auditor General in enforcement and accountability of financial rules and regulations, the President should, with immediate effect, appoint an Auditor General, whose position has been vacant since 2018.

Recommendation 2.12: The Principal Secretary for HRM&D should expedite the conclusion of the functional review for internal audit and consider elevating the position of Head of Internal Audit in MDAs to management level by 1st July 2021.

Recommendations to Strengthen Sanctions

The Taskforce found that the MPSR (1991) is outdated and not in line with the Constitution of Malawi (1994), the PFMA (2003), the Employment Act (2000) and the Labour Relations Act (1996), in terms of disciplinary procedures and penalties for financial mismanagement and irregularities. The penalties for sanctions are not clear, and the disciplinary hearing procedures are very weak. Furthermore, there does not appear to be strong personal liabilities for poor financial management. In Chapter Four on Conditions of Service, the Taskforce makes recommendations on developing and enforcing disciplinary processes as important measures for reducing the abuse of allowances.



Recommendation 2.13: The Taskforce recommends that the Public Finance Management Act should be amended in order to empower the Secretary to the Treasury to surcharge the public officer who has caused the loss of public funds and property, in order to recover the loss and attach personal liability to the officer concerned.

Recommendation 2.14: The Secretary to the President and Cabinet and Controlling Officers should enforce prevailing sanctions for non-compliance and non-adherence to rules and regulations governing the administration and management of allowances.

Recommendations 2.15: The Secretary of HRMD should review the Code of Conduct and Ethics for the public service, to include sanctions for non-compliance and ensure that all public officers sign the revised Code of Conduct and Ethics by 31st December 2021.

Recommendations for Performance Appraisal

Malawi Public Service's performance and productivity is low, and cannot support the achievement of Malawi's ambitious development goals and Malawi 2063 vision., A recent report on performance management system in the Malawi Public Service (2019) identified key reasons for underperformance that include:

- Lack of alignment between results to be achieved by the individual public officer and results to be achieved by MDAs;
- Lack of alignment between performance management and financial management;
- Weak rewards and sanctions, and poor conditions of services.

The government has put in place a number of performance management systems, including the Individual Performance Appraisal System (IPAS) coordinated by DHRMD, and the Organisational Performance Contracting System (OPCS), which is coordinated by the Office of the President and Cabinet. However, these systems appear not to be working. One of the reasons is that there appears to be weak performance appraisal for the SPC and all Controlling Officers at the top of the civil service and a public perception that ministers do not have robust performance goals. According to a former senior government official who declined to be named, “the performance appraisal system in government is dead”. Weak performance appraisal systems do not only lead to poor productivity, but they also encourage impunity such as abuse of allowances and other malpractices.

The Taskforce, therefore, recommends the following:



Recommendation 2.16: To demonstrate strong leadership from the top and the value that the government places on performance appraisals, the State President should introduce performance appraisals of the SPC, and the Deputy Secretary to the President and Cabinet, supported by independent external evaluators to ensure that all key responsibilities outlined in the PSA, PFMA, and other laws are addressed in the appraisal, with the first round to be completed by 1st June 2022.

Recommendation 2.17: SPC should implement annual performance appraisals for the Controlling Officers in line with Performance Contracts of MDAs and in particular, adherence to set regulations and procedures governing allowances, other financial management issues, action on audit findings and ability to take disciplinary action on officers where acts of conduct have been committed.

The SPC should submit a report of all performance appraisal reports of all Controlling Officers to the President by 1st June 2022.

Furthermore, the SPC should implement mechanisms for rewarding high achievers and sanctions for poor performers as stipulated in the MPSR, with effect from 1 July 2021.

Recommendation 2.18: The President should introduce and lead a system for annual public participation in the appraisal of Ministers. Public participation in the hearings should be done through radio, television and other digital platforms.

2.6.3. Legal and Policy Framework Challenges

One of the challenges facing Controlling Officers from implementing strong sanctions for poor financial stewardship is the weakness in the legal framework to support such sanctions. For example, the MPSR (1991) is not well-aligned with the Constitution of Malawi, the Public Service Act (1994), Employment Act (2000), and Labour Relations Act (1996) in terms of disciplinary procedures, and therefore, many court cases involving financial misconduct collapse. The Taskforce also noted the lack of a legal framework for internal audit and as a result, Controlling Officers do not always address the audit queries in their MDAs. Coupled with this is a serious fact that the National Audit Office and the Central Internal Audit functions use old Treasury Instructions, which have weak penalties and very low fines for financial mismanagement.

Recommendations for Legal and Policy Framework

The Taskforce recommends that:



Recommendation 2.19: The Secretary to HRM&D to review the public service Travel Policy, by adding recommendations from this report for stronger sanctions on non-adherence.

Recommendation 2.20: The Minister of Finance should develop a legal framework for internal audit function as part of the Public Finance Management Act (PFMA) review, which is at an advanced stage, by November 2021.

Furthermore, the review of the PFMA should include the development of accompanying Treasury Instructions, with strong penalties, to replace the old Treasury Instructions still being used.

2.6.4. Capacity Development, Selection and Effective Deployment

Some of the abuse of allowances is due to lack of knowledge of the regulations and procedures, and poor management skills. Firstly, the process of appointment and promotion of Controlling Officers is not sufficiently robust on the assessment of leadership skills and knowledge of how the public service works. Secondly, there is poor orientation of Controlling Officers and other public officers (for example, Directors, Deputy Directors and Supervisors) to their responsibilities, and many officers reject orientation training when it is offered to them because of the low allowances paid at Staff Development Institute (SDI) and Malawi Institute of Management (MIM).

Key Recommendations on Capacity Development

The Taskforce makes the following recommendation in relation to capacity development and deployment of officers:



Recommendation 2.21: SPC should introduce mechanisms for interviews to select Controlling Officers that not only identify academic/knowledge/skill qualifications but also demonstrated leadership qualities and integrity. The SPC should assess suitability of Controlling Officers according to criteria stipulated in the PSs' handbook by 1st October 2022 and take appropriate action on those who fall short.

Secretary for HRM&D should incorporate the requirement to interview for the position of Controlling Officer in the draft revised Public Service bill by 1st October 2021.

Recommendation 2.22: Secretary for HRM&D should revive mandatory training programmes for public officers and Controlling Officers, linked to promotion, to include:

- Induction courses at Staff Development Institute (SDI) and Malawi Institute of Management (MIM) for all officers joining the public service;
- Re-introduction of promotional courses as a condition for effecting promotion
- Annual executive leadership programme for Controlling Officers and Directors.

The Secretary for HRM&D should re-introduce the centralised training fund for mandatory training.

Recommendation 2.23: SDI and MIM to introduce moral values and ethics as a mandatory subject in all induction, promotional, and refresher courses by 1st October, 2021.

2.6.5 Moral Values, Ethics, Integrity and Discipline

Moral decay has created a society that approves and celebrates illegal accumulation of wealth. Moral decadence, lawlessness and corruption can be linked to the mismanagement of the transition to multiparty democracy in Malawi in 1994, where freedoms and rights were emphasized, often with disregard to responsibilities. During this transition, rules and guidelines that had characterised the first republic and kept the excesses of corrupt practices at bay were relaxed. A "Code of Conduct and Ethics for the Malawi Public Service" was developed to address this problem, but there has not been sufficient sensitisation and enforcement, and furthermore, it does

not contain specified sanctions for non-adherence.

Key Recommendations for Moral Values

To address the problem of poor moral values, lack of ethics and integrity, and indiscipline, The Taskforce makes the following recommendation:



Recommendation 2.24: The President should embark on the process of identifying national champions and develop a programme to restore the moral and ethical values of the public service and society at large, which should commence 1 October, 2022.

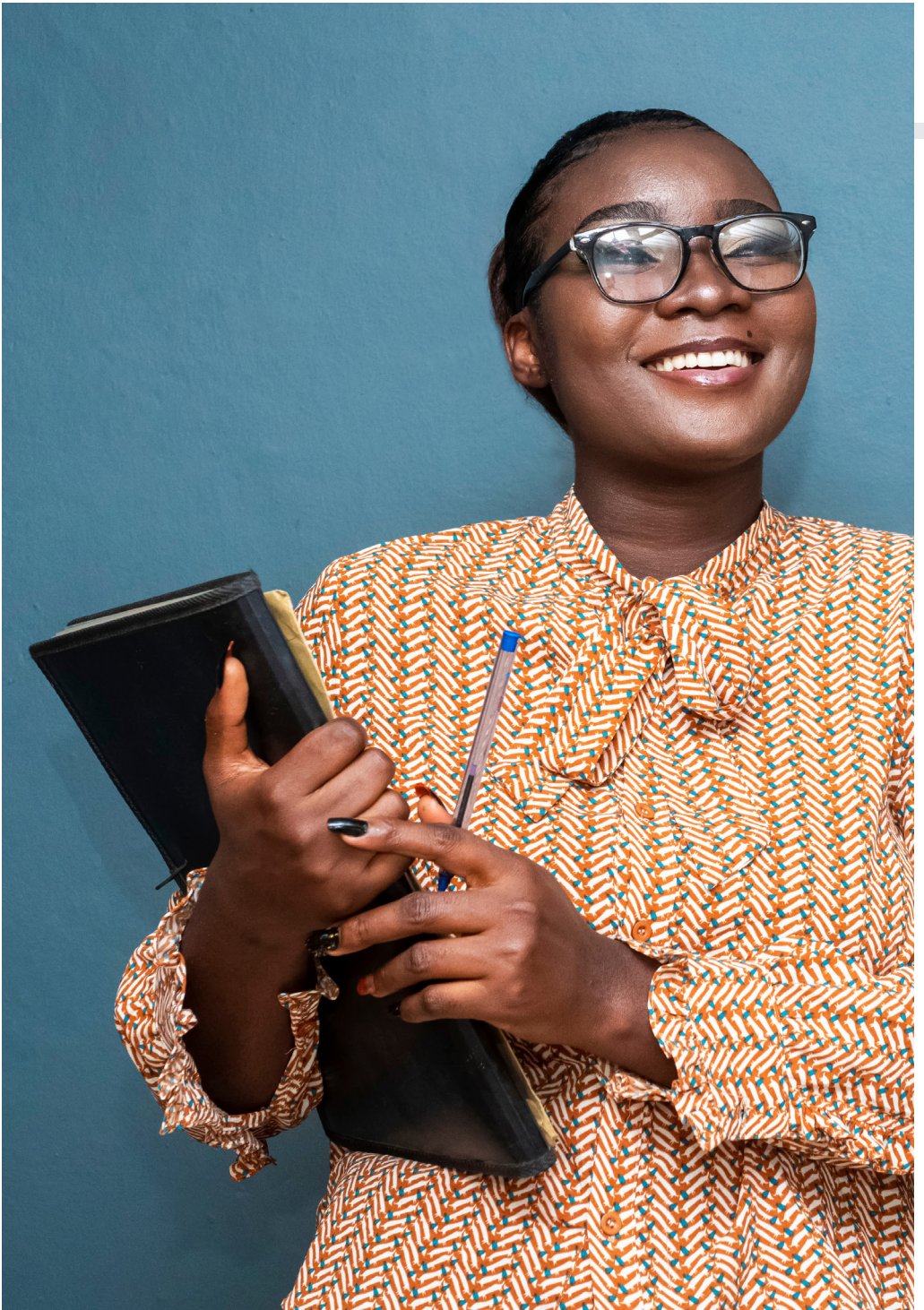
Secretary for Civic Education and National Unity should introduce a national week of advocacy for patriotism, integrity and high standard of moral values with immediate effect.

Recommendation 2.25: The Secretary for Education should facilitate the introduction of moral values, ethics, integrity, and discipline as an examinable subject in all public schools by 1st April 2022, working in consultation with religious institutions, such as the Public Affairs Committee, Evangelical Association of Malawi, Episcopal Conference, Moslem Association of Malawi, Malawi Council of Churches.

Recommendation 2.26: The SPC and Controlling Officers should ensure that all public officers attend the mandatory Code of Conduct and Ethics training and ensure that every officer appends their signature to show that they understand the contents. Subsequently, any officer who violates the code should be held liable with immediate effect.

2.11. Conclusion

The Paris Declaration on Aid effectiveness (2005) and the Sustainable Development Goals agenda (Goal no 16) (2015) compel countries to reduce corruption and develop strong systems for accountability and fairer societies., Malawi is struggling to make progress on these commitments, and this chapter has demonstrated the significant levels of abuse of allowances in the Malawi Public Service. The Taskforce identified a plethora of allowances across the public service and noted the levels of abuse. The money lost through this abuse is estimated to be in billions, money that could advance many development projects and even allow fiscal room for improved salaries and better conditions of service. This level of corruption is morally wrong and economically unsustainable. The Taskforce's opinion is that strict application of these recommendation will result in reduced abuse, significant cost-savings, higher productivity, and restoration of trust in the public service.



PART B:
**ANALYSIS
AND DISCUSSION
OF KEY
FINDINGS**

**CHAPTER 3:
SYSTEM OF EMPLOYMENT
CONTRACTS**

3.1. Background and Problem Statement

This chapter focuses on a review of employment contracts in the Public Service, specifically contracts on Grade E (P4) and above in the mainstream civil service, and those in executive management positions in parastatal organisations. The review noted that contracts in the public service are riddled with disparities in their nature and terms, mostly due to irregular recruitment processes and procedures, poor oversight and lack of consistency in enforcement systems. Contracts are also sometimes poorly framed, resulting in waste and abuse of public resources. The sections below examine the existing employment policies, legislation, and regulations on employment contract; review the employment contract procedures and practices; assess types of contracts based on existing recruitment procedures and placement of officers in the Public Service and recommend appropriate recruitment procedures and practices.

This chapter is divided into three main parts. The first provides the background, problem statement, and layout of the sections. The second part examines the legal and regulatory framework, the typology of employment contracts, the processes and procedures for recruitment, and, the roles and responsibilities of the oversight institutions. Under each the specific head of the chapter are listed key findings and the recommendations. The last part presents the conclusions to this chapter.

3.2. Legal and Regulatory Framework

Section 31(1) of the Constitution, states that *every person shall have the right to fair and safe labour practices and to fair remuneration*. This forms the broad principles and requirements for the many issues that must be incorporated into a contract of employment. In essence, the contract of employment should reflect fair labour practices from recruitment, during its subsistence, to termination and must contain fair terms and conditions of service, including remuneration. Thus, the employer and employee relationship that is created from a contract of employment must benefit both parties.

The first Malawi Public Service Regulations (MPSR) of 1966 provided for two types of employees namely, permanent pensionable employees and specified contract employees. Presently, the MPSR (1991) defines the conditions of service of permanent and pensionable employees of the public service, while the Public Service Act of 1994 is the governing legislation for the Malawi Public Service. Ordinarily, only those at Grade E (P4) and above can be employed on specified contract.

Section 25(2) of the Employment Act categorises employment contracts into three: *(i) a contract for an unspecified period of time; (ii) a contract for a specified period of time; or, (iii) a contract for a specific task*. Although the Employment Act provides

for these categories of employment contracts, the Government rarely hires staff on specific tasks, as provided under Section 25(2)(c). Under section 28(2) of the Act, contracts for a specific period automatically terminate on the date specified for its termination.

While the Secretary for Human Resource Management and Development signs contracts in the civil service, appointment powers are vested in the President. Section 6 of the Public Service Act, states: *“subject to the Constitution, the power to appoint any person in the public service to a post above the rank of under-secretary shall vest in the President.”* This applies to both permanent and pensionable employees and specific contract employees from Grade E and above.

Outside of the Public Service Act and the many laws that allow the President to appoint individuals to specific positions in the public service, the President’s (Salaries and Benefits) Act also entitles the President to appoint certain staff to be employed at the various state residencies without specifying their grades.

A contract of employment is a requirement of the law. Section 27(1) of the Employment Act states that *“every employer shall give to each employee a written statement of particulars of employment.”* The section requires that employees should have written contracts. Section 27(3) gives the minimum requirements of what should be written statement of particulars of employment (contract). These include: the date of commencement of the contract; the rate of remuneration and the intervals at which remuneration is paid; the nature of the work to be performed; normal hours of work; any provision for the termination of the contract other than those provided by the Act; and any disciplinary rules applicable to the employee. For those employed in the civil service on a permanent and pensionable basis at Grades E (P4) or above, Form PSR 19 provides some of the requirements under section 27(3) of the Employment Act. Form PSR 19 informs the employee that the contract is subject to the MPSR, Treasury Instructions, circulars and memos. This means that an officer may not have the full and clearest picture of their terms of employment.

The Gender Equality Act is another piece of legislation that provides gender quotas in the public service. Section 11 of the Act provides that an appointing or recruiting authority in the public service shall appoint no less than 40% and no more than 60% of either gender. The operationalisation of this provision remains a challenge.

Boards of parastatals have powers to make appointments, and to enter into contracts with employees as provided under their specific legislation. The Department of Statutory Corporations (DSC) uses standard contracts for employment of executive management in the parastatals.

For the better functioning of the Public Service, the relevant government departments use circulars and memoranda to provide policy directions or announce

changes, including issues related to employment contracts. These circulars originate from the Department of Human Resource Management and Development (DHRMD) or the Office of the President and Cabinet (OPC).



Recommendations 3.1: DHRMD and DSC should adhere to and enforce the existing laws. Develop clear guide-lines defining recruitment processes and oversight for employment contracts for those on Grades E and above, both in parastatals and civil service, based on the current legislation and for the operationalisation of the gender quotas.

OPC and MoJ should review the legal framework to ensure consistency between the public service and the relevant statutes by December 2021.

3.3 Challenges Affecting Contracts

The Taskforce established that the following challenges affect employment contracts in the Public Service:

- i. There is disconnect between the Public Service Act and the relevant legislation governing many parastatals. Specifically, section 6 of the Public Service Act, which gives powers of appointment to the President for Grades E and above, has been used to appoint or recruit officers into parastatals, even when the law that established the parastatal prescribes different recruitment procedures and authority.
- ii. The current MPSR is outdated and not in line with the current constitutional dispensation and developments in employment and labour jurisprudence in many aspects. Wherever the Public Service Act (1994) and the MPSR make reference to the Constitution, they refer to the repealed 1966 Constitution, and to sections which were not incorporated in the 1994 Constitution, as detailed in Chapter 6 of this report. The process is underway to revise the MPSR and to replace the Public Service Act with a new one.
- iii. Despite having clear procedures and authority in the administration and management of employment contracts in the public sector, there is poor enforcement of existing laws and regulations.

The Taskforce makes the following recommendations to address these challenges:



Recommendation 3.2: The Public Service Bill (2019) should be reviewed and enacted into law. This will provide a harmonised and fair recruitment or appointment process into the public service, in line with employment principles.

Recommendation 3.3: The draft MPSR (2015) should be reviewed and adopted, considering that the current regulations, which came into force in 1966, have been overtaken by the legal jurisprudence and other socio-economic dynamics.

Recommendation 3.4: Clear guidelines should be developed, defining recruitment processes and oversight for employment of contracts for jobs on Grades E and above, in both parastatals and civil service, based on the current legislation. In the meantime, adherence to and enforcement of what the law already provides for will suffice to rectify some of existing anomalies.

Recommendation 3.5: For parastatal organisations, unless the relevant Act specifically provides that the appointment or recruitment of any of its staff will be made by the President, the appointment should be done by the appropriate authority, as provided for in the specific parastatal's Act.

3.4. Types of Contracts in the Public Service

According to the MPSR (1991), the Government may hire persons on permanent and pensionable terms or on contract for a specified period of time. The MPSR defines a contract officer as an officer employed for a predetermined period of time, under a written contract signed by or with the authority of the Secretary for the Department of Human Resource Management and Development, and which contains the officer's terms and conditions of employment. This does not include a permanent officer or an employee.

The MPSR also states that where the public interest requires that an appointment be made on special terms or conditions of service to meet specific needs, a recommendation should be made to the Secretary to the President and Cabinet or Public Service Commission; that the appointment be made on written contract for a specific period of employment and on terms and conditions agreed to by both the Government and the applicant for the post. For example, both the Ministry of Justice and the ACB engage lawyers from the private sector to expedite prosecution of specific matters, such as the "cashgate" cases.

Contracts of Employment for Persons from outside the Civil Service

In July, 2000, Government issued a circular introducing contract appointment for officers on Grades E and above, effective from 1st August, 2000. The circular directed that government may hire personnel on contract terms to Grades E and above from outside the civil service. This would apply to those with special expertise and in the best interest of the service, such as specialized health personnel.

Contracts for Staff on Secondment

According to the MPSR, secondment is appropriate where a civil servant is to be attached to a statutory authority or other non-government body, and where the Government requires that authority or body to reimburse it the whole or part of the civil servant's salary and other benefits. In any such case the seconded civil servant is entitled to receive the salary appropriate to his civil service post and all regulations relating to the civil service shall continue to apply to him during the period of secondment. Due to the exigencies of working in an institution that requires a contract of employment, a civil servant may be seconded to that institution on contract. For example, the Chief Engineering Officer in the Ministry of Water was seconded to Southern Region Water Board as Chief Executive Officer (2019). Similarly, the former Accountant General was seconded to National Planning Commission (NPC) as Director of Finance on specified contract terms (2019).

Contract employees after retirement

The MPSR allows for the engagement of retired civil servants on contract, for efficiency and effectiveness in carrying out certain specified duties. Engagement of officers on contract after retirement has to go through an approval process, where the Ministry that wishes to engage a retired officer writes to DHRMD requesting special approval. The DHRMD then submits the request by the Ministry to OPC for approval.

Contracts in Parastatal Organisations

The Boards of parastatals manage employment contracts, with guidance from the DSC and DHRMD. These contracts vary from month to month, 12 months, 36 months, and in rare situations, up to 60 months. However, the DSC does not have any jurisdiction over some of the state-owned enterprises with special administrative and legal arrangements, such as Malawian Airlines and Sunbird Tourism Limited. Other parastatals that do not fall under the jurisdiction of the DSC include the National Planning Commission (NPC); Smallholder Farmers Fertilizer Revolving Fund of Malawi (SFFRFM); Public Private Partnership Commission (PPPC); Malawi Revenue Authority (MRA); Reserve Bank of Malawi (RBM) and the NGO Board.

Foreign Service Contracts

The MPSR outlines regulations for Foreign Service employees but is silent on their employment contracts. It provides for three years as the period of the tour of duty for serving civil servants. The MPSR is not explicit on the process and procedures on engagement of other employees from outside the civil service. However, their employment follows the same procedure as those joining the civil service and they are employed under specified contract. For those in the civil service already, they are employed in Foreign Service on the general terms, which they sign for on PSR 19. Going into Foreign Service is therefore a time-limited posting for civil servants and not a new contractual agreement. Ideally, only officers serving in the civil service can be posted to the Foreign Service to positions below the Ambassador and Deputy Ambassador. Although the MPSR does not specify the eligibility criteria for the appointment of ambassador, deputy ambassadors or equivalent posts, the Foreign Service is still part of the public service.

In all Foreign Missions, the Government of Malawi employs local staff to serve in select positions. The local staff is recruited and employed on 36-months contract basis, in alignment with the host nation's labour laws.

3.4.6. Key Findings on Types of Contracts

Abuse of Presidential Appointment powers

The Taskforce observed that Presidential appointments are placed on employment contracts for a specified period, which averages 36 months. However, some contract holders, such as personal assistants and diplomats who previously were not in the civil service, are mainstreamed into the civil service upon contract expiry. The same applies to other appointments such as personal assistants. This amounts to back-door en-tr-y into the civil service, which demoralizes the civil servants, skews human resource planning and causes budget slippages, and politicizes the public service.

Presidential appointments under the President (Salaries and Benefits) Act, the Public Service Act (1994) and non-statutory political appointees are not clearly distinguished from those that join main stream civil service in established posts, such as Secretary to the Treasury and Secretary to the President and Cabinet.

The Taskforce therefore recommends as follows:



Recommendations 3.6: Presidential appointees on employment contracts for a specified period, some contract holders such as Minister's personal assistants, diplomats who are not career civil servants, and non-statutory political appointees such as Special Presidential Advisers, should not transition into the mainstream civil service. Furthermore, the length of their employment contract should be aligned to the terms of Office of the President, Vice President, Ministers, and Deputy Ministers as the case may be.

Irregular appointments



Recommendations 3.7: DHRMD and the Ministry of Foreign Affairs should ensure that the review of the MPSR includes clear guidelines on eligibility, recruitment, and selection of diplomats to serve in Malawi's Foreign Missions.

The placement of diplomats in Foreign Missions should be aligned to the Government's foreign policy strategic goals.

Review the Missions' staff organisation chart, update the job descriptions appropriately and ensure that the staff meet the qualification requirements.

Grading and performance appraisals

Officers appointed on fixed-term contracts to fill certain position such as assistants to Ministers or valet to a President are employed in positions equivalent to the specific grades in the civil service salary structure. However, over time, these appointees are arbitrarily given higher grades during the course of their service contrary to the Public Service Act (1994).

The Taskforce therefore makes the following recommendations:



Recommendations 3.8: Strengthen procedures for selection, promotion and performance monitoring of Controlling Officers and other officers.

For Grades E to B, promotion should be upon successful training and subject to oral and written interviews.

Individual performance appraisal must be effectively enforced for all officers in Public Service, including Principal Secretaries.

An effective performance appraisal system should determine the renewal and termination of contracts in the public service.

Recommendation 3.9: The process of winding up a contract of employment should start and be determined at least three months before the expiry of the existing contract.

Recommendation 3.10: As a matter of good governance and effective public service management, the President should make his appointment only from the list of candidates identified by the Public Service Commission through a competitive process.

Recommendation 3.11: Both DHRMD and OPC should develop guidelines on employment of persons from outside of the civil service, who are deemed to possess rare skills. This will ensure that there is documentation confirming that the government has indeed failed to get a suitable candidate from within the civil service

Recommendation 3.12: The Schedule to the President (Salaries and Benefits) Act should be amended, to include specific offices to which the President can make appointments. These appointments should not be assimilated into the civil service, once the term of the appointing authority expires.

3.5. Recruitment Processes and Procedures

PSR 1:115(1) states that “where the public interest requires that an appointment be made on special terms or conditions of service to meet specific needs, the Secretary for HRMD may recommend to the appropriate Commission that the appointment be made on written contract for a period of employment and on terms and conditions agreed to by both the Government and any applicant for the post.” This regulation provides for appointment on contract for a specific period. However, the specific procedures detailed in this regulation have been overtaken by the provision of section 6 of the Public Service Act, which grants the President the power to appoint those on Grade E (P4) and above.

In terms of the recruitment process, MDAs submit recommendation to OPC for filling of posts on Grade E and above. Thereafter, the DHRMD must certify that the

vacancy exists and the Secretary to the Treasury must confirm that there are funds for the post. After the President approves the contracts, the DHRMD drafts a memo and forwards it to OPC to formally appoint the employee. While the process itself is straightforward, it does not always happen in the manner envisaged.

In parastatals, hiring of senior officers is vested in the Board or Council of the corporation. In some of these institutions, the Minister is supposed to appoint members of the Boards or Councils. In the manner articulated by the law, the Minister appoints Board or Council members and the Board or Council hires its executive management, and the Chief Executive Officer (CEO) or other similar officer is responsible for hiring the rest of the lower-level employees. However, the prevalent practice is that the President appoints the members of the Boards or Councils, and the OPC is heavily involved in the hiring of the executive management staff. This is an anomaly.

The recruitment for executive management in parastatals requires the involvement of the DSC and the DHRMD. According to procedure, the Board of the concerned institution informs the DSC of intention to recruit. This practice has no legal basis. For recruitments of those on Grade E (P4) and above or executive managers in the parastatals, OPC is always involved. Equally, this is not within the law since the corporation's enabling Act would have already provided for the authority to hire executive management at Grades E (or its equivalent) and above.

For those in Foreign Service under the Ministry of Foreign Affairs, the guidelines on recruitment are not clear. The Ministry does not segment eligibility by qualifications, which positions are open to political appointees, especially individuals outside of the civil service, and which ones need to be filled by technical staff from within the civil service.

Section 4 of the Public Service Act states that "entry into and advancement within the public service shall be determined solely on the basis of merit, namely, relative ability, knowledge, skill and aptitude after fair and open competition which assures that all citizens receive equal opportunity." However, the procedure or processes currently in use do not often conform to this legal provision.

3.5.1. Key Findings- Recruitment Processes and Procedure

The Taskforce noted that the Government of Malawi had, over the last decades, carried out public sector reforms to strengthen the capacity, efficiency and effective-ness of all branches of the public service and improve the quality-of-service delivery to the citizens of Malawi.^{xvi} The reforms prescribed different processes, provided for different powers and responsibilities to different bodies and persons, including the recruitment process of public officers. These reforms sought to ensure that the recruitment process was a fair and competitive, open to all qualified citizens of Malawi. Despite this, there has been maladministration in the recruitment of public

officers. The following are some of the challenges and bad practices in recruitment of public officers in the civil service and parastatals in Malawi identified by the Taskforce.

Recruitment of Unqualified Officers

There is evidence of cases of recruitment of unqualified candidates in the civil service and parastatals to positions that the law and job specifications clearly provide for the required qualifications. For example, an officer was appointed into the civil service with qualifications in journalism and was appointed Director of Administration after he was relieved of his position as a Presidential spokesperson. Similarly, a Deputy Chief Executive Officer for the National Food Reserve Agency, was offered the position after failing to secure a parliamentary seat. This case is not only about unqualified persons but also unprocedural, in that no interviews were conducted and the post does not exist on the agency's establishment.

Some of these allegations are neither investigated nor acted upon, while others are investigated and proven. A report released by the Office of the Ombudsman in 2021^{xvii} showed that there was irregular promotion of an employee to an Internal Auditor and Risk Manager position at the Malawi Energy Regulatory Authority, without the required qualifications. The report also indicates that the person recruited to the position of Director of Electricity and Renewable Energy was not qualified for the position. Maladministration in the form of recruiting unqualified candidates should be easy to address when there is clarity on the qualifications required for a position in the civil service or a parastatal.

In 2012, the President appointed an advisor on youth development to lead the National Intelligence Service.^{xviii} By its nature, this job requires investigative skills and therefore needed somebody with vast experience in intelligence, intelligence gathering or in the police service or the defence forces, where part of his or her job involved intelligence work. However, the officer was an agriculturist, with no track record in security or intelligence services.

Flouting of Set Procedure

Recruitment or appointment without following standard procedure has also been a challenge in the civil service and parastatals in Malawi. This comes in the form of either appointment by exercising power ultra-vires or recruitment or appointment which goes against the prescribed process for a given position. According to a report of the Ombudsman, a candidate was appointed in 2019 by the Office of the President and Cabinet to the position of Director of Pharmaceutical Operations (DPO) at the Central Medical Stores Trust against the decision of the board. The President exercised powers that he did not have in this case, where the right ap-

pointing authority was the board. However, the board had appointed another candidate, only to be overruled by the Office of the President and Cabinet. The Office of the President and Cabinet also appointed a Chief Executive Officer at the Malawi Energy Regulatory Authority, which was contrary to the dictates of the Constitution, as read with the Energy Regulation Act.^{xix} There are also cases of civil servants who are said to be 'quarantined' in the Office of the President and Cabinet, where they are deployed without being assigned appropriate functions, but get free remuneration.

Handpicking Officers without Following a Competitive Process

There have also been cases of recruitment without following due procedure. There is evidence that there is malpractice in the recruitment and appointment of candidates in different positions in the civil service and parastatals. For instance, the appointment of the Chief Executive Officer at the Malawi Energy Regulatory Authority, who was appointed in 2020 by the Office of the President and Cabinet, was done without advertising the position and allowing for a fair and open competition, which was illegal and unprocedural.^{xx} The same report also indicates that there was unprocedural recruitment of the Director of Electricity and Renewable Energy (DERE), who did not apply for the position, was not qualified for the position and was not interviewed for the same.^{xxi} The interview process is vital in the process of hiring. Apart from the fact that it helps achieve transparency and accountability in the hiring process, which is a requirement in a democratic society, the interview process also helps predict how successfully the individual would perform in the job they have applied for, by measuring their performance against predetermined criteria.^{xxii}

Political Influence on Recruitment Process

The reported forms of maladministration usually come about because of political influence and interference, cronyism, favouritism or/and corruption. It appears there are people determined to put candidates in certain positions, regardless of stipulations of the law. The Malawi Revenue Authority recruitment saga 2020 is a good example. According to the Malawi Anti-Corruption Bureau,^{xxiii} 533 candidates were invited for interviews by MRA, of whom 487 attended the interviews and 125 candidates were successful. The list of 125 successful candidates was then sent to the National Intelligence Service for vetting. However, MRA felt that the vetting process was taking long and went ahead to offer jobs to some of the candidates, prior to receiving the vetting results. In the process, 71 names, which were not on the list of the successful candidates, were offered jobs. They found their way into the second list without merit. The ACB report also showed that the National Intelligence Service (NIS) was not supposed to vet the successful candidates, according to the law, which provides that customs and revenue posts are not supposed to be vetted by NIS. It is possible that this happened because of influence from people in political positions, who were determined to add names to the list of those recruited, even without any established merit. Table 16 presents selected examples of irregular or illegal employment contracts in the Malawi Public Service.

Table 16: Selected Cases of Irregular/ illegal Contracts

ISSUE	INSTITUTION	CASE
WORK FACILITATING		
Employment outside the retirement age	National Herbarium and botanic gardens	CEO was appointed after he attained the mandatory retirement age.
	National Food Reserve Agency	Serving as CEO when he had attained the retirement age
	National Library Service	Serving as CEO even after attaining the mandatory retirement age
	Pharmacy and Medicine Regulatory Authority	DG appointed even when he had attained the retirement age
Noncompliance to contract management procedure	National Herbarium and Botanic Gardens	Served as CEO without a signed contract and did not receive his salary. He wanted to be paid under the University of Malawi salary scales, his former employer. This is contrary to the Employment Act that says employees should have a net salary of not less than 50%.
	Pharmacy and Medicine Regulator Authority	CEO demanded a salary outside the salary structure of PMRA which is contrary to the organisation's terms and conditions of service.
	Electricity Generation Company	The CEO and several Directors paid salaries outside the scale of EGENCO

ISSUE	INSTITUTION	CASE
	National Higher Education Loans and Grants Board	CEO signed contract in February, 6 months before the previous expired against the standard procedure of signing a new contract at a time you have completed a contract and the standard practice of having contract negotiations when a contract is 3 months to the expiry date
	Roads Authority	Director of Planning and Development- contract signed before expiry of the 1st contract
	Roads Authority	Chief Executive Officer - contract was signed before the expiry of the first.
Conflicting clauses in the standard employment contract	MACRA	CEO was transferred from MACRA to Lilongwe Water Board and then to Malawi Post Corporations with reference to clause 1 g the employment contract seeing MACRA technically with two CEOs.
	ESCOM	The same clause was used to transfer from ESCOM to Air Cargo making ESCOM have two CEOs on their payroll
	Malawi Gaming Board	CEO transferred to Umodzi Holding subject to clause 1 g of the Employment contract

ISSUE	INSTITUTION	CASE
Contract issued without interview procedure	Power Market	Recruitment of all Executive Management of Power Market did not follow proper procedure
	Malawi Gaming Board	CEO appointed at the Gaming Board as CEO without proper interviews
	Greenbelt Authority	Acting CEO, Director of Finance appointment did not follow procedures

3.5.2. Recommendations for Procedures and Processes

Based on the these findings, the Taskforce recommends the following:



Recommendation 3.13: The respective boards and DHRMD should terminate all irregular contracts including those people recruited without following government-approved procedures, without appropriate qualifications, political appointees who were mainstreamed, and those who are past the mandatory retirement age, by end June 2021.

Recruitment procedures must be followed to the letter, and where they are flouted, the responsible officers, including boards, must be held to account.

Recommendation 3.14: Government and parastatal boards must carry out Human Resource Audits, or take action on existing Audit reports, to confirm unprocedural recruitments. Contracts for all those irregularly and illegally employed must be terminated.

Recommendation 3.15: OPC, DHRMD and MDA's should immediately discontinue the practice commonly known as "Quarantine," "Guantanamo Bay" or "Warehousing", where officers are deployed without being assigned to appropriate functions, but get free remuneration. Controlling Officer should follow appropriate procedures for addressing indiscipline and under-performance, including termination of services, as provided for in the Employment Act.

DHRMD should provide guidelines for redeployment and redundancy scheme. All affected officers must have their cases resolved within three months.

The reasons for transfer or exigencies have to be stipulated in the letter of posting; and DHRMD should develop proper guidelines for posting and redeployment of public officers.

3.6. Oversight Institutions

There are several institutions and offices that play different roles in determining and managing employment contracts. The key ones are discussed below.

The Office of President and Cabinet (OPC)

Section 6 of the Public Service Act vests the power to appoint all officers above the rank of Under Secretary in the President. Thus, all appointment of officers from Grade E (P4) and above are under the jurisdiction of the President. Therefore, recommendations for appointment of such officers are submitted to the Office of President and Cabinet for the President's decision.

The Minister responsible for the Public Service has powers to determine emoluments in contracts to be attached to public offices. In exercise of this role, the Minister is supported by the Secretary to the President and Cabinet, who is also designated as the Head of the Public Service. The anomalies in this arrangement are further discussed in Chapter 4 on Conditions of Service.

The Department of Statutory Corporation

The Department of Statutory Corporations (DSC) was established in 1982 through an Executive Order. Its mandate is to coordinate the management and governance of State Corporations on behalf of the Government. The DSC was established to ensure state corporations' optimal resource allocation, utilization and management, in order to ensure the efficient and effective delivery of services to the public and maximise complementary goods and services provision across the sector.

The Department of Human Resource Management and Development (DHRMD)

The Department of Human Resource Management and Development (DHRMD) was established under section 19 of the Public Service Act (1994), to be headed by the Secretary for Human Resource Management and Development. One of the principal objectives for its establishment was to *"(e) to develop, introduce and judiciously administer the public service conditions of service, codes of ethics, precedents and norms to ensure that the integrity of the service, staff morale and welfare and overall performance of the public service continuously remain high.*

Among other things, the Secretary for Human Resource Management and Development shall be responsible *"for direction, co-ordination and control of all professional, technical and administrative activities relating to human resource planning; human resource training and development; human resource complement, grading*

and deployment; human resource management; recruitment and promotion policy; performance and productivity improvement recruitment and promotion policy;”

The Public Service Act therefore gives DHRMD the role to oversee and coordinate the process of management of contracts of employment in the public service.

The Secretary to the President and Cabinet (SPC)

As Head of the Public Service, with approval of the Minister responsible for the Public Service, the SPC is responsible for the overall management and administration of the Public Service. This includes formulation, direction and coordinating the overall national policy in relation to the emoluments and remuneration, hence contracts of public officers.

The National Assembly

The National Assembly determines salaries of judicial officers, as provided for in section 114 of the Constitution. As the National Assembly does not have requisite capacity and skills for this role, at one point it hired external consultants, Graham Carr, to advise it on setting remuneration and benefits for the Judiciary. The exercise was one-off and has never been repeated and it did not make the public sector-wide comparison that the Taskforce is advocating for.

Management Boards of Parastatals

Boards of parastatals have the mandate to determine conditions of service of staff in their parastatals and seek approvals as they see fit, from OPC and the Treasury. This practice compounds the disparities in employment contracts and conditions of service among the parastatals. For example, the remuneration and benefits that Malawi Communications Regulatory Authority and Malawi Energy Regulation Authority offer their workers are much higher than most of the parastatals, while those of the Reserve Bank of Malawi, EGENCO, and Power Market are outliers. The Chapter on Conditions of Service discusses these issues in detail.

3.6.1. Key Findings on Oversight bodies

After a detailed analysis of the above issues, the Taskforce noted that:

a) Although the law provides that the basis for remuneration of public officers shall be *equal pay for work of equal value and recognition for excellence in the performance of their duties as determined by an objective method of evaluation*, little objectivity exists. The fact that there are several institutions with mandates to set salaries in different organisations in the public service means that no holistic approach

has been applied and this has led to substantial differences/disparities in remuneration, allowances and benefits payable to officers across the public service. The civil service remains the lowest paid entity in the public service, as further discussed in the Chapter on Conditions of Service.

It is also observed that there is intention to have in place *a mechanism for determining remuneration and benefits for public officers, intended to among other factors, incentivize and retain public officers in service* but this does not exist.

In order to achieve equity and distributive justice in the public service, we expect that when remuneration and benefits are decided there must be a comparative review of all remuneration and benefits across the entire public service. However, no comparative reviews are known to take place across the public service. The institutions with oversight appear to operate independently when it comes to determining remuneration and benefits. There is also a weak legal and institutional framework for undertaking this critical function, which should ensure fair and justifiable remuneration and benefits packages, and as a result, contracts on offer bear no semblance of fairness and equity. It is instructive to note that the operations of the DHRMD are mostly *ad hoc* in nature and thus do not reach all institutions in any given cycle.

The Taskforce noted that efforts in this direction have been made in the past to address these challenges, including the establishment of the Public Service Remuneration Board, established administratively in 2006, to undertake these comparative reviews. However, the Board never executed its mandate, due to the absence of an enabling legal framework for its functional operations. Another effort is the drafting of the National Remuneration Commission Bill (2017). Although the 2017 Bill met with a court injunction, which prohibited further work, the settlement removing the injunction was reached out-of-court, which means that the Bill can now be revived. The Taskforce's recommendations on a National Remuneration body are spelt out in the Chapter on Restructuring.

3.6.2. Recommendations: Oversight Bodies

The Taskforce therefore recommends as follows:



Recommendation 3.16: The proposed National Remuneration Directorate under the Public Service Commission should harmonize remuneration, benefits, and conditions of service across the public service.

DHRMD should enhance the capacity of and coordination among oversight institutions.

Carry out or take action on existing HR audits and performance appraisals by Performance Enhancement Department.

3.7. Conclusion

Despite various reforms that have been implemented in the civil service to ensure fair and competitive recruitment process, there have been cases of maladministration which have taken a form of exercising power ultra-vires, influence of the recruitment process and corruption. Officers have been handpicked without a fair and competitive process of recruitment, which is against the values of a democratic society like Malawi. Further, the current oversight has various institutions determining remuneration and benefits of public sector officers in a disjointed, unprofessional way and it has led to palpable disparities in remuneration throughout the Public Service. This has led to lack of distributive justice and equity in the public service.



PART B:
**ANALYSIS
AND DISCUSSION
OF KEY
FINDINGS**

**CHAPTER 4:
CONDITIONS OF SERVICE**

4.1. Background and Problem Statement

The Taskforce looked at the conditions of service in the public service. It observed that these, and particularly salaries and monetary and non-monetary allowances in the civil service are not competitive enough to attract and retain professional and technical staff, especially those with rare skills. This demotivates and undermines attempts to introduce performance management and discipline in the public service. Further-more, there are huge disparities in conditions of service in the public service institutions resulting in inequitable remuneration for work of equal value across the board. This demotivates and undermines attempts to introduce performance management and discipline in the public service.

In this regard, at paragraph 366 of its report, the Herbecq Commission on the review of the Malawi Civil Service (1985) observed that *".....the State is under a categorical obligation to remunerate its employees fairly and any statement of end which does not explicitly recognize this is not adequate. The concept of fairness in the field of pay is not straightforward. There is room for a wide spread of views as to what is fair and what is not, and as to the factors that should be properly taken into account and the weight to be attached to each. But a State which is manifestly unfair in its pay policies will not keep a satisfactory balance between duties and rewards and will pay a heavy price in employee dissatisfaction, ineffective working, poor recruitment and retention of staff with marketable skills and failure to attain objectives"*.

4.2. Objectives for the Review of Conditions of Service

The objective of this chapter was to review and to recommend some fair, equitable and competitive conditions of service, and a corresponding implementation plan that will eventually help to attract and retain a competitive and highly motivated work force. The ultimate objective is to have a public service that is fair and competitive in remunerating its employees, is efficient and effective in delivery of public services and commands public confidence and respect.

The specific objectives of the review were as follows:

- a. Review the existing policies, legislation and regulations on conditions of service to determine existing disparities in the public service and recommend appropriate amendments where applicable.
- b. Conduct a comparative study of conditions of service in public institutions.
- c. Review and recommend appropriate changes to the conditions of service in order to manage, attract and retain the best talent.

The Analysis

The Taskforce compared conditions of service in the judiciary, legislature and executive arms of the government and identified differences and similarities in the approval processes of the conditions of service for institutions under them. With regard to the executive arm, the analysis covered the mainstream civil service consisting of Ministries, Departments and Agencies (MDAs), parastatal organisations and state-owned enterprises (SEOs) and oversight institutions.

The analysis was aimed at making reasonable comparison in the conditions of service and, in some instances, using differential analysis.

The data analysis compared remuneration and general provisions in the various conditions of service reviewed, in general, and at specific levels of authority which have comparable responsibilities, irrespective of employing public institution. For instance, regarding remuneration, the Taskforce compared the following positions across selected public service institutions:

- a. Heads of institutions;
- b. Directors and managers;
- c. Entry point for graduates;
- d. Secretaries; and
- e. Lowest paid employee.

A few outlying public institutions were also sampled deliberately to provide a clear picture of the extent of the disparities in conditions of service and the extent to which they affect the morale of public servants and the overall management of the public service. The final decision to include an institution in the analysis was determined by the availability of data considering the time within which this report had to be produced. Nonetheless, the findings in this report are representative of the overall picture in terms of comparison of conditions of service in the public service, and therefore, can be relied upon as a basis for policy decision and adjustments.

4.3. Key Findings of the Analysis

4.3.1 Contextual Overview

Conditions of service, also called conditions of employment, are rules, procedures and stipulations that employees must abide by as part of their employment contract. These must be agreed to by both the employee and employer at the beginning of a worker's employment. For the purposes of this chapter, the review considered salaries, remunerative allowances and selected conditions of service as outlined in the Malawi Public Service Regulations (MPSR, 1991) and conditions of service applicable to selected parastatals.

4.3.2 Salaries

Salaries form a key element of conditions of service that has a direct impact on employee motivation. This poses the questions whether employees in the public sector, particularly but not exclusively those with scarce skills, are fairly and equitably remunerated for the duties they are required to perform. In considering this question the Taskforce paid particular attention to two fundamental principles. The first is the principle captured in section 6(1) of the Employment Act which states that *"every employer shall pay employees equal remuneration for work of equal value ..."*. This principle also applies to the public service by virtue of section 8 of the Public Service Act (1994). The second principle is the feasibility and sustainability of raising

²See <https://www.hrzone.com/hr-glossary/what-is-a-condition-of-employment>

remuneration in the current economic environment as it relates to the current cost of living. In considering the second principle, the Taskforce was guided by the observations of the Herbecq Commission Report (1985) in paragraph 371. The Commission observed that:

"A Government facing economic difficulty is entitled to expect its employees to bear a fair share of the cost of recovery. But to give insufficient priority to the funding of their pay is to put an excessive and unfair part of the burden on the employees and run serious risks with their motivation, their efficiency and integrity. The best of them, especially those with marketable qualifications, will leave; the rest will become discontented and their integrity, an asset of the highest value to Malawi, will come under increasing strain. And if standards once slip, recovery tends to be a long and difficult process".

In this regard, the Taskforce's role was to assess fairness and equity in the remuneration of public employees and recommend appropriate measures. The principle of fairness and equity is well captured in section 7 of the Public Service Act (1994) and section 12 of the Public Service Bill (2018) proposed to replace the current 1994 Act. Both sections provide that all public officers shall be treated fairly and equally in respect of human resource management and development. Accordingly, the Taskforce anchored its analysis of the conditions of service on these principles.

On this basis, the review has established the following:

Low Salaries in the Public Service

- a. Salaries are generally lowest in the civil service and highest in the parastatal sector. This is true irrespective of whether or not the parastatal is subvented. For example, out of a sample of thirty-two (32) public institutions, a Principal Secretary, who is the Controlling Officer of a Ministry or Department in the civil service, had the second lowest salary, compared to a Chief Executive Officer, who is a Controlling Officer of a parastatal and, yet, reports to the Principal Secretary of a Ministry under which the parastatal falls. This glaring disparity is captured in Figure 4 and also in Figures 8-12 in Appendix 5. The Taskforce also found that there are wide salary gaps between the lowest and the highest paid employees in high paying institutions than in low paying institutions in the public service (See Figure 5). Clearly, the salary structures have no regard to fairness and equality among public institutions and run counter to the principle of equal pay for work of equal value enshrined in section 6(1) of the Employment Act (2000) and section 8 of the Public Service Act (1994).
- b. There are some outliers among parastatals on both the lower end (e.g. National Herbarium and Botanical Gardens of Malawi (NHBG)) and on the higher end (such as ESCOM, EGENCO, MACRA, MERA): see Figures 8-12 in Appendices 5. The Taskforce found it difficult to fully appreciate that salaries in NHBG are low for the simply because ESCOM, EGENCO, MACRA and MERA, NHBG is not a commercial organisation and does not generate its own income. Seen from this angle and give that all these

institutions are parastatals wholly owned by the government, the Taskforce found this reasoning flawed and unfair.

Figure 4: Minimum and Maximum Selected Grades in the Public Service

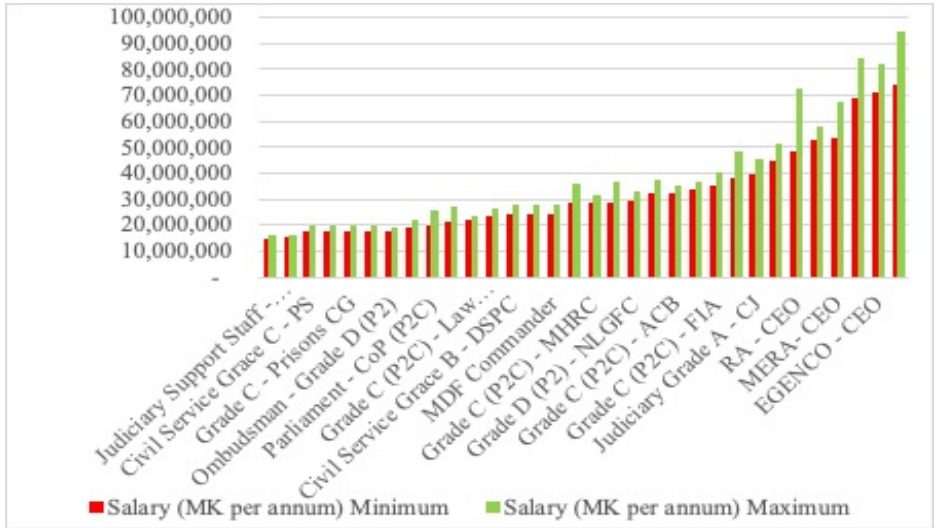


Figure 5: Salary Equity - The Differential/Gap Analysis Between the Highest and the Lowest Paid Employees

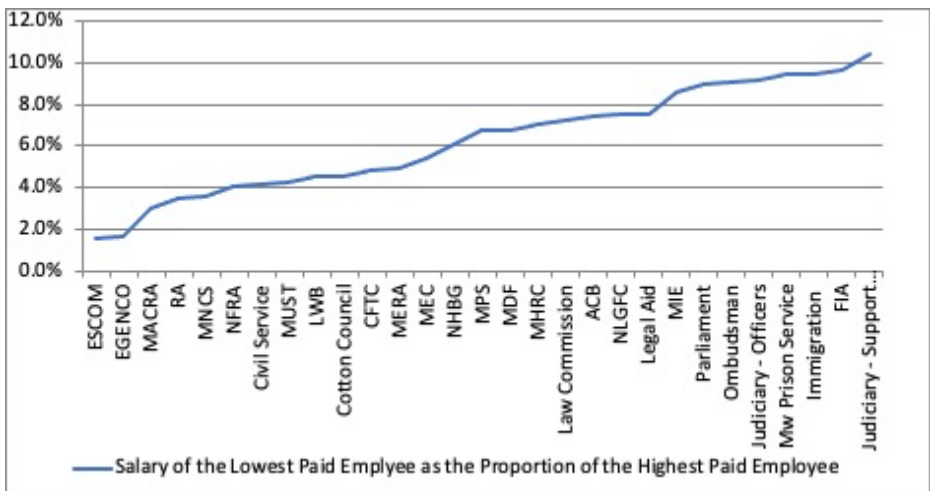
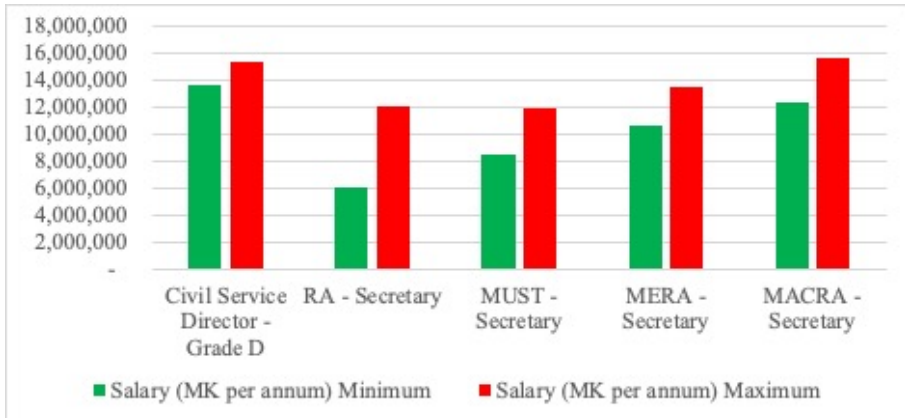


Figure 6: Salaries of Civil Service Directors Compared to Secretaries in Selected Parastatals



- (c) Salaries of directors in the mainstream civil service are comparable to those of some secretaries to the CEOs in some parastatals, even though the two jobs have very different responsibilities and demands. See Figure 10 in Appendix 5.
- (d) The number of employees in the civil service is high in the middle to lower grades. There are 65,332 employees at Grade L and 29,588 employees at Grade K, representing 41.9% and 19% respectively of the total workforce of about 155,822 employees (the civil service, Malawi Police Service, Malawi Prison Service, Teaching Service, Health Service). This means that 60.9% of the total work force is in Grades L and K. As a result, any slight upward adjustments in the salaries results in an escalation of the wage and pension bills.



Recommendation 4.1: Rationalize Salaries in the Public Service

The Taskforce recommends that specifically,

- a. DHRMD, DSC, MoF and MoJ in liaison with the Boards of Directors for parastatals should review salary structures in the Public Service in order to achieve parity and equal pay for work of equal value. In order to achieve this, the following factors should be taken into account or applied, as the case may be:
 - i. Freezing the salary structures of the highest paying institutions in the public service (allowing notch movement only and not revising the salary structures).
 - ii.
 - iii. Terminate by mutual agreement employment of existing staff in parastatals, paying them appropriate terminal benefits and rehiring those still interested on new and approved salary structure. This measure is not new. It was done before when migrating CEOs from permanent and pensionable to fixed term contracts of employment and similarly in 2000 when civil servants in grades E (formerly Grade S4/P4) and above migrated from permanent and pensionable to fixed term contracts before that scheme reverted to permanent and pensionable terms a few years later.
 - iv.
 - v. Drawing new and realistic contracts for all new recruits on fixed term contracts while allowing the existing contracts to expire;
 - vi.
 - vii. Monitor the fixed ratio between the lowest and the highest paid employee to ensure adherence to the principles of equity and to control arbitrary salary increases for the top management.

Salaries below Minimum Basic Needs Basket

Salaries of lower cadre public servants (especially from Grade I and below in the civil service) are far below the Basic Needs Basket cost of living which as at March 2021 was MK240,000 net per month, for an average family of six, according to the Centre for Social Concern (See Table 22 in Appendix 5 for an illustrative list of the needs basket). This translates into a gross salary of K300,000 per month or MK3,600,000 per annum. Currently, the minimum entry salary of MK115,521 per month or MK1,386,252 per annum for Grade R in the civil service is below the current cost of living wage by 61.5% while that of a fresh graduate at Grade I of MK282,370 or MK3,388,440 per annum is below the current cost of living wage by 5.9%.

The low salary impinges on the employee's right to decent accommodation and

the principle of decent work enshrined in the ILO conventions. This is borne out by the fact that the majority of civil servants, especially in the lowest cadres live in dilapidated conditions, not fit for humans, and are deprived of their right to human dignity. Besides, unlike senior public servants, the lowest cadres live very far from their work places and face difficulties to travel to and from work. In this regard, the Taskforce observed that any slight adjustment in the wage bill has a huge impact in the overall personal emolument budget and pension bill.

However, in analysing the salaries, it was clear to the Taskforce that transport and housing are the major cost items in the civil servants' consumption basket. For instance, the net salary for the employee in Grade R is MK110,865 per month. When the cost of transport and housing, estimated at MK78,000, are taken out, the employee remains with about MK32,865 only per month, on which he or she is expected to meet all other needs, including food. Given that the cost of the Basic Needs Basket increases with time at a faster rate than increases in the salaries, the real value of the salary erodes rapidly within a very short time, widening the gap between the Basic Needs Basket and the net salary of the employee.

It is unconscionable and inhuman for the government to pay any employee or any segment of its employees' remuneration below the cost-of-living wage. This is precisely the genesis of the abuse of allowances, and the reason for corruption, theft, fraud, and collapse of ethics and moral values. And it is largely the reason for the establishment of this Taskforce.

The Taskforce therefore recommends as follows:



Recommendation 4.2: Improve the salaries of public servants so that the lowest paid employee should receive a salary which responds to the Basic Needs Requirement.

- a. At any point in time the salary of the lowest paid public servants should not be lower than the cost of living
- b. Immediately implement Scenario Two (MK150,000) of the three options below and move towards Scenario Three (MK200,000) in the short term, and to a salary of not less than the prevailing cost of living wage in the medium term;
- c. Introduce a contribution towards housing and transportation through appropriate non-taxable allowances as recommended below.
- d. Implement the housing allowance progressively, starting with MK40,000 for Grade R in Year 1, MK60,000 in Year 2 and MK70,000 in Year 3.
- e. The Public Service Commission recommended in this report must monitor the cost of living at least on a quarterly basis to be used in reviewing salaries

YEAR ONE SCENARIO	MINIMUM SALARY FOR GRADE R	HOUSING FOR GRADE R	TRANSPORT FOR GRADE R	INCREMENTAL WAGE BILL	
				(MK' BN)	%
ONE	115,521	40,000	30,000	11.9	41
TWO	150,000	40,000	30,000	20.5	70
THREE	200,000	40,000	30,000	33.1	113
	GRADE	HOUSING ALLOWANCE	TRANSPORT ALLOWANCE		
	A	150,000	0		
	B	140,000	0		
	C	120,000	0		
	D	110,000	0		
	E	100,000	30,000		
	F	90,000	30,000		
	G to I	60,000	30,000		
	J to L	50,000	30,000		
	M to R	40,000	30,000		

Note 1: Since housing allowance is currently provided to doctors, military personnel, police officers and judicial staff, it is only fair and equitable to extend this benefit to all civil servants.

Note 2: Furthermore, given that these are modest amounts, an introduction of non-taxable allowances will improve the net pay of employees without any negative impact on the pension bill.

Note 3: The housing and transport allowances for the rest of the grades are proposed as above.

4.3.3 Lack of a Coordinated System for Checks and Balances in the Implementation of Medium Term Pay Policy

It is government policy that no employee in the public service shall receive salaries outside the salary scale segment approved by the government applicable to em-

ployee's grade. In this regard, the study established that some parastatals currently pay the employees in their executive management salaries that are above, and outside the approved salary scale segments of their grades, despite this clear policy. A good example is EGENCO, where the approved salary structure shows that the salary of the Chief Executive Officer (CEO) is in the range of MK70.8 million to MK81.7 million per annum. To the contrary, the CEO's current contract of employment shows that his salary in the first year of his contract of employment was MK109.6 million. This means that his salary was K27.9 million in excess of the maximum of K81.7 million provided for in the approved salary structure. The same case applies to the Director of Operations, and Director of Planning and Development in the same agency (see Figure 7). It must be noted that the adjustment to the current salaries of employees in the executive management at EGENCO, a company wholly owned by the government, were not approved by government.

Not surprisingly, the salary arrangement at EGENCO has made other public institutions, including ESCOM and MERA, to also request adjustments of salaries for their top management to the same level or beyond those at EGENCO. However, ESCOM and MERA have taken care to formally request the government to approve the adjustment of the proposed salaries and, in the view of the Taskforce, to be seen to be following procedure. The Taskforce recommends that the government should reject the request from ESCOM and MERA and instead proceed to address the situation at EGENCO as stated in Recommendation 4.3.



Recommendation 4.3: Ensure that contracted salaries are within the Salary Scale Segment of the employee's grade

DHRMD in consultation with the DSC, the Attorney General and the Board of Directors of statutory bodies, must urgently review salaries of statutory bodies and investigate the basis for salaries that are outside the approved salary structures, determine their legality and report to the Office of the President and Cabinet for appropriate disciplinary and corrective action.

Henceforth, no employment contracts should depart from the approved conditions of service. The starting salary should be pegged at the minimum salary applicable for the grade.

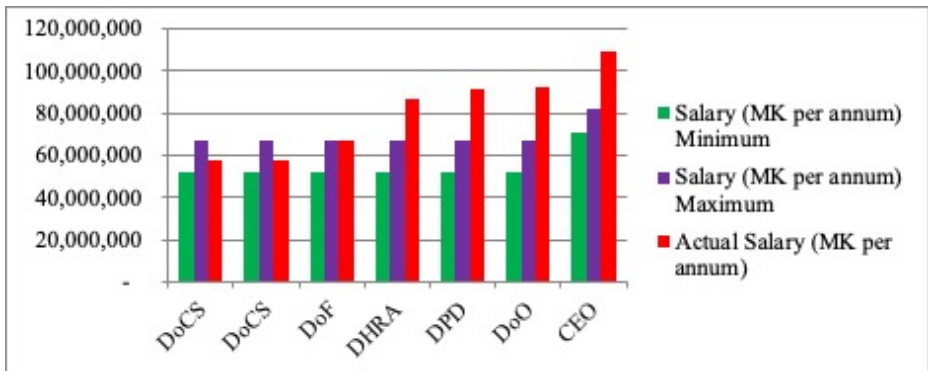
Ensure improved Governance Structures

Improve governance by establishing systems of checks and balances by finalising the State Corporation Policy, State Corporations Bill and the National Remuneration Commission Bill as (recommended in Chapter 5 on Restructuring Committee) to avoid ad-hoc salary and conditions of service adjustments.

4.3.4. Policy on Renewal of Contracts of Employment

A related issue with a bearing on remuneration concerns the renewal of employment contracts of members of senior management of the parastatals. It is government policy and a matter of good employment contract management that a contract of employment may only be renewed not more three months in advance of the expiry of the current contract, and not before a performance appraisal is carried out. The study has found that, in breach of this policy, contracts of employment in selected parastatals were renewed eight months or more in advance of the expiry of existing contracts. The Taskforce noted that this irregular practice tends to happen before a presidential election, in order to secure employment in the event of a transition from one administration to another. This issue is addressed in Chapter 3 on Employment Contracts.

Figure 7: Actual Salaries for EGENCO Executive Management



4.4. Remunerative Non-Cash Allowances

Clean Wage Policy in the Public Service

The review noted that government adopted a clean wage policy (consolidation of remunerative allowances into the salary), following the implementation of the Civil Service Medium Term Pay Policy (2003). However, as noted in the chapter on Allowances, there have been some deviations from the clean wage policy in order to accommodate the special needs of selected institutions and professional employees.



Recommendation 4.4: Introduce and/or Maintain Uniform Remunerative Allowances.

Review remunerative cross-cutting remunerative allowances and introduce non-taxable remunerative allowances towards critical expenditure items, namely, housing and transportation.

Determination and Revision of Conditions of Service in the Public Service

The Taskforce found that there are disparities in the approval process of conditions of service. This is a result of the existence of multiple approving authorities that work in isolation of each other and the absence of specific common laid down standards or guidelines to moderate, rationalize and harmonize the conditions of service. The general lack of clear policies and procedures on remuneration has largely caused a proliferation of various remunerative allowances as demonstrated below.

Disparities in Approval of Conditions of Service among Public Sector Institutions

The problem of disparities in conditions of service essentially emanates from the enabling legislation of each public institution or service. Section 30 (2) (a) of the Public Service Act (1994) empowers the Minister responsible for the Public Service to make regulations providing for the terms and conditions of service of public servants. With regard to public servants in the civil service, their terms and conditions are laid down in the Malawi Public Service Regulations (MPSR). This is repeated in section 63 (2) (a) of the proposed Public Service Bill (2018). There are no terms and conditions of service common to all the parastatals including state-owned enterprises. For parastatals and state-owned enterprises, the terms and conditions of service are almost entirely determined by their Boards of Directors as mandated by their respective enabling legislation, although in practice they are subject to government approval or endorsement.

This effectively means that there are multiple authorities that are mandated to determine conditions of service in the public service. For instance, the civil service conditions of service are approved by multiple authorities within the civil service, including the civil service Commission. For judicial officers and some constitutional bodies, conditions of service are approved by Parliament. For judicial support staff, they are approved by the Minister of Finance while Parliament and the Cabinet approve their own conditions of service.

The Taskforce observed that the same applies to parastatals. For example, the Communications Act (Chapter 68:01 of the Laws of Malawi) empowers the Boards of Directors of the Malawi Communications Authority (MACRA), Malawi Broadcasting Corporation (MBC) and Malawi Posts Corporation (MPC) to pay their employees such remuneration, allowances, pensions, gratuity and other benefits as the institutions may, after obtaining professional advice, consider as being competitive in the employment market in Malawi. The Act does not define what constitutes “competitive in the employment market” and, therefore, leaves the determination of salaries and other benefits to the discretion of each institution. On the other hand, the Public Private Partnership Act empowers the Board of Directors of the Public Private Partnership Commission to appoint its Chief Executive Officer on such terms and conditions as may be approved by the Minister. Other staff are appointed by the Commission on such terms and conditions as may be determined by the Commission. The same picture obtains with respect to other parastatals. This is the genesis of the disparities in the determination of conditions of service, in particular, salaries observed in the public service.

Disparities within the Civil Service

Over time, the government has haphazardly approved remunerative allowances for specific selected professions or public institutions, supposedly in order to address their unique needs. These include professional allowances, risk allowances, subscription fees and school fees for children. This has resulted in an increased take-home pay for the concerned professions or institution and has demotivated other categories of employees who are denied similar allowances. Similarly, the government pays subscription fees to professional bodies for some professionals and not for others. Furthermore, all parastatals pay school fees in full for children of their executive management at schools of their choice in Malawi. No senior civil servant receives a similar benefit.

Our analysis has established that this disparity in remunerative allowances is a result of: a lack of a transparent procedure for granting these remunerative allowances and a lack of a single authority that considers and approves requests for these allowances. Currently, approvals for these allowances are granted separately by Cabinet, DHRMD, OPC, and MoF. In addition, the process for obtaining remunerative allowances is driven by interest groups within the public service such as lawyers, health workers and teachers that, by the nature of their professions, have strong bargaining power.

The analysis accordingly established that there is no harmonised and consistent mechanism for reviewing conditions of service in the civil service.



Recommendation 4.5: Ensure Equity in the Approval and Implementation of Remunerative Allowances

- a. The government should pay subscription fees for eligible professional officers to their respective professional bodies and pay the officers appropriate professional allowances reflecting the demands of their professions. Eligible professions must be only those recognized in section 5 of the Professional Qualifications Act, Chapter 53:01 of the Laws of Malawi; and in Schedule to the Act.
- b. DHRMD, DSC and Boards of Directors should revise the conditions of service, as appropriate, and develop a revised Employment Contract Template for implementation based on the recommendations of this report; and
- c. Conditions of service including remunerative allowances should be reviewed transparently and consistently at regular intervals of not more than five years by the Public Service Commission whose establishment is recommended in Chapter 6.

4.4.1 School Fees for Children of Members of Executive Management in Parastatals

Currently, all parastatals pay 100% of the school fees for up to two (2) children (who are below the age of eighteen (18)) of members of executive management at international private schools of the Executive's choice within Malawi. Similarly, Parliament pays school fees for the Clerk of Parliament, for up to three (3) children below the age of twenty-two (22) within Malawi. In all these cases, the choice of school is left to the discretion of the individual employee. The benefit is given, irrespective of the performance of the institution and whether it is financially sound or not. The schools do not have uniform levels of fees, so the institutions do not have full control of their budgets, resulting in (a) poor planning and poor allocation of resources at the expense of effective service delivery, and (b) serious abuse of this benefit.

The Taskforce also established that diplomatic staff in the Malawi Foreign Service receive school fees allowance for up to four (4) children. However, the amount is capped to a maximum applicable at the employee's duty station and to his or her grade.



Recommendation 4.6: Abolish school fees benefit for children of members of executive management of public institutions

- a. Abolish the school fees benefit in public institutions to achieve parity in the public service and revise employment contracts accordingly
- b. Current contracts to run their course before adopting this change in policy, and any new contract from the date of approval shall be on the new fixed contract template.
- c. Only public servants in the diplomatic service should be provided with school fees support for children below the age of 18 years while in service at a diplomatic mission abroad, and upon return to their home service, for a period of three to five years to allow for proper adjustment and reintegration into the school curriculum.

Cost Savings from the Abolishment of School Fees for Children of Members of Executive Management

The Taskforce estimates that at national level, implementation of the foregoing recommendation shall result in immediate savings amounting to MK5.89 billion in the first year (See Table 17). Considering that the schools adjust their fees almost on annual basis, the Taskforce estimates that savings will increase perpetually.

Table 17: Cost-savings from the Abolishment of School Fees for Executive Management's Dependent Children

S/N	Employer	Number of Executives	Number of Children	Number of Terms	Average Fees per Term	Average Fees Per Annum
1	Parastatals	355	2	3	2,752,599	5,863,035,870
2	Parliament	1	3	3	2,752,599	24,773,391
4	Total	356		6		5,887,809,261

NB:

- (i) Fees for Kamuzu Academy = K2,180,000 per term;
 - (ii) Fees for Karibu Academy = K1,800,000 per term;
 - (iii) Fees for St Andrews International School = K3,523,400 per term;
 - (iv) School Fees for Bishop Mackenzie International School = K3,506,976 per term;
- Average Fees = K2,752,599 per term**

4.4.2. Motor Vehicle and Fuel Entitlements

In the civil service, officers from Grade C and above are entitled to the use of self-driven government motor vehicles. For the purpose of this assignment, the analysis concentrates on selected grades as indicated below. Officers in Grade C and above are entitled to any motor vehicle with an engine capacity of not more than 3500cc (usually Toyota Prado TXL) and monthly fuel allowance of 500 litres. Currently, there are three (3) employees at Grade A, nine (9) employees at Grade B and fifty - seven employees at Grade C, making a total of sixty-eight (68) employees in all the three (3) Grades.

At the current level of entitlements, if all motor vehicles were to be replaced at once at the prevailing prices, it would cost the government (civil service and parastatals combined) a total of MK36.6 billion using a Toyota Malawi brand or MK24.8 billion using Nissan Malawi brand. In addition to the high purchasing cost, the government also pays huge maintenance costs for the vehicles in both the civil service and parastatals.

Similarly, the government is currently spending MK339.2 million on fuel every month, which translates to MK4.07 billion every year and MK20.4 billion every five years (the useful economic life of a motor vehicle). Furthermore, according to the government policy on disposal of motor vehicles in parastatals, a vehicle may only be disposed of upon reaching 200,000km or four (4) years, whichever comes first, and at 10% of the purchase price. Contrary to this policy, parastatals have negotiated with and convinced their boards to align disposal of government vehicles to the three (3) year -term of the contracts of employment. This is a serious abuse of the facility in every sense of the word. All government vehicles including those used in parastatals by eligible officers must be disposed of in accordance with government policy.



Recommendation 4.7:

Cabinet must revise motor vehicle entitlements for employees in Grades C or their equivalent in the public service, including Chief Executive Officers of parastatal organisations as follows:

S/N	POSITION/ GRADE	CURRENT	PROPOSED	CURRENT	PROPOSED
1	GRADE C	3500cc (e.g. TXL, Mitsubishi Pajero Exceed, etc)	2500cc (e.g. Toyota Rav 4, Nissan X-Trail, or their equivalent)	500 litres	500 litres
2	Grade D	None	Motor Vehicle Ownership Scheme/ government Provided vehicle	250	250 litres

Transitional Arrangements

Officers currently entitled to official vehicles will continue to use them to the end of their useful lives. New purchases will follow the new proposals.

Disposal Procedure

Disposal period to be revised upwards from the current four years from the date the vehicle was first procured or 200,000km whichever comes first, at 10 percent of the original price to:

- i) six years or 300,000 km, at 10 percent of the original price, or
- ii) three years, at 50 percent of the original price.

MOTOR VEHICLE SCHEME FOR GRADE D

Under Grade D, two options are available for consideration:

Option 1 (Government Provided)

Introduce a Motor Vehicle Ownership Scheme for officers at Grade D in the civil service and other officers of equivalent grade in other public institutions.

Under this option, the government would enter into an arrangement with a reputable car dealer in Malawi to supply Grade D employees with brand new or reconditioned vehicles, duty free, financed by a government-backed bank loan granted under the motor vehicle ownership scheme, as long as the dealer provides cost

³ CFAO Malawi was requested to provide information of its motor vehicles for inclusion in the analysis but never did despite several reminders.

effective after sales service.

In addition, government will provide a **maintenance allowance** calculated at current average maintenance cost of a Corolla Toyota.

Justification

- This arrangement will reduce the number of government-owned vehicles together with their associated costs, since the government will no longer provide self-driven vehicles for Grade D
- Employees will have ownership and control of the vehicle and will prudently use it knowing they have a limit on the maintenance allowance
- An independent Vehicle Needs Assessment should be carried out, with the aim of improving efficiency and effectiveness in pool vehicle utilization and maintenance and realizing cost savings that could be used to improve salaries.
- The excess vehicles can be reallocated to institutions including local councils where the vehicles are needed most.
- The excess drivers can be retrained and reallocated to perform other jobs in the civil service.
- Vehicles that are inefficient and costly to run and maintain can be boarded off pool.
- There will be a guaranteed after sales service provided by the vehicle dealer.

Option 2

Introduction of duty-free motor vehicle entitlement for public servants in Grades D, **to import** one brand new or re-conditioned motor vehicle of less than 8 years old, under a government loan, once every five years.

The government will provide a **maintenance allowance** as the vehicles will be used for official duties (calculated at current average maintenance cost of a Toyota Corolla)

Justification

- The loan amount (from government perspective) will be relatively smaller as compared to option 1 above as the vehicle price will be lower due to duty exemption.
- The government will have a known and limited amount of maintenance over the useful life of the vehicle.
- The officer will prudently use the vehicle knowing they have a limit on maintenance allocation per month and that they will ultimately own the motor vehicle.
- Employees will be able to buy better vehicles in good condition at a relatively lower purchase price

Option 1 is recommended because of the ~~duty-free option and after sales service.~~

⁴ Data obtained from Toyota Malawi

The advantage is that this will boost morale of the employees, encourage lower cadre employees to work hard and remain loyal to the civil service and encourage eligible officers to own suitable motor vehicles to ease their mobility.

4.4.3. Fuel and Motor Vehicle Entitlements in Parastatal Organisations

The parastatal sector has seventy-one (71) institutions, each headed by a Chief Executive Officer (CEO) who is entitled to any motor vehicle with engine capacity of not more than 3500cc (usually Toyota Prado TXL), and monthly fuel allowance ranging from 500 litres to 700 litres. Each parastatal has an average of four directors, and each is entitled to any motor vehicle with engine capacity of not more than 3000cc (usually Toyota Fortuner) and monthly fuel ranging from 400 litres to 500 litres.



Recommendation 4.8: Revise vehicle and fuel entitlements for CEO of parastatals as follows

S/N	POSITION/ GRADE	MOTOR VEHICLE ENTITLEMENT		FUEL ENTITLEMENT	
		CURRENT	PROPOSED	CURRENT	PROPOSED
1	CEOs	3500cc (e.g. TXL, Mitsubishi Pajero Exceed, etc)	2500cc (e.g. Toyota Rav 4, Nissan X-Trail, etc)	500-700 litres	500 litres*
2	Directors in Parastatals	3000cc (e.g. Toyota Fortuner, Nissan Pajero Sport, etc)	Motor Vehicle Ownership Scheme	500 litres	250 litres*

Note: Officers entitled to fuel as above shall not be allowed to draw any additional fuel from the pool unless with written authority from the Office of the President and Cabinet through the Department of Statutory Corporations.

*This fuel is for duty facilitation for both local and out of duty station work

4.4.4. Motor Vehicle Entitlements for Ministers, Deputy Ministers and Civil Servants

The Taskforce was mindful that the justification of the stringent recommendations in this report requires that sacrifices be made at all levels of government, including at Cabinet level and in the top-most positions in the civil service. For this reason, the Taskforce recommends that the motor vehicle entitlements of members of Cabinet and holders of the two top-most positions at Grades A and B in the civil service be similarly revised downwards. A revision in these benefits will go a long way to demonstrate genuine political will and commitment to cost-cutting and that senior members of the government are mindful of the economic hardship experienced by tax payers.



Recommendation 4.9: Revised vehicle and fuel entitlements for Cabinet Ministers and Deputy Ministers and Grades A and B

S/N	POSITION/ GRADE	CURRENT ENTITLEMENT	PROPOSED ENTITLEMENT
1	Minister and Deputy Minister. Grade A and B or equivalent, in the public service	Three Vehicles: <ul style="list-style-type: none"> • Toyota VX for Ministers/ Toyota TX for Deputy Ministers • 4x4 for relief and Personal Assistants for the Minister • Saloon for office errands 	<ul style="list-style-type: none"> • E.g. One Toyota Prado TXL official vehicle for the Minister and the Deputy Minister; and one saloon vehicle for relief and office errands

* Minister and Deputy Ministers receive 1,200 litres plus MK 400,000 for fuel. Grade A receives 2,500 litres fuel. Grade B receives 750 litres fuel.

Transitional arrangements: Immediate application will require renegotiation of current contracts of the civil servants at Grade A and B. Otherwise, this will apply to new contracts after the expiry of current contracts.

Cost Savings from Reduction of Motor Vehicle Entitlements

The revision of the motor vehicle and fuel entitlements will have immediate savings amounting to approximately M45.9 billion if

the motor vehicle brand was Toyota or MK49.7 billion if the brand was Nissan. Fuel saving would approximately MK956 million every year. These savings represent 76% on the current expenditure on motor vehicle entitlements and 23% on fuel.

Table 18 :Cost Savings from Reduction of Motor Vehicle Entitlements

S/N	EXPENDI- TURE ITEM	CURRENT ENTI- TLEMENT (MK)	PROPOSED ENTITLEMENT (MK)	SAVINGS	
				MK	%
A	OPTION: TX/FORTUNER VERSUS RAV 4/MOTOR VEHICLE SCHEME				
1	Purchase Cost per 5 years	54,657,400,000	12,239,200,000	42,418,200,000	78
2	Motor Vehi- cle Mainte- nance per annum	4,504,650,300	973,362,000	3,531,288,300	78
3	Total	59,162,050,300	13,212,562,000	45,949,488,300	78
B	OPTION: TX/FORTUNER VERSUS NISSAN X-TRAIL/MOTOR VEHICLE SCHEME				
1	Purchase Cost per 5 years	54,657,400,000	7,753,300,000	46,904,100,000	86
2	Motor Vehi- cle Mainte- nance per annum	4,504,650,300	1,676,298,000	2,828,352,300	63
3	Total	59,162,050,300	9,429,598,000	49,732,452,300	84

Notes:

(1) The TX/Fortuner has been used because the majority of the executive are currently using the same and a minority is using Nissan, VW or Ford equivalents;
 (2) The purchase cost was estimated by multiplying the number of employees in Grades A-C in civil service (69); Heads of oversight institutions (16); and CEOs of parastatal organisations (71) and directors of parastatals organisations (284) by the price of the motor vehicle. The maintenance cost was estimates by using standard service charges from Service Menu for Nissan Malawi and Toyota Malawi
 (3) The savings on the purchase cost are once off costs to be met at the time of purchase of the motor vehicle. However, the analysis has prorated them monthly over the five-year period, which is the Useful Economic Life of the motor vehicle;
 (4)The savings on Motor Vehicle Maintenance are annual figures. The analysis prorates them per month.

Table 19: Cost Savings from Reduction of Fuel Entitlements

S/N	EXPENDI-TURE ITEM	CURRENT ENTI-TLEMENT (MK)	PROPOSED ENTITLEMENT (MK)	SAVINGS	
				MK	%
	Fuel	4,070,400,000	3,114,000,000	956,400,000	23%

4.4.5. Medical Scheme Policy

While public sector institutions generally provide medical insurance cover to employees, the Malawi Public Service Management Policy (2018 to 2022) recognizes that the public service lacks appropriate guidelines and procedures for the management of the welfare of employees. This is particularly true of the civil service, where medical cover currently is provided to employees in Grades A to H. Employees in Grades A to C enjoy 100% medical cover while employees in Grades D to H enjoy a contributory scheme of 90% employer and 10% employee contribution medical cover to employees in Grades D to H.



Recommendation 4.10: Roll out medical cover in a phased approach to all cadres in the long term.

Immediately extend medical cover to Grade I with a contributory scheme of 80:20 in the first year and move towards 90:10 contributory scheme in **two years** and, in the medium-term, the Ministry of Finance and DHRMD should examine the logistics of extending coverage to employees in Grades J to R, given the numbers involved and their widespread location in rural areas where there are no MASM supported health facilities.

4.4.6. Performance Management System in the Public Service

Section 8 of the Public Service Act (1994) provides that the basis for remuneration of public servants shall be equal pay for work of equal value and recognition for excellence in the performance of their duties as determined by an objective method of evaluation. This principle is repeated in section 13 of the proposed Public Service Bill (2018) and is recognised in the Malawi Public Service Management Policy (2018 - 2022).

According to this policy, high performing public servants and public institutions are crucial for improving service delivery to the citizenry. Performance management involves planning, managing, and assessing the performance at organisational and individual levels in the context of a well-defined and communicated national results framework. The Malawi Public Service has for a long time been implementing performance management systems to improve productivity and performance with moderate success.

Unfortunately, the performance management system is challenged by inadequate funding for planned activities to enable employees and organisations to perform; poor implementation; inadequate commitment to the system, resistance to change by some implementing officers; lack of linkages between the performance appraisal system and rewards and sanctions systems; inadequate remuneration in the public service; inadequate strategic alignment of employees performance to national priorities through their MDA strategic plans; lack of integration between the employee performance management system and the organisational performance system which operate as two separate systems and; inadequate accountability for implementation of performance management systems by MDAs. In other words, the Performance Management System is practically dysfunctional and ineffective, despite the existence of the Performance Enforcement Department (PED).



Recommendation 4.11: Enforce the Performance Management System (PMS) in the Public Service

- a. Strengthen PED and the performance management system with Controlling Officers and heads of institutions taking the lead in management, reward and/or disciplining of officers.
- b. Implement outstanding human resource audit recommendations by National Audit Office.
- c. Make enforcement of the PMS a key performance framework for the Controlling Officers and heads of institutions. and for training of controlling officers and heads of institutions in the PMS;
- d. Introduce rewards and sanctions scheme (cost-saving or surplus schemes) aligned to performance management system;
- e. Controlling Officers to enforce adherence to Institutional Service Charters.

4.4.7 Discipline, Grievance Management and Code of Ethics in the Public Service

In the Malawi Public Service Management Policy (2018 - 2022), the government acknowledges that discipline in the public service is fast eroding. The policy identifies a number of reasons for this state of affairs. First, weak and selective implementation of policies and enforcement of rules, regulations and the public service code of ethics. Second, most supervisors lack the confidence to discipline their juniors. The policy attributes this to recruitment and promotion of wrong people and other irregularities. Third, grievances are often handled without regard to laid down procedures and laws, and different MDAs use different procedures for handling indiscipline and grievances.

Fourth, the Public Service Act is lacking in terms of fundamental principles for administrative justice, which is critical in guiding administrative decision-making, as provided for in the Constitution. Consequently, many decisions made in public service are challenged for being inconsistent with principles of natural justice, resulting in costly legal action.

Fifth, some public servants, particularly those in junior ranks, are members of unions such as the Civil Service Trade Union and Teachers' Union of Malawi. A lack of a clear understanding by both senior managers and junior staff of labour relations laws, including the Labour Relations Act of 1996 and labour relations regulations presents a challenge in the enforcement of discipline during illegal industrial actions. This has led to the entrenchment of indiscipline in the public service.

Sixth, lack of strict and consistent adherence of the Code of Ethics and Conduct for the Malawi Public Service (2013) as evidenced by rampant cases of unethical conduct by public employees. Yet, the code was developed to create a value system for the public service moulding it into a professional, innovative, responsive, results oriented and impartial public service which is able to deliver quality services. The Taskforce makes the following recommendations in this regard:



Recommendation 4.12: Apply a transparent and equitable discipline and grievance management process which adheres to principles of natural justice in order to maintain a disciplined and motivated work force.

Specifically,

- a. Institutionalize discipline and grievance management system through dissemination of grievance handling procedures in the Human Resource and Development Procedure Manual;
- b. Strengthen the capacity of supervisors and leaders on discipline and grievance management;
- c. Entrench the guiding principles and values outlined in the Public Service Management Policy among all public servants in order to institutionalise a customer and citizen-centric and service culture in the public service;
- d. Train senior managers in labour relations principles and the legislative framework for labour relations;
- e. Disseminate to all employees in simple easy-to-understand language key elements of labour relations laws and regulations;
- f. Develop a step-by-step manual for the enforcement of discipline based on the principles of natural justice in order to promote administrative justice.
- g. Develop a Disciplinary Action booklet that summarises all acts of misconduct and their penalties as stipulated in various laws and regulations including: the Malawi Public Service Commission Regulations, Malawi Public Service Regulations and the Public Finance Management Act and circulate them to all public servants, by 1st October, 2021
- h. Re-introduce and strengthen the institution-based Appointments and Disciplinary Committees and institutionalize Grievances Handling Committees and resource them accordingly.

Recommendation 4.13: Institutionalise Graduate Internship Programme and make it part of the National Youth Service and apply it to private companies as well; i. Introduce a gap year, after secondary school completion, for National Youth Service Programme as a prerequisite for employment. Civics and leadership to be part of the curriculum during the gap year;

4.5. Irregular Appointments and Promotions in the Public Service

As noted in the Chapter on System of Employment Contracts, irregular appointments are not uncommon in the Malawi public service. During consultations, it was clear that there are many challenges in the appointment, promotion and deployment of public servants. These include lack of transparency and guidelines especially in Presidential appointments of officers to positions in Grades E and above of the civil service. There is wide perception that these appointments are not based on merit especially where the appointee is not a career civil servant. In addition, while the appointment of non-career civil servants into the civil service can help to bring new and innovative ideas, there are no guidelines to ensure that the appointees possess the requisite qualifications, knowledge, experience and expertise for effective public service delivery. Consequently, such appointments are widely perceived to be nepotistic and/or made for political expedience or patronage, or to serve self-interests. In contrast, recruitment and promotions of employees in the civil service from the lowest grade to Grade F are effected through competition conducted by the Civil Service Commission from time to time.

These findings apply equally to the appointment of members of Boards of Directors of parastatals that fall under the Department of Statutory Corporations. The legal or legislative instruments establishing the majority of these public institutions do not specify the criteria for appointment to the Board. Not surprisingly, therefore, in many cases unqualified and incapable individuals are appointed to be on the Boards of Directors without due regard to the mandate of the institutions they are expected to direct and supervise. This is in sharp contrast to the appointment of Board members of the National Aids Commission and Malawi Human Rights Commission and the practice in Botswana and Kenya where Board members of statutory bodies and state-owned enterprises are appointed through competitive interviews.

The Taskforce saw no justification for the continued practice of exempting senior public officers from going through a competitive selection process except for appointments to Grade A (S1/P1). The Taskforce believes that the practice has outlived its usefulness and recommends its immediate abolition to ensure that only the most qualified people are appointed to various positions in the public service through a competitive selection process. This is in line with modern recruitment policies and the Malawi Public Service Management Policy.

The Taskforce makes the following recommendations:



Recommendation 4.14: Institutionalize meritocracy in appointments, deployments and promotion of public servants and appointment of Board Members of parastatals:

- a. **Appointments and deployments of public servants:**
by strictly enforcing the provisions of the Malawi Public Service Regulations in the appointment of public servants through the Public Service Commission whose establishment is recommended in Chapter 5 of this report and reviving institutional Appointments and Disciplinary Committees
- a. **Promotion of public officers:**
 - by ensuring that promotions to all positions in the civil service except Grade A (S1/P1) are based on the principles of competition, performance and examinable training at the Malawi School of Government. Training results to be submitted to Public Service Commission and relevant authorities which should thereafter interview the candidates for promotion.
 - by finalising the establishment of the Malawi School of Government with a curriculum based on the existing capacity gaps and needs in the public service, in particular
 - i. Leadership and Management.
 - ii. Ethics
 - iii. International Relations and Foreign Service.
 - iv. Health.
 - v. Labour Relations.
 - vi. Law, including labour law and principles of constitutional and administrative law.
 - vii. Administrative justice and procedure.
- b. **Appointment of Board Members of parastatals**
All non-*Ex Officio* board members positions must be advertised and interviews conducted by the Public Service Commission in consultation with the DSC, except where the relevant act of parliament provides for a public call for nominations.

4.6. Inadequate Legal and Regulatory Framework

The public service is guided by legislation, policies, regulations, executive guidance, and practices in making decisions and/or taking action. However, the Taskforce noted that the Public Service Act (1994) and the Malawi Public Service Regulations are outdated and not in tandem with the current challenges of the public service. Furthermore, a lot of decisions are made without following harmonised legal frameworks, written rules and procedures. This has resulted in inconsistencies in the management of the public service due to inadequate and legal frameworks that are

not harmonised. The following recommendation is made to rectify this situation:



Recommendation 4.15: Review and Improve the Legal and Regulatory Framework
Finalise proposed legislative instruments for the management of the public service, namely, Public Service Bill, draft Malawi Public Service Regulations, State Corporation Bill and State Corporation Policy, Foreign Relations and Service Bill and harmonize the MPSR with the Employment Act.

4.7. Public Service Pension Scheme

Following the enactment of the Pensions Act, (2011), the government adopted a contributory pension scheme for the civil service for newly recruited employees and those that were thirty-five (35) years and below as at 1st July, 2017. Government continued with the Pay-As-You-Go pension scheme for civil servants who were above 35 years of age on the same date. The fiscal burden of gratuity under the pay-as-you-go scheme is projected to end in 19 years' time when the last set of civil servants under this scheme retire. Since the scheme is managed wholly by the government, the fiscal burden on public funds means retirees experience delays in being paid their terminal benefits on retirement. Almost all are put on a waiting list and paid on a first come-first go basis. Meanwhile, the backlog increases every year as more civil servants retire.

A similar situation occurred in Zimbabwe. To manage the transition from the permanent pension scheme to the contributory scheme, the Zimbabwe government resorted to the contributory pension scheme as a source of funds not only to clear the backlog in gratuities, but also to pay off all retirement benefits of the retirees under the pay-as-you-go scheme. This has eased the fiscal burden on the cash flow management of the Zimbabwe Government. In addition, there is a fully-fledged government department which manages the book entries of employees' accounts under the contributory pension scheme.

The Taskforce makes the following recommendations:



Recommendation 4.16: Improve the Public Service Pension Scheme

- a. Contributions from the contributory pension scheme should be used to meet obligations under the Pay-As-You-Go Scheme.
- b. Establish a government institution with in-house capacity, e.g. Actuarial/Fund Managers, to manage the pension funds.
- c. After nineteen (19) years, upon the expiry of the Pay - As - You - Go Scheme, the institution should be licensed as a fully-fledged in-house pension fund which will manage the government pension fund much like at Press Corporation Limited, ESCOM Limited and National Bank of Malawi plc, etc.
- d. Review and exit any contract(s) with external pension funds managers in line with the revised policy.

4.8. Staff Complement at Central and Local Government

The Decentralization Policy and Local Government Act (1998), requires MDAs to devolve authority, responsibilities, functions and resources to local authorities. The policy also requires the phasing out of the parallel de-concentrated structures at district level.

As noted in the Public Sector Reforms Policy document, despite the intent in the Decentralization Policy and Local Government Act (1998), devolution in Malawi has been slow and partial, with dual systems of devolution and decentralization still operating at district level. Local authorities also lack the capacity in terms of human resources, finances and competencies to be effective, which is the justification some central government ministries use to delay the devolution process. Consequently, local governments recruit employees for the very same grades that exist and where staff are concentrated at, and which must be devolved from the central government to local councils.

Therefore, there is need to rationalize human resources at central government level and devolve excess staff to local government authorities where they are needed the most. Results from the personnel audit by the DHRMD should be used to carry out this exercise. It is also imperative to carry out a peer review of the Decentralisation Policy to assess the effectiveness of its implementation.

The Taskforce makes the following recommendations to address this state of affairs:



Recommendation 4.17: Rationalize the staff complement in the Central and Local Governments

Specifically:

- a. Decentralisation must be fully implemented as a matter of extreme urgency.
- b. Implement full devolution of the HRM function to Local Councils.
- c. Fully devolve assets and the budget to ensure efficient and effective service delivery at the local level.
- d. Undertake business process re-engineering to identify jobs that are still relevant, those that can be combined and any excess/irrelevant numbers. This will right-size and rationalize the structure of the civil service.
- e. Retrain and or redeploy any excess/irrelevant number elsewhere within the public service, for example, in Local Councils where their services are still required. To finance the payroll costs of the redeployed staff, Local Councils should be allowed to retain a proportion of their locally generated resources.
- f. Create avenues to absorb excess labour for those jobs that may become redundant as a result of restructuring and reforms, for example, by promoting SMEs through mechanisms such as the National Economic Empowerment Fund (NEEF)
- g. Undertake a peer review of the Decentralisation Policy and take corrective measures to complete the decentralization process.
- h. Reduce working hours for lower cadres whose jobs do not require them to serve the full 8-hour working day subject to a detailed study by DHRMD in consultation with the Ministry of Finance, Ministry of Labour, Ministry of Trade and Industry and other relevant stakeholders. Consider paying them hourly rates. This innovative arrangement could help them to complement their incomes elsewhere while maintaining their employment and wages. This will also have multiplier effects from the additional economic activities they will be undertaking.
- i. In the long term, government should consider phasing out and outsourcing functions performed by lower cadres employees to themselves.

4.9. Staff Welfare for Public Servants

Legislation and policies relating to management of the public service do not take into account emerging issues surrounding staff welfare including financial, health and family life of public servants. Section 13 of the Public Service Act (1994) provides that all public servants shall be accorded facilities for staff welfare, job satisfaction and higher quality working hours. The government has not succeeded in providing sufficient staff welfare, job satisfaction and a high- quality working life

especially in the civil service. The staff welfare system, including the government loan scheme has collapsed. Access to loans is severely restricted by inefficiencies in the management of a robust revolving loan fund. The absence of access to loans has largely driven the allowances culture and associated consequences on the government budget, including the depletion of resources meant for the delivery of public services.

The review also established that while there is existence of national policies regarding specific cross-cutting issues of staff welfare such as gender mainstreaming and HIV/AIDS, there is lack of comprehensive staff welfare policies for other issues affecting public officers. For example, there is no policy to cover equally important issues such as mental health, the prevention and management of non-communicable diseases and a support system for employees with chronic health issues. Other issues that also need to be considered include staff wellness and work life balance to ensure that public servants balance between family and work demands. It was also established that there is lack of policies and regulations that prescribe minimum working and safety conditions for the public servants in general.

A further issue concerns work beyond normal working hours. While the Taskforce is against the proliferation of remunerative allowances, it recognizes that employees are required to work beyond normal working hours from time to time. This depletes their free time and prevent them from undertaking private activities.

The Taskforce makes the following recommendations:



Recommendation 4.18: Introduce staff welfare initiatives for public servants
Specifically,

- a. Revamp the Civil Service Revolving Loan Scheme.
- b. Replenish emergency advance scheme and government motor vehicle loan scheme with clear mechanisms for safeguarding against non-repayment of the loans by beneficiaries and ensuring reimbursement between MDAs where employees move from one MDA to another to ensure the growth of the loan revolving fund in each institution.
- c. Develop comprehensive national policies that cover the welfare of staff in all aspects such as physical, mental and spiritual health as well as family life of employees.
- d. MoF and DHRMD to conduct a detailed study for compensation of officers working beyond normal working hours through monetary or non-monetary compensation.
- e. Ministry of Labour, in conjunction with DHRMD to conduct a study establishing minimum working conditions that need to be encapsulated into the public service.
- f. OPC should rehabilitate the Civil Service Club sporting facilities and complete the construction of the clinic at Capital Hill. Local councils should provide similar facilities for their employees.

4.10. Capacity Development

Human resource development is crucial to the performance of the public service. According to the Malawi Public Service Management Policy, the Human Resource Development (HRD) function, which was systematically being implemented prior to the 1990's is dormant. The public service also lacks resources earmarked to support human resource development.

The Taskforce established that the policy that MDAs should use 2% of their allocated resources to support human resource development is not being followed. The ad-hoc training that currently takes place is not adequately aligned to the competency requirements and performance challenges of the public service, because it is not based on systematic needs assessments.



Recommendation 4.19:

The government, through DHRMD, to implement a strategic and systematic approach to human resource development in the public service based on the human resource plans, the competency requirements of the public service and performance weaknesses of employees

Specifically,

- a. Enforce comprehensive induction to all new employees at all levels to ensure they embrace public service ethos, policies, programmes, regulations and procedures and are able to meet job performance expectations and career aspirations within six months of Appointment;
- b. The Malawi School of Government to develop a comprehensive training plan and determine the timing of the inductions courses to ensure availability of the course offering for all professional and levels at all times;
- c. Endeavour to provide continuous training and development of staff based on needs assessment through formal institution such as the Malawi School of Government and institutionalize on the job training through mentoring and coaching within the public service; and
- d. Create a fund to support and sustain strategic human resource development in the public service in a transparent way.

PART B:
**ANALYSIS
AND DISCUSSION
OF KEY
FINDINGS**

**CHAPTER 5:
REVIEW OF PROCUREMENT**

5.1. Background and Problem Statement

This chapter focuses on public procurement. The public procurement system in Malawi is principally regulated by the Public Procurement and Disposal of Assets Act of 2017 and the subsidiary legislation made under it. Since 2003, it is a decentralized system in which government Ministries, Departments and Agencies (MDAs) are empowered to do their own procurements. The system is overseen by the Public Procurement and Disposal Authority (PPDA) which is mandated by law to regulate, monitor and oversee all public procurements.

Malawi's public procurement is a highly regulated process, with multiple actors and stakeholders depending on the nature, and value of goods, services or works involved and the mandates and primary clients of the procuring entities. However, in spite of all good efforts and intentions, the country's public procurement system is now well-known for draining public resources through a myriad of schemes, including fraud and outright corruption, signifying a system that is short on transparency and accountability, effectiveness and efficiency.

Overall, there is a strong public perception of habitual and systemic wastage of public finances through procurement malpractices and payments that do not reflect value for money. Loss of public funds through procurement malfeasance has huge costs in forgone development outcomes. This is because resources that should have been put to better use in providing public goods and services are misappropriated for private and selfish benefit, sometimes to particularly well-organised cartels that are able to navigate the procurement rules, make huge amounts of money from public procurement while delivering substandard products for public benefit. The government needs to take some bold steps to address the existing malpractices across the public procurement spectrum.

In recent times, there has been a growing inclination by the government and economic actors in the private sector to use the public procurement system as a vehicle for achieving other policy objectives related to development of industrial capacity, local and indigenous economic empowerment in order to address glaring socio-economic inequalities. Depending on how the implementation frameworks and modalities are designed and executed in practice, such policy objectives have significant potential to rig the public procurement system and assault the cardinal principle of 'value for money' in public procurements. Thus, as a vehicle for achieving other policy objectives, the design and practice of public procurement presents policy dilemmas and trade-offs. Against this background, the Taskforce reviewed the public procurement system using the Terms of Reference outlined below.

⁵ Defined as "the acquisition, whether under formal contract or otherwise, of works, goods and services by public bodies using publicly sourced finances." See, Uromi, Sabbath (2014) Challenges Facing Public Procurement information in some African Countries namely: South Africa, Uganda, Zimbabwe and Tanzania, International Journal for Innovation Education and Research: 2(7):54-60. www.ijer.net

5.2. Terms of Reference for the Review of the Public Procurement System

The Taskforce reviewed the country's public procurement system in terms of its institutional framework, law, rules and regulations and practices and in order to make necessary recommendations for its effective, efficient and value-for-money-orientation. Specifically, the analytical work of the Taskforce focused on the following tasks:

- i. Examine the institutional framework for public procurement based on the Public Procurement and Disposal Act 2017 to determine if it is fit for purpose;
- ii. Review procurement methods used in the public service and their vulnerabilities to loss and wastage of public money;
- iii. Identify ruses or schemes for malfeasance in public procurement and the incentives that drive them;
- iv. Review the functional competence of the PPDA and ACB to exercise effective oversight over public procurements to ensure value for money, and make necessary recommendations;
- v. Review approaches, effectiveness and efficiency of contract management to avoid budget overruns and make recommendations;
- vi. Examine the provenance and administration of rewards and sanctions applicable to procurement entities, their officers and suppliers and make recommendations

5.3. Institutional Framework for Public Procurement

General Framework

The PPDA has overall statutory mandate over public procurement. It carries out both prior and post procurement reviews and is responsible for handling complaints. It comprises of one member nominated by the Malawi Law Society, another by the Malawi Institute of Procurement and Supply, another by the Malawi Institute of Engineers, another by the Malawi Chamber of Commerce and Industry and another by the Institute of Chartered Accountants. The Minister of Finance appoints any of these members as Chairperson of the PPDA. These appointments are subject to the approval of the Public Appointments Committee of Parliament. Besides these members, there are three *ex-officio* members, namely, the Secretary to the President and Cabinet, the Secretary to the Treasury and the Solicitor General.

The Public procurement system is decentralized. Part IV of the Public Procurement and Disposal Act allocates the primary responsibility of leadership and supervision of the procurement function to Controlling Officers in Ministries, Departments and Agencies (MDAs) that are the procuring entities. The Controlling Officers are mandated and obliged to appoint Internal Procurement and Disposal Committees for their institutions, which are responsible for executing the primary functions of procurement.

Under section 6 of the Act, the PPDA has the power to set and enforce monetary thresholds for regulating procurement and disposal functions. At the time of preparing this report, procurement thresholds for prior reviews were as follows: Goods of monetary values more than MK30 million; Works of monetary value more than MK50 million; Consultancy services of monetary value of more than MK20 million; Routine procurements of monetary value of more than MK30 million and motor vehicle repairs of more than MK5 million. The approval to proceed with the procurement is issued as a notice of 'No Objection'. Additionally, PPDA approves use of procurement methods other than open tendering as required by section 37(10) of the Act. The Anti-Corruption Bureau (ACB), established under the Corrupt Practices Act, is given a role in prior review of procurements. In particular, it is mandated, under section 37(11) of the Public Procurement and Disposal of Public Assets Act to vet any single-sourcing or high value procurements. The Act, however, does not define 'high value procurements'.

A procuring entity is mandated to enter into a contract with a successful bidder within three months after a 'No Objection' is granted by the Authority under section 6 of the Act. However, beyond the PPDA, the decision of contract award and the actual contract go through a series of clearances by various control bodies namely, Government Contracting Unit (GCU) in the Office of the President and Cabinet, Treasury, and Ministry of Justice (MoJ). These downstream approval processes were introduced administratively through government circulars and therefore added to the institutional framework for public procurement. It also includes other organisational actors that are established and regulated by instruments other than the PPD Act. For instance, the PPDA is required to establish and maintain institutional linkages with the Malawi Institute of Procurement and Supply (MIPS) and other professional bodies in regulating the ethical behaviour and standards of supply chain management professionals in the public sector. Similarly, the PPDA's work on post reviews of all procurements conducted by entities is complimented by the National Audit Office (NAO). The PPD Act places an obligation on entities to ensure that these oversight agencies have access to procurement and disposal records.

5.4. Challenges with the Institutional Framework and Proposed Recommendations

The Taskforce noted a number of challenges related to the institutional framework as described above. Notable are the following:

Lack of Clarity on the Role of the ACB in the Procurement Process

The role of the ACB in vetting contracts is not clearly spelled out in the law to demonstrate its value addition to the procurement process. Neither are there published regulations, procedures and processes which guide the ACB when carrying out the vetting process. This situation renders the mandate of the ACB in the procurement process suspect for capricious exercise of discretion. Furthermore, the net

⁵ See Regulation 141 (1)

effect is that there is a lingering impression of duplication of efforts and resources between the PPDA and the ACB.

The Taskforce explored the possibility of ACB's involvement in the procurement process having negative impact on its investigative and prosecutorial functions related to procurements that it may have vetted. Through in-depth discussions with the ACB, the Taskforce established that the ACB carries out its procurement vetting work through the Department of Corruption Prevention while investigative and prosecutorial work are carried out by other departments. Nonetheless, the Taskforce found this situation untenable and representing potential conflicts of roles that should be avoided.



Recommendation 5.1: The role of PPDA should be clarified to ensure that, by its own name, it is the only 'Authority' to vet and authorize procurement. The role of the ACB in the public procurement process should be clarified in the short-term, and reviewed in the medium-term to ensure that its role in the process does not compromise its ability to investigate and prosecute crimes

Streamlining the Procurement Approval Process

Public submissions to the Taskforce pointed out the prevalence of multiple approval points for public procurement. Besides causing inordinate delay of contracts and affecting business planning, some stakeholders felt or observed that multiple approval points make the procurement process vulnerable to irrelevant considerations. In particular, stakeholders found the approval by OPC, which is represented on the PPDA board, unnecessary since it comes after the PPDA has given a 'No Objection'. The Taskforce observed that approvals by the PPDA and the ACB are provided for by the law while those by the GCU and the OPC are not and were introduced administratively. However, in a review of several procurements, the Taskforce observed that the administrative vetting authorities wield veto powers over decisions made by the statutory authorities. In fact, the circular issued in July 2020 by the Chief Secretary to the government makes this position clear:


"The Office of the President and Cabinet (OPC) directs that no procurement entity should sign a contract binding government, which has not been vetted by the Ministry of Justice and Government Contracting Unit in the Office of the President and Cabinet...

⁷ Chief Secretary to the Government, 'Vetting of Public Contracts' Ref.CS/S/001, 27th July 2020.

Procurement entities should know that a “NO” objection from the Public Procurement and Disposal of Public Assets Authority (PPDAA) does not mean that the contractual obligations are complete.

The Taskforce appreciated the role of the Ministry of Justice in vetting contracts and the role of the Government Contracting Unit (GCU) in supporting MDAs in negotiating and managing contracts. However, many times these administrative processes undermine the procurement regulations, which require contracts to be entered into within three months of the date of ‘No Objection’ (validity period). Furthermore, the actual execution of their roles has often amounted to undermining the authority of the PPDA and potentially causing chaos and gridlock in the procurement process. The Taskforce recommends that:

Recommendations 5.2: Streamlining the Approval Process



i) Only authorities statutorily mandated to review procurements should be involved in the procurement processes. OPC should immediately stop approvals of procurements after the PPDA as the SPC already sits on the PPDA. The administrative roles of the MoJ and GCU should be revised immediately to streamline them and properly limit them to advising and supporting procuring entities in contracting and contract management;

The circular requesting procurements to be approved by the OPC should be withdrawn and reissued to be in line with the PPD Act;

ii) In compliance with the procurement regulations (s.141), the roles of MoJ and GCU in negotiating, drafting and vetting contracts with respect to any procurement of any MDA should be done within the stipulated three months for entering a contract to avoid re-opening upstream procurement processes;

iii) The GCU’s role in contract negotiations, drafting and management is critical as most MDAs do not have posts and skilled personnel for these tasks. The GCU, therefore, should be resourced to assist MDAs in contract negotiations, drafting and management. Its role should be limited to this and not be seen to be mandated to approve procurements. This role should be legislated.

5.5. PPDA Functional Competence

High Vacancy Rates

The PPDA is entrusted with the role of ensuring that public procurement and disposal are conducted in a manner that promotes efficiency, effectiveness and value for money. This mandate necessitated that a functional review be conducted which created the organisational structure and positions needed to effectively deliver on

⁸ Chief Secretary to the government, ‘Vetting of Public contracts’, Ref. CS/S/001, 27th July, 2020.

its mandate as provided for by the Public Procurement and Disposal of Assets Act (2017) While the Act was passed in 2017, the functional review was only approved by Government in February 2020 while placement of existing personnel was finalized in April 2020. However, only less than 50 of 86 established are filled indicating a vacancy rate of about 50 per cent, with technical and managerial positions being the most affected. The Taskforce observed that the high vacancy rates in technical positions has resulted in the PPDA spending more staff time on prior review at the expense of other core functions, especially monitoring of on- going procurements and post review and audit of procurements.

Prior review

In relation to PPDA's oversight role, the Taskforce received and reviewed submissions expressing two opposing views on prior reviews of procurements, which lead to granting of 'No Objection' on the procurements conducted by entities. One view is that prior reviews by the PPDA compromise its oversight role, as the PPDA becomes part of the procurement process that it has to oversee compromising its independence in reviewing complaints related to the procurements in question. From this perspective, prior reviews of procurements are seen as unnecessary and proponents of this view recommended that they should be eliminated. The other view is that involvement of PPDA through prior review of procurements is necessary to help protect public resources by providing a second layer to the procurement approval process. The inadequacy of capacity in the procuring and disposing entities (PDEs) and the intrusive interests and influence at play in the procurement process would lead to serious unfairness in the process and wastage of even more public resources if the function was to be left completely to the entities, under the decentralized system as illustrated below.

Examples of Procurement Anomalies - Prior Review

In June 2020, a security agency intended to procure police uniforms using Single Source Method of procurement from Capstone Limited arguing that it was the only supplier with capacity to successfully deliver uniforms. The request did not even have information about quantities of the different sets and pieces of the uniforms, unit prices and the total value of the prospective contract. However, before seeking "No Objection", the agency had initially intended to single source the same supplier, but did not complete the transaction because Treasury refused to provide the required funding which was in excess of USD2million. Similarly, a proposed single source contract of MK6.2 billion contract with Xaviar Limited when there were more suppliers of the same merchandise on the international market represented abuse of public funds that prior reviews of procurements by PPDA prevent.

It is further observed that prior reviews have had an indirect positive effect in capacity development of the procuring entities on how to correctly apply the laws and regulations of public procurements.

The Taskforce observed that procurement thresholds issued by the PPDA for purposes of prior reviews are guided by prevailing economic environment as well as general improvement on how PDEs discharge procurement functions and that PDEs are categorized based on their capacity to handle particular procurements using particular methods. The thresholds currently in force are higher than the previous ones. Thus, as more PDEs acquire professional capacity to carry out complex and high value procurements correctly, the role of the PPDA in prior review will decrease. It is therefore recommended that:



Recommendation 5.3: The PPDA must expedite the filling of vacant technical positions and treat this with a sense of urgency and priority to ensure that core functions are executed timely and diligently so that the public procurement system works effectively and efficiently;

PPDA should expedite diversification of skills and competencies of personnel for various technical positions as it deals with various aspects of procurement including works, goods and services, which demand different knowledge sets and competencies;

The Taskforce supports retention of the prior review function of the PPDA because of capacity issues in procuring entities and as a way of checking malfeasance and preventing loss or inefficient use of public funds in high value procurements. However, the PPDA must fill all existing vacancies in established positions as a matter of priority;

PPDA should commence regular reviews of the performance of each of the entities and gradually increase thresholds for prior reviews. This would deal away with any delays, particularly for relatively low value procurements.

5.6. Overview of Stages of Public Procurement and Common Malfeasances

The diagnostic work of the Taskforce confirmed the prevalence of multiple malfeasance in the procurement system that undermine it and affect principles of fairness and equity, openness, competition and value for money in terms of cost as well as quality of goods, works and services. This section highlights risks in the main stages

⁹ Circular from the Director General of PPDA, 'Procurement Thresholds Effective 19th August 2019', Ref. No. PPDA/01/22

of the procurement cycle that have been responsible for various mischiefs that motivated the review of the procurement system.

Procurement Planning

Section 39 of the PPD Act requires that procurement and disposal activities be planned with a view to achieve value for public expenditures. Procurement planning helps procurement consolidation, cash-flow management and supports monitoring and evaluation of the procurement function.

The Taskforce established that three main issues in procurement planning compromise attainment of 'value for money'. These include inadequate planning particularly for infrastructure projects, slicing of procurements and under-budgeting. Many procuring entities are unable to produce credible procurement plans based on the annual activity budgets, which determine the inputs required. Procurement plans do not adequately reflect the MDA's activities. In the worst cases, entities have not produced any procurement plans and have conducted haphazard procurements. Although the Public Procurement Act provides for a penalty for failure to plan procurements and disposal, the same is rarely enforced or does not have sufficient power of deterrence.

Slicing describes a practice whereby procuring entities package procurements in a manner that makes them remain under the thresholds for competitive tendering instead of consolidating similar requirements for competitive tendering. This is done to avoid the process of prior review by the PDDA or to favour some suppliers by avoiding the competition that comes with methods for 'high value' procurements. As illustrated below, bidding slicing facilitates procurement monopolies. Under-budgeting occurs when a procuring entity provides an estimated cost of a procurement which is lower than what the market is offering. This is mostly done intentionally with the aim of avoiding open tendering, although there are cases where it is a result of lack of capacity to accurately estimate costs. The following case in Rumphi illustrates this malpractice:

Illustrations of Bad Procurement Planning

- In 2020, Rumphi District Council disregarded the threshold for use of Request for Quotations (RFQ) for works which is MK50million. The Council proceeded to use RFQ and identified a contractor to construct four houses at MK56,014,852.00 each, making a contract sum of MK224,059,408.24. This slicing of the procurement amounted to the abuse of RFQ method. If the procurement had been opened up, there was a possibility of fetching lower prices for the same works due to competition.

- In April 2020 Greenbelt Authority planned to embark on additional civil works of MK14, 997,452.32 at Chikwawa Scheme in Salima whose initial contract sum with Victory Vision Contractors was MK49, 805,280.00. The additional works (access road to the project site) could not be justifiably overlooked at the project conception stage. Such schemes cost the government more than it should pay.

The Taskforce is convinced that the current law and regulations have sufficient provisions for dealing with the risks prevalent at procurement planning stage. What is lacking is enforcement of sanctions, and therefore, the Taskforce makes the following recommendation:



- Recommendation 5.4: i) The PPDA should enforce procurement planning through its regulatory and compliance directorate;
- ii) PPDA and Treasury should invest in improving the capacity of MDAs in procurement planning, based on approved annual budgets.

Preparation of Bidding Documents

A number of risks exist at bidding document preparation stage. The law requires that technical specifications or qualification criteria should be generic enough to accord adequate and effective competition. In some instances, entities tailor the requirements towards a particular product or firm which stifles competition effectively and effectively turns the procurement method to 'single-sourcing' while disguising or maintaining the appearance of competition. This practice is in part responsible for procurement monopolies. In other cases, entities define specifications that are superficially high and not related in any way to a need which makes the procurement more expensive than would otherwise be the case. It was also established that there is a general lack of knowledge in specifications development which compromises achievement of value for money through acquisition of substandard products, especially in civil works and consultancy services.

The Taskforce makes the following recommendation, to address these malpractices:



Recommendation 5.5:

- i) The PPDA should develop standard specifications to be used for procurement of commonly used items.
- ii) PPDA should sanction procurement officers who rig procurement methods to undermine competition, fairness and value for money and refer them to the MIPS for hearings on professional misconducts.

Risks in Publicity and Advertisement

Invitations for bids are done either by directly contacting the prospective bidders or openly calling for bids through the media. This stage of procurement has a number of risks which distort the outcome of the procurement process. The law provides mandatory minimum bidding period for each of the procurement methods to allow prospective bidders prepare responsive bids. Some entities allow for insufficient bidding period in order to stifle competition. There have been cases of entities also publishing invitations for bid in newspapers not widely distributed although the law requires that it does so in two widely distributed newspapers.

Invitations sometimes provide inadequate, misleading and ambiguous information in the advertisement which affects the quality of responses or bids that are submitted. With ambiguous information given to prospective bidders, the bidders respond to the invitations based on different understandings which results in bids being incomparable.

According to the regulatory framework, a procuring entity can charge a fee for obtaining of bidding documents to participate in a bidding process where such a fee should be limited to the cost of printing and distributing the document. In practice, however, procuring entities sometimes charge prohibitive prices of bidding documents which potentially discourage potential bidders, thereby stifling competition. In worst cases, procuring entities have used this to mobilise money for their own purposes by selling bidding documents when there is no real intention to carry out the procurement. The law has adequate provisions on the procurement methods and processes to be followed. The law too has sanctions applicable in cases of infractions of the law.

Bids Submissions

According to the regulatory framework, bids have to be submitted by a particular day and must not be opened before the set date and time. Any bid which gets delivered after the set time is not supposed to be accepted and must be returned unopened. There are reported cases of procuring entities accepting late bids which is clearly contrary to law.

In some cases, procuring entities use inappropriate bid submission methods such as receiving and keeping them in an office desk drawer, which compromises the safety of the bids, thereby compromising the integrity of the whole procurement process. According to the law, bids are supposed to be submitted through a secured tender box which protects the integrity of public procurement.

Entities have also been found to solicit quotations from suppliers who do not deal in the particular items of interest, thereby staging a false competition. This is particularly the case in direct solicitation of bids such as quotations or Restricted Tender arising out of security related exemptions from using open tendering. There are also times when procuring entities also solicit quotations from the same supplier under different names thereby creating false competition. In effect, this is single sourcing in a disguised competition.



Recommendations 5.6: The PPDA should be held accountable by Parliament, under Section 20 (4) of the Public Procurement and Disposal of Public Assets Act, on its performance in enforcing. PPDA should develop procedures for effecting disciplinary actions against public servants and suppliers responsible for malfeasance.

Risks at Bid Evaluation

Public procurement procedures require that evaluation criteria be made known to bidders at bidding stage and that they be applied as communicated. Entities have been found using evaluation criteria not specified in the bidding document which is used to favour some preferred bidder due to influences of unethical issues such as gifts and also influences coming from senior officials interfering with the evaluation process.



Recommendation 5.7: Always constitute an ad hoc evaluation team in accordance with the law. The appointed evaluation team should always undergo a pre-evaluation briefing on how to conduct an evaluation as part of capacity building but also to avoid unnecessary errors in the evaluation process which contribute to inefficiency of procurement system. Any deviations from the law must be punished.

Contract Award

According to the Act, a successful bidder is determined to be the one with the lowest price after satisfying all administrative, technical and commercial requirements, through the lowest evaluated bidder principle. However, this process has been noted to at times be compromised because of public servants soliciting bribes from the successful bidders. This is something which in some cases involves senior officials in entities. Further, the lowest evaluated bidder principle has been noted to be limited in helping entities procure quality products or identifying qualifying service providers due to its focus on the purchase price and ignoring lifecycle costs. Some documents reviewed by the Taskforce show that other international partners have moved to using a whole life costing principle, which goes beyond the purchase price but looks at costs of running and maintaining the product procured, for example.

It was also established that entities change conditions of the contract as well as specifications i.e. modifying important provisions in favour of the successful bidder. This usually results in quality being compromised. It was also noted that some contractors have been awarded more contracts despite clear evidence of poor performance on public contracts especially in works. In view of these findings, the Taskforce makes the following recommendations:



Recommendations 5.8:

- i) Amend the existing law to include decision making to award contract based on the 'most economically advantageous bid' principle as it takes into account cost beyond the purchase value, to be used in procurements where the use of lowest evaluated bidder principle is likely to result in compromises on quality or time and cost overruns.
- ii) The PPDA should require entities to prepare and submit reports on contract performance to establish a database and build a track record of contractors and their performance. This information should then be used in subsequent award decisions. All suppliers who have a record of not meeting their contractual obligations or bad past performance should be debarred (blacklisted).

Execution of Contract

The Taskforce identified a number of malpractices at contract performance stage. First, there were cases identified where those involved in contract administration accepted goods or certified works or services that did not meet the contractual specifications. This was mainly due to either wilful decision by those responsible for contract administration, or resulted from undue influence exerted by some superior authority or lack of capacity to determine technical compliance. Secondly, there were cases of accepting of unreasonable contract variations particularly in works procurements. This results from either lack of technical knowledge or collusion between the contractor and those responsible for contract administration such as consulting engineers, as illustrated in the case below:

Unnecessary Delays affect Length of Contracts

In August 2020, Ministry of Health intended to adjust a contract for the Construction of Rural Community Hospital at Domasi in Zomba by 59% from MK4,178,859,729.84 to MK6,994,011,641.44 translating to around K2.8bn increase. This contract started in 2013 and is still going on seven years down the line. At 65% completion rate, there really needs to be sufficient justification for granting extension of time and consequently contract sum variation. Such time extensions escalate project supervision costs. There is no record that the contract was at some point terminated which would have necessitated de-mobilization of the works and that a new contract was signed at some point to require re-mobilization. The variations arose from aspects that were changed from the initial designs such as windows and doors, wall finishes and floor whose justification was unclear and additional scope of works including a construction of a warehouse which was not originally part of the scope. Such changes in scope are very common in building works and costly as they do not provide room for competition. These resources may be saved if proper planning of the works is done.

Thirdly, delayed payments by Government lead to accumulation of arrears and consequently stalling of projects, which affect project delivery timelines and cost. This was highlighted by most of the stakeholders who provided input into the review, with some suppliers and contractors reportedly owed payments for as long as 12 months and more. This is a serious matter requiring the attention of relevant authorities including Ministry of Finance and Heads of MDAs. This practice has the potential of killing local industry including micro, small and medium enterprises, besides increasing the monetary values of the procurements. Lastly, it was also found that those in authority influence or make payment for works that have not been competently certified or for delivery that has not been confirmed. The Taskforce makes the following recommendation:



Recommendations 5.9:

- i. Procurements should only be initiated when there is certainty of funds being available to finance the eventual contract. Thus, for procurements requiring PPDA approval, procuring entities must provide a Treasury certificate of availability of funding should be submitted together with the evaluation report;
- ii. The Secretary to Treasury and the Accountant General should first ascertain certificates of works carried out with GCU and Consulting engineers in order to effect payments to contractors for works and ascertain delivery notes for goods and supplies claimed to have been delivered.
- iii. Hold those managing the contract liable for quality lapses in works.
- iv. PPDA and GCU should be given roles in scrutinizing contract variations diligently to ensure that the variation does not amount to a mockery or rigging of the procurement process and that the variation is reasonable and represents value for money.
- v. GCU should enhance contract management capacity (skills) at entity level through regular training and refresher sessions.

5.6.2. Challenges related to a Manual Procurement Processes

The Taskforce identified lack of transparency in Malawi's public procurement process as the core problem leading to various procurement malfeasance. Inadequate transparency emanates, primarily, from the manual, paper-based process that procuring entities and approval authorities use. Public submissions and expert testimonies availed to the Taskforce showed that automating the procurement process would address most of the systemic issues that are currently taken advantage of by both private sector actors and public servants to commit procurement malfeasance. The Taskforce was also informed that the Government, through the PPDA and with financial and technical assistance of the World Bank, is already implementing an e-procurement system. This system, if well implemented, will be key to solving most of the systemic issues which affect the performance of procurement contracting processes and management. It will also change the way of doing things in public procurement.



Recommendations 5.10: The PPDA should expedite roll out of the electronic procurement system since it is extremely important to address a lot of the malfeasances in public procurement.

The Act requires that public officials involved in procurement act with highest levels of integrity and in public interest. However, where one acts otherwise, relevant provisions must be invoked. As a long-term solution, it is the view of the Taskforce that the Government should deliberately come up with strategies aimed at promoting a culture of ethical conduct and personal integrity among the public, in general and public officials in particular.

In order to address the capacity challenges in the procurement and contract management area, the Government should consider supporting training of sufficient numbers in procurement and supply management area and also skills development in specific areas of procurement management including but not limited to contract management.

5.7. Key Malfeasances Identified in Public Procurement Contracting

The Taskforce identified a number of key issues contributing to the poor performance of the public procurement contracting. Some of these are specific to the nature of procurements and this report groups them into two - those in works or infrastructure contracts, and those in goods and services contracts.

5.7.1. Key Malfeasances in Procurement of Works

The review found that the most common issue in works procurement and contract management is contract variations in timelines for delivery and completion of projects, poor quality of works delivered and cost variations. These problems arise from a number of factors in both upstream and downstream procurement processes. This section discusses the key factors that have given rise to this problem.

Collusion between Contractors and Consulting Engineers

The Taskforce found that although consulting engineers/firms are expected to work as agents of the public and the Government, in some cases they renege on their sacred duty due to perverse incentives in their work arrangements. In particular, their time-based contracts incentivize them to be lenient with contractors on meeting deadlines for delivery of projects. This results in the prolonging of delivery time for projects from which the consulting engineers benefit financially because of their time-based contracts with the Government. In this scheme, the more funds are spent on projects than absolutely necessary. Further, it was discovered that some consulting engineers/firms certify for payment substandard and incomplete works. The Taskforce makes the following recommendation to address this challenge:



Recommendations 5.11: Prevention of Collusion

- i) PPDA should enforce the law in section 55 of the PPD Act which requires suppliers and contractors to conduct themselves in a manner that does not compromise the entity's attainment of objectives of procurement.
- ii) Specifically, PPDA should invoke and apply section 56 which provides for disbarment of any supplier, contractor, consultant or any bidder who is guilty of misconduct from participating in public procurements.
- iii) Director General of the PPDA should promulgate codes of ethics for public officials and suppliers to guide the conduct of those involved in public procurement according to section 58 of the PPD Act.

The review also found that for some infrastructure projects, especially building construction, the Department of Buildings serves as contracts managers/supervisors. It was also established that even where Department of Buildings is providing the supervision, there are some traits of possible collusion which give rise to unnecessary and unjustified contract variations. The Taskforce was also given the impression that there are indications of some public servants within the Department of Buildings having financial interests in some construction companies.

Limited works supervision expertise among public officials

Public works is a highly technical area which requires that procuring and disposing entities have technically competent personnel who understand, draft and manage the contracts and supervise projects to ensure timely, on budget delivery and compliance to specifications and quality of the projects. However, most of the MDAs do not have personnel with the required skills in works procurement and contract management. They mostly rely on the Department of Buildings (DoB) for development of bills of quantities, supervision and the GCU for contract drafting, negotiation and management. However, both the DoB and the GCU are constrained in terms of numbers and specialization of personnel. For DoB, stakeholders further alleged collusion between staff and the contractors, casual attitude towards work and even sheer dereliction of duty on account of lack of adequate budgetary provisions for supervision of projects. The Taskforce understood that the budgets for site supervision are either included in the project budgets managed by the procuring MDAs or the DoB is expected to use its allocation for Other Recurrent Transactions.

Overall, there is dissatisfaction among the MDAs with the way the DoB operates. The general impression is that the Department is no longer fit for purpose and requires restructuring and a fresh set of Terms of Reference to guide its work. The Taskforce therefore makes the following recommendation:



Recommendations 5.12: Supervision of Works

- i. A functional review of the Department of Buildings (DoB) is strongly recommended, and that once done, ensure that it is given adequate capacity for its role;
- ii. The Ministry of Finance should issue guidance on the management of project supervision budgets and stop the inclusion of DoB supervision budget in the construction contract because it breeds an incentive to approve unreasonable contract variation; and
- iii. The GCU should be adequately staffed with sufficient numbers and skill sets for it to play its rightful role with the efficiency that is required.

Poorly Planned Projects

Unplanned infrastructure projects often result from decisions that conform to political desires and logic but are financially not viable. Politicians tend to exert pressure on bureaucrats to have their preferred projects implemented. Their motivations include the need to garner or sustain political support or in some cases, to use the projects as money-making schemes through collusion with contractors. Such unplanned projects almost always cut procurement procedures, good projects management practices and end up delaying in execution after contractors have started. Some infrastructure projects are even launched without detailed designs and site inspection being done, thereby making it difficult to determine project budgets which become very dynamic in the course of implementation. Such projects affect cash flow and accumulate arrears and interest payments to contractors. Almost always, such projects commence because of political pressures and expediency, and create room for overpricing with corrupt elements creeping in.

Similarly, projects commence without adequate funding to cover its completion being identified. Consequently, disproportionately small amounts of resources tend to be allocated over the financial years with contractors working for only a few months in a year while remaining on site and accumulating arrears and interest payments. This problem is symptomatic of lack of discipline across MDAs and failure of influential politicians, often Ministers, to adhere to the Public Sector Investment Program (PSIP) i.e. an annual catalogue of projects with identified funding.



Recommendations 5.13: Project Planning

1. All procurements must be duly planned and approved and projects' viability duly assessed in accordance with sound socio-economic development goals and within budget. Any unsanctioned departure from these should be punished accordingly.
2. Furthermore, the Ministry of Finance and the Ministry of Economic Planning and Development should review processes and procedures for the development of the Public Sector Investment Programme (PSIP) to ensure that the process is sufficiently consultative and inclusive and that the criteria for selecting projects into the PSIP is transparent. Once settled and built into the annual budget, the Secretary to Treasury, supported by the Minister of Finance and the Cabinet.

Inadequate regulation of consulting engineers

The National Construction Industry Council (NCIC) is mandated to register operators in the construction sector, including consulting engineers. The review noted that contractors have various categories which indicates the complexity of the works that their capacity can support. However, the NCIC Register of consulting engineers shows that they are not categorized by capacity at registration and their registration criteria is vague. This has created a problem where consultants with limited capacity have been assigned works which are too complex for their capacity. This breeds compromised quality of certified works.

Another observation made from the Taskforce consultations is that there are a limited number of consultancy firms available, which leads to multiple assignments being given to the same firms at any given time, thereby compromising supervision and contributing to delivery of poor-quality work. Some firms also employ fresh graduates without any practical experience in construction to supervise complex works. The Taskforce makes the following recommendation, to address this anomaly:



Recommendations 5.14: Regulating Consulting Engineers

- i) Enforce minimum requirements and categories for consulting engineers.
- ii) Place professional liability on consultants through regulations and enforce joint-debarment for contractors and consulting engineers

Over-pricing and Lack of Estimates of Cost of the Project

One of the issues that came to the attention of the Taskforce is the indication that the Malawi construction sector has highest unit rates in the region, which affects construction cost in general thereby limiting the number of projects that can be done at a time. One school of thought felt the engineers' estimates should be used in the estimation of the projects cost. However, after learning of the abuse that was associated with the engineer's estimate, the Taskforce feels that unless the management and use of this tool is clearly defined, the current practice should remain. However, the issue of comparative regional costs needs to be pursued further, therefore the Taskforce makes the following recommendation



Recommendations 5.15: A regional technical study of the construction unit rates should be done as a matter of priority to determine realistic rates for Malawi considering its geographical location. These rates should then be used to calculate fixed costs while competition is allowed to be based on the variable cost component.


5.7.2. Key Malfeasances in Procurement of Supplies

Procurement of supplies across Government Ministries and Departments has not been spared from fraud and corruption which manifests itself in various forms. From the interviews and review of existing literature on public procurement in Malawi, the Taskforce singled out the following as problem areas.

Payments without evidence of delivery: A review of audit reports revealed a number of transactions that were paid for without evidence of delivery. Treasury Instruction 5.23.2 states that expenditure shall be charged against Government account when the goods or services are received. A review of payments by some MDAs revealed that some payments were made without documentary evidence that the goods were indeed delivered. In other cases, it was noted that supplies were not fully delivered and feared to be an arrangement between public officials and suppliers to defraud Government.

Lack of monitoring: There is insufficient monitoring on public procurements, which is made worse by the inability of PPDA to carry out regular post reviews of public procurement. Currently the PPDA spends most of its time carrying out prior reviews which makes it impossible for the Authority to monitor ongoing implementation of public procurements contracts. The Taskforce therefore recommends the following:

Recommendations 5.16: Punishing Wrongdoing in Procurement

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- i) PPDA should enforce punitive measures on both suppliers and public officials, including debarment and surcharge and other disciplinary measures or criminal prosecution.
 - ii) PPDA must intensify regular post reviews of all public procurements

5.8. Sanctioned Abuse of Single Sourcing Method for High-Value Procurements

Section 37 of the Public Procurement and Disposal of Public Assets Act recognizes open tendering as the default method of procurement, to promote competitions among bidders for achievement of value for money in the procurement of goods and services. As noted in the previous section, the procurement regulatory framework also provides for use of other methods of procurement subject to approval of the Director General. The review however noted that there are some decisions made by offices and communicated through circular which have sanctioned abuse of procurement methods especially single sourcing. A case in point is the circular issued by the Office of the President and Cabinet and another by Comptroller of Statutory Corporations directing heads of MDAs to use a Toyota Prado as their official vehicle. It is the view of the Taskforce that these circulars, which were issued before the promulgation of the Public Procurement and Disposal of Public Assets Act 2017, breaches the terms of section 37(9) of the Act. Abuse of the single source method results in making awards to preferred contractors or supplies repeatedly and creates procurement monopolies and cartels.

Another example of sanctioned abuse is the arrangement between the Government and Pharmaceutical Manufacturers Association of Malawi (PHAMAM) through a Memorandum of Understanding (MoU), in which the Government agreed that Central Medical Stores Trust should procure medical supplies from these manufacturers. The decision is well intentioned and supports the Buy Malawi Strategy. However, its implementation has been overtaken by personal interests, which have led to CMST procuring medical supplies from the association members at almost 140% above the market price. While the spirit was for PHAMAM members to enjoy a 15% preference margin, the basis of which should be the market price, PHAMAM has agreed on a higher selling price to CMST and added a 15% thereby creating such a big difference with the market price, thereby ripping off government. While the Taskforce understands the spirit of promoting local manufacturing, the application of the MoU has not been done properly.



Recommendations 5.17: Single Sourcing

- i) The circular on motor vehicles should be withdrawn and a new one re-issued that the practice of directives that contravene existing legal framework should be stopped.
- ii) An open tender for purchase of government vehicles, properly conducted, will always buy the required vehicles at lower prices thereby realizing value for money.
- iii) Government must as a matter of priority review the MoU signed with PHAMAM to ensure that the objective of value for money is still safeguarded.
- iv) For policy objectives such as 'Developing local industrial capacity' Government should find resources and run programmes through the Ministry responsible for Industry rather than use public procurement systems in ways that breach procurement law.

5.9. Overpricing by Bidders on Government Tenders.

The review found that bidders have the tendency to overcharge each time they are bidding on Government tenders. Usually, suppliers claim to overcharge on Government tenders as a way of cushioning themselves against late payments common with Government tenders. Nevertheless, this is not justifiable as Government contracts have provisions for interest charges on late payments.

In addition, public officials take advantage of the situation to siphon money by cooperating with the bidders who inflate prices of goods and services to be supplied to MDAs. There is overwhelming evidence on such malpractices where Government is paying over 200 percent of the market values and in other instances Government has paid over 1000 percent of the market prices on goods procured. A notable example is the procurement of the uniforms for the immigration officers amongst the many of such contracts and the procurement of utensils including plates and cups for Malawi Prisons by the Ministry of Homeland Security (2019). Regrettably, such procurements with exorbitant prices get approvals from the IPDC, sometimes under duress especially when the Internal Procurement and Disposal Committee (IPDCs) are composed of low graded officers.



Recommendations 5.18:

The PPDA and MIPS should ensure that they regularly produce, update and widen a comprehensive market price index. The index should be expanded by categories included and geographical dimension.

- As regards construction works MIPS should work with the PPDA to maintain price data base of bills of quantities for construction works such as buildings and roads. This should always be benchmarked with prevailing rates in the region be it SADC or COMESA to determine construction unit cost to avoid overreliance on engineer's estimates only which at times is compromised. In this way Government will ensure that it is being charged reasonably for quality services.
- A study on the regional rates is strongly recommended help to determine the construction rates prevailing on the regional market.
- In addition, as part of the E-procurement system, introduce e-market place for price comparisons particularly for MSMEs. E-procurement will also improve transparency on how contracts are awarded and will greatly reduce such malpractices.

5.10. False or duplicate invoicing for goods and services not supplied

Public officials deliberately approach individuals with registered companies to dupe Government to make fraudulent payments by providing false documentation of goods and services that were never delivered. The Government has lost money in billions due to such malpractices, which usually arise from lack of proper supervision and inadequate administrative monitoring mechanisms in most MDAs.

Treasury Instruction 5.16.1 requires every Controlling Officer to ensure that internal control measures and procedures are in place, in respect to the processing of transactions for payment. Furthermore, Controlling Officers need to ensure that proper accounting records are maintained to support all financial and related transactions. Nevertheless, most payment vouchers in MDAs disclose that a lot of payments are being made without adequate supporting documents. In the absence of the necessary supporting documents, it is difficult to ascertain how genuine such payments are.

5.11. Non-adherence to PPDA rules

Audit reports by National Audit Office identify cases where Internal Procurement and Disposal Committees did not make the decision to procure. This contravenes

the procurement regulatory framework and the motivations for doing so are sometimes ill-intentioned. There are cases, which have also been noted, where entities procured products without complying with the requirement of the minimum number of three quotations. This means single source method was employed without prior approval of the PPDA. Such cases also create a possibility of malpractice which can lead to loss of resources. The Taskforce therefore makes the following recommendations:



Recommendation 5.19:

All non-adherence to set procurement procedures must be punished and the controlling officer disciplined, and where appropriate, prosecuted.

Recommendations 5.20: Government should adopt e-procurement processes to promote transparency.

5.12. Contextual Factors that Fuel Malfeasances in Procurement

Political Interference

There is a public perception that most of the malfeasance in public procurement are linked to politicians, where the need to finance political activities is seen to be a motivator for malfeasance. Much as that maybe the case, the reality on the ground is that there is collusion between the suppliers and the procurement officers. Consequently, this leads to inflated contract prices to accommodate the politicians hence draining public resources.

On the other hand, public servants feel intimidated by the politicians. At times, public servants that have not cooperated with pressure from politicians have been victimized in different ways, ranging from being posted away to an institution where one's skill sets are not required, thereby effectively rendering one redundant, or denial of promotion opportunities etc.

Unfortunately, the PPD Act and its procurement regulations are silent on specific offences by politicians who may choose to influence procurement outcomes and sanctions, apart from using the "general influence peddling" clause in the regulations.

Additionally, there is no formal mechanisms for reporting political influence. The system also lacks a whistle blower protection mechanism and policy, and therefore a lot of political interference goes unreported. Some MDAs have whistle blowing mechanisms and rewards in place although these do not seem to be effective and the major reason for such could be the lack of protection for the whistle blower.

In an effort to encourage reporting of possible malpractices including political influence, the PPDA is engaging Deloitte and Touche to offer a Tipoffs Anonymous service. This is an initiative which if properly utilized can help address some of the challenges faced by the procurement. The Taskforce makes the following recommendations:



Recommendations 5.21: Sanctions Against Political Interference

- i) There must be stiff sanctions targeting politicians found guilty in influencing procurement. Such politicians should also be publicly named and shamed.
- ii) Mechanisms should be developed and implemented for reporting, especially targeting politicians and their accomplices.
- iii) Protection mechanisms for the whistle blowers should also be promoted.

Low integrity among public servants including procurement officers

Issues of ethics are a general problem in the public service and this is not unique to the procurement staff. In general, there is lack of adherence to values, ethics and integrity in the public service resulting in the mismanagement of public funds. Regrettably the moral decay in the public service has accumulated over so many years and much needs to be done in order to correct the situation.

Over the years, the service has lost discipline, accountability and transparency in the use of public funds. This has been made worse due to the weak enforcement mechanisms across the system. Government is losing billions of Kwachas through embezzlement aided by the public service.

In addition, there is lack of training modules on ethics and integrity in the curriculum for procurement courses, so most procurement staff do not view ethics as a critical attribute. Furthermore, of late, public servants no longer attend the induction course at Staff Development Institute in Mpemba, where they receive training on public service and how they must conduct themselves. Such programs have the ability to mould and influence ethical conduct of public servants in as far as public resources are concerned.

Ethics and Integrity modules should form an integral part of all training programs including procurement and supply chain. This should be a requirement for one to qualify for a procurement qualification. Ethics and Integrity should likewise be a compulsory module during orientation and on the job training for procurement staff in both public and private sectors. It is also critical to increase levels of sanctions for procurement officers found guilty for breaching ethics and integrity regulations. The Malawi Institute of Procurement and Supply and the PPDA should take a leading role in strongly enforcing ethics and integrity among the procurement cadres which will make offenders get stiff sanctions. The Government should also consider introducing an ethics program at one of the public training institutes, in order to have its officials undergo periodic refresher courses on ethics.

Low capacity of procurement officers in MDAs

Each MDA has a Procurement and Disposal Unit that processes all procurement requirements. The procurement units are responsible for the procurement of goods and supplies that add up to 60% of Government budget. Surprisingly procurement staffing positions are on very low job grade, compared to other Departments within the MDAs. Most procurement units in mainstream civil service are headed by a Principal Procurement Officer, except for the Ministry of Health and Ministry of Education where the head is at Deputy Director level. In a few parastatals, such as ESCOM and CMST, the procurement unit is headed by a director.

This implies that in most MDAs the procurement function is not even represented in the Senior Management Meetings, where key procurement decisions are made. The procurement function in public service is seen as a support function, not core function and does not have a seat at the strategic table. The absence of a procurement specialist at the strategic level has over the years led to management override, which has resulted in the procurement procedures being flouted. Such flouting of procedures usually results in decisions that do not promote achievement of value for money.

Furthermore, most of the personnel handling procurement in most MDAs are not qualified procurement specialists. In general, there is insufficient numbers of competent and dedicated procurement staff across MDAs and this is worse in the District Councils leading to inefficient and ineffective procurement processes evidenced by the long cycles of procurement processes.

In addition, there is lack of knowledge of the existing procurement regulatory framework at all levels of staff in the Public Service. This has led to some public officials making decisions which contravene the law.

The need to upgrade the procurement function in all MDAs cannot be over-emphasized commensurate with the importance of this function in overseeing the efficient

and prudent utilization of public resources. The Taskforce therefore recommends that:



Recommendations 5.22:

- i) The procurement function should be upgraded in all MDAs to a management level.
- ii) Upskill procurement officers through various professional training programs through the Malawi Institute of Procurement and Supply and other credible institutions.
The training should be targeted at specific skill gaps which would enhance performance rather than simply to expose one to a program which might even be irrelevant for his/her job.
- iii) Furthermore, considering the importance of public procurement in development, government must invest in building capacity at all levels of public service especially mainstream civil service, from the district councils to the Ministries and this must be done in the short to medium term.

Lack of enforcement mechanisms for misconduct

The Public Procurement and Disposal of Public Assets Act provides for sanctions for misconduct for bidders, suppliers as well as public officials in sections 55 and 57, respectively. The Act further provides for debarment of bidders who do not adhere to the expected conduct and any code of ethics that may be developed by the Authority. Regardless of these provisions aimed at preventing malpractices, schemes still exist in public procurement contracts which result in loss of public funds including collusion, bribery, delivery poor quality products, delivery of less than contracted products in terms of quantity. Nevertheless, despite having the legal provisions in the Act, enforcement mechanisms for misconduct in public procurement is almost absent. The Government must endeavour to enforce sanctions to all bidders and public servants found guilty of any misconduct.

Lack of regular monitoring by the PPDA

In view of the colossal sums of money allocated towards procurement in MDAs, require regular monitoring and oversight of the whole procurement cycle is required if value for money is to be achieved. However, it is clear PPDA currently does not have the capacity to effectively monitor due to the high vacancy rate on its establishment.

Without such monitoring, those conducting procurement and managing contracts relax and are implicitly encouraged to take the wrong path.



Recommendation 5.23:

PPDA should carry out regular post reviews which are only possible if its vacant positions are filled. As such, PPDA should as a matter of priority recruit and train technical personnel in order to enhance this key function.

Lack of Integrity among Public servants

Another reason for some of the malpractices in the various stages of the procurement cycle is lack of integrity among public officials. This is a cross-cutting issue which needs to be addressed with a holistic view.

5.13. Procurement Policies Beyond Value- for- money Objectives

5.13.1. Policies Favour Indigenous Malawians

The PDA Act has provisions aimed at achieving other government objectives. Among key provisions are those meant to promote participation of indigenous black Malawians in government procurement opportunities and promotion of micro, small and medium enterprises (MSME). This section briefly discusses these two important provisions and highlight any possible implementation challenges.

Section 44(10) of the Act requires that a procuring and disposing entity should ensure prioritization of all bids submitted, by giving preference to 60% indigenous black Malawians and 40% to others for national competitive bidding. This provision is intended to address perceived inequalities in the business opportunities, which have seen “indigenous” Malawians being pushed out of the market as “others” monopolise government procurement opportunities. However, it was brought to the attention of the Taskforce that section 44(10) of the Act could be inconsistent with section 20 of the Constitution.

This provision has three issues that needs clarity. Firstly, submission of bids is not under the control of the PDE, such that how to prioritize those bids would pose serious implementation challenges. Secondly, the provision is not clear whether the 60% means number or value of bids. Lastly, what would be meaningful in promoting indigenous black Malawians would be to consider value and not number of contracts. Further, at operational level, the policy presents problems of identification as the

meaning of 'indigenous black Malawian' is elusive. While 'indigenous' would include nonblack Malawians born in Malawi and indigenous black Malawian, the emphasis on colour excludes people who are Malawians by law. While it also appears to exclude citizens of Malawi by naturalization, it is not clear what it means for citizens born of a Malawian and a black non-Malawian.

The crafting of the provision is also quite limiting in that "national competitive bidding" excludes both lower and higher value procurements. The provision would only be applicable to procurements raised through National Competitive bidding. The Taskforce learnt that some quarters consider this provision as discriminatory and unconstitutional, while others believe it is constitutional as the Malawi Constitution allows positive discrimination intended to correct an imbalance or inequality created by some circumstances.

The Taskforce believes that this resonates quite well with public perceptions that public procurement contracts are being monopolised by business enterprises owned by foreigners and non-indigenes. Therefore, this provision is meant to address an existing discrimination from business opportunities that has been created and sustained by history and corruption. The Taskforce makes the following recommendation:



Recommendations: 5.24

i) Promulgate guidelines for preferential procurement as provided under section 44(10) of the Public Procurement and Disposal of Assets Act (2017) and the Small Medium Enterprises Order (2020). However, the Ministry of Finance and PPDA should provide clarity on the following amongst other factors:

- *How the provision applies to consortia as opposed to individuals;*
- *Whether it is number of bids or the total value of procurement where the 60:40 ratio should apply;*
- *How to identify "indigenous black Malawians."*

5.13.2. Procurement from SMES order

PPDA gazetted the Public Procurement and Disposal of Public Assets (Participation by Micro, Small and Medium Enterprises) Order, 2020 also known as MSME Order on 14th December 2020; based on section 36(2) of the PPD Act. For effective implementation of this Order, there is a requirement for the Ministry of Trade to register businesses in the three categories of Micro, Small and Medium enterprises. However, as at the time of the review, the implementation was still held up in registration

of SMEs by Ministry of Trade. The delay has been experienced due to the need to avoid errors of inclusion and exclusion.

Potential risks during implementation of this order include fronting, where big businesses register businesses in the name of some individuals and benefit from the MSME pool; and lack of capacity by MSMEs which may make an otherwise good initiative to fail to deliver the intended objectives. However, from the financial perspective, the capacity issued could be addressed by helping the MSMEs with access to soft loans for business finance.

PART B:
**ANALYSIS
AND DISCUSSION
OF KEY
FINDINGS**

**CHAPTER 6:
RESTRUCTURING OF THE
PUBLIC SERVICE**

6.1. Background and Problem Statement

The terms of reference of the Taskforce, as spelt out by the President, required the Taskforce to make recommendations on the structure of the Public Service as a service delivery mechanism of the Government. Section 3 of the Public Service Act (1994) provides a benchmark for assessing the character and performance of the Public Service as follows:

The public service shall:

- a. Aim to deliver services to the public in an efficient and effective manner;
- b. Be the instrument for generating and maintaining confidence in the Government;
- c. Be impartial, independent and permanent so as to enable the public to continue to receive Government services and in order that the executive functions of the Government continue uninterrupted irrespective of which political power is in place;
- d. Be guided only by concerns of the public interest and of the welfare of the public in the delivery of services and the formulation and implementation of development projects; and
- e. Aim to achieve and maintain the highest degree of integrity and proper conduct amongst the personnel at all grades.

This chapter draws from and builds on the findings in the preceding chapters. The structure of the Public Service is currently malfunctioning, the values have been eroded, and the character of the Public Service has become diametrically opposed to what was intended under the Public Service Act (1994).

Evidence from studies on politics of development and capacity of states to spearhead and deliver development outcomes, shows obvious connections between technocratic and professional public service systems and efficient and effective delivery of services. There are also close connections between technocracy and professionalism in the public service and delivery of development. The more technocratic and professional the public system, the higher the rate of delivery of development. This is so because technocratic and professional public service systems tend to be results-oriented, focused on performance, independent of unnecessary political influences, and incentivised to deliver public goods and services. They value integrity and diligence. Currently, these attributes are not common in the Malawi Public Service.

6.1.2. Objectives for Public Sector Restructuring

The general objective of the chapter is to review and recommend an institutional restructuring of the Malawi Public Service in order to re-establish a rationalized and right-sized Public Service that effectively enforces its laws, procedures, policies, and

contracts. The ultimate objective is to have a technocratic and professional Public Service that is efficient and effective in the delivery of its services, is duly accountable to the public, and delivers development.

The specific objectives are:

1. To review the current structure of the public service, determine gaps therein, and make appropriate recommendations for resolving them;
2. To align the public service structure and size to the national vision and key service delivery imperatives, and recommend the most appropriate operational model(s) for public service delivery; and
3. To conduct a benchmarking exercise and make recommendations on legislating the appropriate structure of the Public Service, focusing on the three arms of the Government.

The account following thematically isolates the key issues on the structure of the public service that affect service delivery. Under each theme, the legal and regulatory framework is presented, followed by the observations and recommendations of the Taskforce.

6.2. Definition of the Public Service(s) in Malawi

The Constitution does not precisely define the public service, although it provides its general framework. The Public Service Management Policy (2018, page 2) define the public service as:

“Public service” is any service that is provided by government directly or indirectly using public resources or any public interest activity that is under the authority of government. Public service also includes government institutions and their employees”

In terms of its composition, Section 1.1 of the Policy states that the Malawi Public Service comprises the following institutions and staff that work therein:

- i. The National Assembly or the Parliamentary Service;
- ii. The Judiciary or the Judicial Service;
- iii. The Civil Service which comprises all Government Ministries and Departments;
- iv. The Defence Force;
- v. The Police Service;
- vi. The Local Government Authorities;
- vii. Any corporation, council, board, committee, public university or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pur-

- suance of any such law;
- viii. Any other body prescribed by regulation for the purposes; and
 - ix. Any company in which the Government has majority share equity.

On the other hand, Section 2 of the Bill defines the Public Service as follows:

“Public Service” means any service that is under the authority of the Government and the organs of the Public Service include the following – (a) the Government or any Department, service or undertaking of the Government; (b) the National Assembly or the Parliamentary Service; (c) the Judicial Service; (d) the Security services; (e) a local authority; (f) any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law; (g) a public university; (h) any other body prescribed by the Minister by notice published in the Gazette for the purposes; and (i) any enterprise in which Government has majority share equity.”

The Bill further defines “public officer”, as follows:

“public officer” means any person in the employment of the State, its agencies, subsidiary and any enterprises in which Government has majority share equity, local authorities or parastatals and includes any person holding office in the legislative, executive or judicial branch of the State or exercising a public function or duty in any of its agencies or enterprises and includes an employee or member, including an unpaid, part-time or temporary officer to carry out activities in the name or on behalf of the State, at all levels of its structures, but does not include the following:

- The President;
- The Vice President;
- Member of the Cabinet; and
- Member of the National Assembly.”

6.2.1 Findings on the Definition of Public Service

The Taskforce observed the following related to the definition and conceptualization of the Public Service:

- a. While the Constitution outlines the “State” in Sections 1, 2 and 3, it falls short of providing a definition for “Government” which is mentioned in Section 4 (and nowhere else). Section 2(1) of the General Interpretation Act (1966) assumes that there is such a definition in the Constitution.

- b. The Constitution (1994) does not provide a definition for "Public Service". This omission creates tensions and lack of clarity in the definitions provided in the other legal instruments. Consequently, this affects how different "public" sector institutions relate to each other and how they function in the delivery of services.
- c. As it currently stands, the definition of "Public Service" as provided in the Public Service Bill (2019) is incomplete since it does not define "State" and "Government", and their institutions or organs.
- d. The definition of "Public Service" in the Bill erroneously suggests that the "service" is a structure that has organs. On the other hand, the definition in the Policy appropriately combines a system of providing public means and the institutions or bodies that provide them.
- e. The definition of Public Service in the Bill is wide and all-inclusive, covering even constitutional bodies that have their own commissions. The definition puts State and Government institutions in the same basket at the risk of compromising the constitutional independence of some of them, as well as the constitutional principle of Separation of Powers. Such risks come in at the point when the Headship of the Public Service is defined. Where "the Government" is not properly defined, the danger is that the entire public service, so widely defined, would fall under the authority and leadership of the Executive.
- f. Institutional structures are not properly defined in the legal instruments, officers are not sure of what they should be doing and what they should not, and it is difficult to hold them accountable in case of their failure of duty. Professionalism and commitment to work and effort are eventually affected. Lines of authority, accountability, and transparency are also blurred. As a result, it is easy for officers to exploit grey areas for personal gain, or to run away from responsibility when things go wrong.
- g. In many countries, the practice is to define the public service in the national constitution followed by a more elaborate definition and outline of its structure in an enabling statute. Boxes 1 and 2 illustrate the cases of Kenyan and Ghana, respectively:

Box 1 - Definition of Public Service in the Constitution of the Republic of Kenya

"Public Officer" means - (i) any State officer; or (ii) any person, other than a State Officer, who holds a public office.

"Public Office" means an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament.

"Public Service" means the collectivity of all individuals, other than State officers, performing a function within a State organ.

"State Office" means any of the following offices - (i) President; (ii) Deputy President; (iii) Cabinet Secretary; (iv) Member of Parliament; (v) Judges and Magistrates; (vi) member of a commission to which Chapter Fifteen applies; (vii) holder of an independent office to which Chapter Fifteen applies; (viii) member of a county assembly, governor or deputy governor of a county, or other members of the executive committee of a county government; (ix) Attorney-General; (x) Director of Public Prosecutions; (xi) Secretary to the Cabinet; (xii) Principal Secretary; (xiii) Chief of the Kenya Defence Forces; (xiv) commander of a service of the Kenya Defence Forces; (xv) Director-General of the National Intelligence Service; (xvi) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or (xvii) an office established and designated as a State office by national legislation.

"State Officer" means a person holding a State office.

"State Organ" means a commission, office, agency or other body established under the Constitution.

Box 2 - Definition of Public Service in the Constitution of the Republic of Ghana

1. The Public Services of Ghana shall include - (i) The Civil Service, the Judicial Service, the Audit Service, the Education Service, the Prisons Service, the Parliamentary Service, the Health Service, the Statistical Service, the National Fire Service, the Customs, Excise and Preventive Service, the Internal Revenue Service, the Police Service, the Immigration Service; and the Legal Service; (ii) Public corporations other than those set up as commercial ventures; (iii) Public services established by this Constitution; and (iv) Such other public services as Parliament may by law prescribe.
2. The Civil Service shall, until provision is otherwise made by Parliament, comprise service in both central and local government.

As observed, the Ghana Constitution defines both the Public Service and the Civil Service. In Kenya, on the other hand, the major distinction is between state service and public service. A state officer in Kenya is a public officer, but not all public servants are state officers. Every person who holds a public office in Kenya is a public officer.

6.2.2 Recommendations on definition of the Public Service(s)

The Taskforce, therefore, makes the following recommendations on the definition of the Public Service(s) in Malawi:



Recommendation 6.1:

Provide clear definitions of “State” and “Government”, as well as their organs, in the law

- a. Amend the Constitution to provide a clear definition of “Government” and its organs. Based on section 2(1) of the General Interpretation Act (1966). This definition of “Government” is necessary in order to provide proper alignment of public service institutions.
- b. Revise the Public Service Bill to provide the definitions of both State and Government, as well as their separate organs which jointly constitute the Public Service.
- c. The Ministry of Justice should identify all other statutes affected by the proposed amendment herein, and amend them accordingly.

Note: As the proposed definitions are likely to be inserted in Chapter 1 of the Constitution, which contains entrenched sections, it is envisaged that the amendment proposed in this recommendation would be accomplished under section 196(3) of the Constitution.



Recommendation 6.2:

Define “Public Service(s)” both in the Constitution and in the statutes

- a. Amend the Constitution to introduce a chapter on the Public Service which should provide a clear definition and structure of the Public Service(s) in relation to the organs and institutions of State and Government.
- b. Identify all other statutes affected by the proposed amendment herein, and amend them accordingly.



Recommendation 6.3:

Align the definition of “Public Service” between the Bill and the Policy

Revise the Public Service Bill (2019) to adopt the definition of “Public Service” as stated in the Public Service Management Policy (2018), subject to the changes suggested under Recommendations 1 and 2 above.

6.3. Headship of the Public Service

Section 16 of the Public Service Act (1994) states that the Secretary to the Cabinet shall be the head of the Public Service, while section 17 of the same Act state as follow:

“Subject to this Act and any general or special directives of the Minister, the Secretary to the Cabinet, as head of the Public Service, shall be responsible for the overall management and administration of the Public Service
....

In addition, section 1.1 of the Public Service Management Policy (2018) states that:

“The President is the Political Head of the Public Service while the Chief Secretary to the Government (currently Secretary to the President and Cabinet (SPC)) is the Administrative Head of the Civil Service and also oversees the management of the public service.

The Taskforce observed that what amounts to ‘overseeing the management of the public service’ is not clear. The Constitution of the Republic of Malawi does not provide for an SPC; it only provides for a Secretary to Cabinet. The danger here is that there is a risk of taking Cabinet for Government, as if they are one and the same. Chapter XX of the Constitution, on the civil service, also does not define the civil service and its structure, and does not provide for its headship, let alone confer powers on the Secretary to Cabinet to head the civil service. The Chapter confers powers to appoint, confirm, and exercise disciplinary control over persons holding or acting in any office to which this Chapter applies to the Civil Service Commission.

Section 20 of the Public Service Bill (2019) places the SPC as head of the broadly defined Public Service, effectively making the SPC head of the Judicial Service, Civil Service, Parliamentary Service, as well as the constitutional (state) bodies that are included in the widened definition of the Public Service. Section 21 further gives

the SPC powers over the management of the broadly defined Public Service, but also recognises the existence of a political head of the service (i.e. a Minister) who is not defined in section 2. This is inconsistent with section 94(4) of the Constitution, which only provides for the Secretary to the Cabinet (not even secretary to the entire Executive as defined in section 9 of the Constitution).

6.3.1. Findings on the headship of Public Service

- a. Placing the entire public service under the headship of the SPC (Public Service Bill (2019)), who is Secretary to Cabinet (refer to Constitution), in effect extends the powers of the Secretary to Cabinet beyond Cabinet responsibility, and contradicts the principle of Separation of Powers.
- b. If the SPC becomes Head of the Public Service as stipulated in the Bill, there will be no meaningful distinction between the Public Service and the Civil Service. The two will be fused into one. This arises from inconsistent formulations between the Bill and the Policy.

6.3.2 Recommendation on Head of Public Service

The Taskforce therefore makes the following recommendation regarding the headship of the Public Service:



Recommendation 6.4:

Legislate effectual headship of the Public Service

- a. Amend the Constitution to create Public Service Commission as a State body outside the Executive, which oversees the management of the public service and reports to the Head of State. The PSC should comprise the Chairperson, Vice Chairperson and five Commissioners. The Commission should be appointed by the President and approved by Parliament.
- b. Amend section 92(4) of the Constitution to create the position of Secretary to the President and Cabinet, rather than Secretary to Cabinet.
- c. Amend Chapter 20 of the Constitution to provide that the SPC shall be head of the civil service.
- d. Revise Section 20 of the Bill to remove the provision that the SPC shall be head of the public service.

6.4. Separate Powers of the Executive and Legislature

Sections 7, 8 and 9 of the Constitution provide for the separate statuses, functions,

and duties of the Executive, Legislature and Judiciary, respectively. However, Malawi uses a hybrid system of Government in which the President is both the Head of State and Head of Government (see section 79 of the Constitution). As in a parliamentary system, the President is allowed to elect members of his Cabinet from among Members of Parliament (MPs) without such members being required to vacate their Parliamentary seats, although the democratic legitimacy of his authority is not necessarily derived from his ability to command the confidence of the Legislature.

6.4.1 Observations on the separation of powers of the Executive and Legislature

The Taskforce observed that the fact that MPs may also be members of the Cabinet compromises the concept of the separate statuses, functions and duties between the Executive and Legislature as provided under the Constitution. Such ministers, thus, belong to both the Executive and Legislative arms, and are inherently conflicted in the conduct of official business. This has the following implication, for example:

- a. The appointment of key senior positions in the Public Service (e.g. Chief Justice and the Inspector General of the Malawi Police Service) are a preserve of the President but subject to the approval of Parliament. Therefore, Cabinet ministers who are MPs become part of both the appointing and approval processes.
- b. Policy formulation and implementation are prerogatives of the Executive, while legislation and oversight are the prerogative of Parliament. Therefore, Cabinet ministers who are MPs become part of both processes (i.e., they participate in legislating and overseeing their own policies).

Nevertheless, shifting from the current system would have implications on how political power and authority are configured and exercised. Therefore, the solution to this challenge is not obvious in the context of the current system of Government. These, and any other issues that have implications for the structure of government, can best be resolved through a referendum on the country's system of Government.


6.4.2 Separation of Power between the Executive and Judiciary

Section 119 (7) provides that the President may assign a judge to any other office in the public service. The Taskforce observed that where the assignment is to the office of the Attorney General or the Secretary to the President and Cabinet, it raises a potential conflict in the separation of powers because the individual concerned raises a judge while performing executive functions. The Taskforce noted that this is a structural issue, emanating from sections 7,8,9 of the Constitution of Malawi, and at the same time raises the issue of the desired system of government for the country.

6.4.3 Recommendation on Separation of Powers

The Taskforce, therefore, makes the following recommendations on the separate powers of the executive, judiciary and legislature:

Recommendation 6.5: Separation of Powers

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- i) Cognisant of the findings of the Special Law Commission of 2007 on this issue, the Taskforce recommends further review should be undertaken to examine the merits of amending section 94(2) of the Constitution to disallow the practice that a cabinet minister may continue to serve as a Member of Parliament in order to actualise the separation of powers between the Executive and Legislature.
 - ii) Hold a national conference, followed by a referendum on the desired system of government for the country.
 - iii) The practice of assigning sitting judges to positions in the executive branch of government should be stopped, and the Constitution amend-ed accordingly. Where a judge is seconded to the executive, they should resign permanently from the judiciary.

6.5. Independence and Harmonisation of Public Bodies

In addition to providing for the separate statuses, functions and duties of the Executive (section 7), the Legislature (section 8) and the Judiciary (section 9) as noted above, the Constitution also provides for independence in the exercise of the functions, powers and duties of the Judiciary (section 103), the Ombudsman (section 121), the Law Commission (section 136), the Police (section 158), and the Civil Service (section 193). There are also other statutes that create specific autonomous or semi-autonomous public agencies, including the following:

- a. The Human Rights Commission Act (Act No.27 of 1998)
- b. The Electoral Commission Act (Chap. 2:03)
- c. Anti-Corruption Bureau (see section 5(2) of the Corrupt Practices Act (1995))
- d. The Malawi Communications Regulatory Authority (see section 5(3) of the Communications Act (2016).
- e. The Reserve Bank of Malawi (see section 4A of the Reserve Bank of Malawi Act (2015))

6.5.1 Findings on the independence and harmonization of public bodies

- a. It is common in Malawi to refer to such bodies as government agencies, even where the Constitution establishes such bodies as independent bodies not subject to the influence of any authority in the execution of its duties. In other jurisdictions, the practice is to refer to such bodies either as constitutional bodies or as "state bodies", or "state commissions", or "state organs". These are part of the public service, but not necessarily agencies or structures/institutions of Government. In Kenya, all state commissions and independent offices are listed in a separate chapter (Chapter 15) of that country's constitution.
- b. In Malawi, the legislative frameworks for these bodies provide for their "operational independence", including the power to determine their own conditions of service - in some cases subject to approval by Parliament. Such independence may not necessarily translate into "financial independence".
- c. In general, the concept of "independence" has distended uncontrollably and unrealistically. This application of the term "independence" is responsible for gross disparities in Public Service conditions of service, among others. It is hitherto impractical to achieve harmonization of the Public Service, regardless of how the term would be defined.
- d. As analysed in the Chapter on Conditions of Service of this report, the extent of disparities in Public Service Remuneration is glaring. Because these disparities generally disadvantage mainstream civil servants relative to other public servants, the consultations conducted in this review affirm that this is a significant contributor to the worsening trends in corruption, rent-seeking and allowance-hunting tendencies, because disadvantaged officers seek to recoup perceived lost income. Addressing these disparities is, therefore, a critical Public Service reform area.
- e. Further, clarity is required on the appropriateness, rationale and objectives of harmonization in the Public Service. Principles of natural justice suggest that public employees should be compensated on the basis of "equal pay for equal work", holding qualifications and experience constant. Therefore, while the criteria for appointment and promotion may differ across the entities of the Public Service, the system is obligated to establish criteria for ensuring equity in the compensation of public servants as a key step towards addressing the glaring disparities already cited.
- f. An initiative to establish the National Remuneration Commission to oversee the remuneration of all public servants is currently underway, having been thwarted until recently by an injunction obtained by the Judiciary. A related additional anomaly is in terms of the determination of the remuneration of MPs. Unlike the remuneration of judicial officers which is determined by the National Assembly as per section 114 of the Constitution - an issue that also causes practical problems arising from the fact that Parliament is not in the best position to

ensure that its resolutions on the matter realistically reflect the fiscal position of the country - the remuneration of MPs is determined by the Parliamentary Service Commission in line with section 11(1)(g) of the Parliamentary Service Act (1998). Thus, MPs set and approve their own remuneration, a scenario that creates an obvious case of conflict of interest. It is overly meriting and convenient that an independent and specialised body should be responsible for matters of remuneration in the Public Service.

- g. The relationship between the proposed Public Service Commission and the proposed National Remuneration Commission remains unestablished, despite the fact that both will be responsible for matters that border of the conditions of service of public servants.

6.5.2 Recommendations on the independence and harmonization of public bodies

The Taskforce makes the following recommendations regarding the independence and harmonization of public bodies:



Recommendation 6.6:

Define "operational independence" of eligible public bodies

Amend the Constitution and other relevant legislation so that separation of powers and independence should be limited to the exercise of the functions, powers and duties of the concerned bodies (i.e., limited to operational independence). It should not be the basis for differential conditions of service in the Public Service.



Recommendation 6.7:

Rationalise public service harmonisation

Establish a harmonised grading system in the Public Service, ensuring that:

- a. Positions perfectly mirror each other across the entire Public Service;
- b. Differential qualification and promotion criteria are permitted to reflect job-specific career path differences; and
- c. Officers in the same grade are equally compensated.



Recommendation 6.8:

Create a National Remuneration Directorate as part of the Public Service Commission

The proposed National Remuneration Board should be created as one of the directorates of the Public Service Commission whose establishment is in Recommendation 4 above, and as provided for in section 40(1) of the Public Service Bill (2019)

Every effort should be put into establishing the National Remuneration Directorate, in order to facilitate the harmonization of public sector remuneration as a function of the Public Service Commission. Persistent inability to address this matter on account of the self-interest of some public servants will constitute gross national negligence and system failure

6.6. Establishment of the Public Service Commission

The establishment of a broadly defined public service will require the establishment of a Public Service Commission to regulate or/and manage it. Currently, Malawi has eight service commissions. Some of these commissions are established under the Constitution while others are established in statutes, as follows:

- a. The Judicial Service Commission, created under section 116 of the Constitution;
- b. The Police Service Commission, created under section 155 of the Constitution;
- c. The Prisons Service Commission, created under section 167 of the Constitution;
- d. The Civil Service Commission, created under section 186 of the Constitution;
- e. The Parliamentary Service Commission, created under section 6 of the Parliamentary Service Act (1998);
- f. The Local Government Service Commission, created under section 9(1) of the Local Government Service Act (1981);
- g. The Teaching Service Commission, created under section 3 of the Government Teaching Service Commission Act (1996);
- h. The Health Service Commission; and
- i. Public Private Partnerships Commission, established Public Private Partnerships Commission Act

Records from the Public Service Reform Commission reveal that there have been gross inconsistencies in the way the eight service commissions operate. The inconsistencies include:

- a. variance in the memberships of the commissions;
- b. differences in the tenures of office among the various commissions;
- c. differences in conditions of engagement and remuneration among the various

- commissioners;
- d. differences in work output, funding, and influence among the various commissions; and
- e. differences in modes of operation among the various commissions

In addition, there lacks proper coordination of the commissions, resulting in serious inefficiencies in service delivery. In order to address these observations, Part V of the Public Service Bill (2019) establishes the Public Service Commission (PSC), as a vehicle for harmonising the structure and management of the Public Service. However, the jurisdiction of the PSC excludes the Judicial Service Commission and the Parliamentary Service Commission on account of the principle of separation of powers already discussed. It also excludes the Police Service Commission and the Prisons Service Commission, purportedly for security reasons and in keeping with international best practice.

6.6.1 Findings on the establishment of the Public Service Commission

- a. The proposed PSC is misaligned with the broad definition of a Public Service already discussed; therefore, it is inappropriately named. Importantly, the exclusions imply that the PSC will not achieve the objective of harmonization for which it was being set. This further reflects the misapplication of the concepts of separation of powers and independence.
- b. Given that some of the institutions included in the broad definition of the public service used in the Bill are (and may be) established under different legal instruments, with varied powers, it may be difficult to bring them under the authority of the PSC as defined in the Bill. For example, recruitment and working conditions in public universities are a preserve of the university councils. Unless such councils are abolished or their power reduced, it will be difficult to extend the authority of the PSC on matters of hiring, firing, and conditions of service to the public universities.
- c. Staff management powers and functions of the proposed inclusive PSC may conflict with those of the Commissions established by the Constitution, as well as those of the Governing Boards of the state-owned enterprises and bodies established under various statutes.

6.6.2 Recommendations on the establishment of the Public Service Commission

The Taskforce makes the following recommendations on the establishment of the Public Service Commission:



Recommendation 6.9:

Establish a Public Service Commission (PSC) in line with the broad definition of the Public Service

The PSC established under recommendation 4 above should have the following powers and functions, *inter alia*:

- i. To establish and abolish key offices in the Public Service;
- ii. To appoint persons to hold or act in those offices, and to confirm appointments;
- iii. To exercise disciplinary control over and remove persons holding or acting in those offices;
- iv. To promote the values and principles stipulated in Section 2.4 of the Public Service Management Policy (2018) throughout the Public Service;
- v. To investigate, monitor and evaluate the organisation, administration and personnel practices of the Public Service;
- vi. To ensure that the public service is efficient and effective;
- vii. To develop human resources in the Public Service;
- viii. To determine the conditions of service, remuneration, code of conduct and qualifications of officers in the Public Service; and
- ix. To advise the Government on all matters of human resource management.

6.7. Management of the Public Service

Section 25 of the Public Service Bill (2019) establishes the Department of Public Service Management (DPSM). Seeking to replace and upgrade the current Department of Human Resource Management and Development (DHRMD), the DPSM will be responsible for developing and maintaining sound and effective Public Service systems and practices, and administering the Public Service conditions of service, including those of statutory bodies. Headed by a Secretary for Public Service Management, this new Department with expanded scope and mandate shall take overall responsibility and related functions on behalf of the SPC, with respect to the administration and management of the Public Service as broadly defined above.

6.7.1 Findings on management of the Public Service

- a. The proposed mandate of the DPSM is in conflict with the fact that most state bodies have specific legal instruments, including the Constitution, that give them powers to determine their conditions of service as indicated in Section 2.6 above. In other words, the proposal is untenable due to the current application of the principles of separation of powers and independence.
- b. No major changes have been made on the structure and functioning of the

current Common Services, nor the responsibility of Controlling Officers over the human resource management function beyond sanctioning. One adverse implication of this is that staff can still be moved around within the civil service by the Common Services, usually without consultation with the Controlling Officers; sometimes without immediate replacement. The implication of this in terms of human resource instability within the MDAs is very significant. Coupled with high vacancy rates - averaging 21%, but ranging from 10% in most ministries to 46% in the Ministry of Health, as at end July 2017 (see Palladium, 2018) - staff instability is a huge contributor to an inefficient and ineffective Public Service.

- c. One positive development is that the jurisdiction of the proposed DPSM extends to statutory bodies, which creates a framework for controlling the establishment levels in those institutions.

6.7.2 Findings on human resource development

Human resource planning and development is a function of DHRMD. The existence of high vacancy rates in the civil service suggests that this function has not been properly carried out over the years. The Taskforce noted that there is an Internship Programme under the Ministry of Labour that has the potential to contribute to the country's human resource development of the country. The programme could become a training ground for career public servants, in addition to skills acquisition for those intending to join the private sector. Unfortunately, important as it is, the programme is not institutionalized and its future is rather uncertain. The Taskforce further noted that the TEVETA authority is an implementing agency for the Ministry of Labour on human resource development. This means that the function of human resource development in the country is spread over more than one institution, with no proper coordination. In some countries TEVETA, technical colleges, and skills development in general, are under the ministry responsible for education (or education and skills development).

6.7.3. Recommendations on the management of the Public Service

The Taskforce makes the following recommendations to strengthen the management of the Public Service



Recommendation 6.10:

Create a Directorate of Public Service Management, and a Directorate of Skills Development, as part of the Public Service Commission

- a. The proposed Department of Public Service Management should be created as one of the directorates of the Public Service Commission whose establishment is in Recommendation 4 above, and as provided for in section 40(1) of the Public Service Bill (2019).
- b. DHRMD should integrate graduates of the Internship Programme into the Public Service, and recommend some to the private sector
- c. Create a Directorate of Skills Development in the Public Service Commission to run the Internship Programme as one of its key functions.
- d. Carry out an institutional assessment of TEVETA with a view to move it to the Ministry of Education together with technical education. The Ministry of Education could then be split into the Ministry of Basic Education and the Ministry of Higher Education and Skills Development



Recommendation 6.11:

Create a Directorate of Public Common Services as part of the Public Service Commission

A Directorate of Public Common Services should be created as one of the directorates of the Public Service Commission whose establishment is in Recommendation 4 above, and as provided for in Section 40(1) of the Public Service Bill (2019). The roles and functions of (current) common services should be performed through separate units of this directorate, hence the current common services should be abolished. Consideration should be made for merging some of them in the creation of the said units.

6.8. Size and Character of the Public Service

6.8.1 Findings on the size and character of the Public Service

- a. There are no clear written guidelines for determining the appropriate structure and size of the public service. In relation to the three branches of the Government, for instance, the following observations can be made:
 - i. Section 76(2) of the Constitution does not constrain the Electoral Commis-

sion against increasing the number of constituencies, and resource implications is among the list of considerations for determining constituency boundaries. As a result, for example, the constituency review undertaken in 1997 increased the number of constituencies from 177 to 193, and there is a risk that subsequent reviews could unduly increase this number further. In comparison, the Constitution of Zimbabwe limits the numbers of Senators and Members of the National Assembly at 80 and 270, respectively. Similarly, article 68(2) of the Constitution of Zambia provides for 156 constituencies.

- ii. Section 92 of Constitution falls short of setting a limit on the size of the Cabinet, let alone determining its exact portfolios.
 - iii. Sections 105 and 109 of the Constitution set the minimum numbers on the compositions of the Supreme Court of Appeal and the High Court respectively, but no upper limits are set. Unless otherwise revised, the proposed establishment of a High Court of Appeal is likely to adopt the same tradition.
 - iv. The Public Service Bill (2019) is equally unrestricting in this regard. In general, there are no clear guidelines on the matter of Government structure and size.
- b. These gaps have implications on the structure, size and stability of the Public Service. In general, there is a risk of having a top-heavy Government at all levels, and proper planning of establishments and succession is compromised. More specific implications include the following:
- i. The Public Service structure and size do not reflect the size of the economy and available resources, leading to undue pressure on the country's constrained fiscal position. For instance, it is generally felt that the public service in Malawi maintains more than the required number of ministries.
 - ii. The structure of the Government does not reflect the existing medium and long-term development plans. Over the years, the structure has been consistently misaligned with the priorities in the Malawi Growth and Development Strategy (MGDS) as well as both the Vision 2020 and the Malawi 2063. It is, therefore, not clear whether the mandates and operations of all public institutions are strategic to the achievement of key government objectives and targets.
 - iii. There is gross duplication and fragmentation of functions and mandates within the Public Service. For example, overall organisational performance management responsibilities are fragmented across two organisations at the central level, all under the Presidency. These are the Performance Enforcement Department in the Office of the President and Cabinet (OPC), and the Public Sector Reform Unit in the Office of the Vice President (OVP).
 - iv. There are no guidelines for the establishment and determination of the sizes of ministries, departments, divisions or other units within the civil

- service, nor their association with the rest of the Public Service. As a result, for example, directors head what are called departments in some ministries and what are called divisions in other ministries. The system is, therefore, chaotic and lacks structure.
- v. There is significant instability in the structure of the Public Service as some departments are moved from one ministry to another, or ministries are split from time to time. For instance, the Department of Tourism has, over the years, been tossed around as part of the Ministry of Trade, Industry and Tourism; Ministry of Tourism, Natural Resources and Environmental Affairs; and Ministry of Tourism, Culture and Wildlife. Recently, the Ministry of Industry and Trade was split into two separate ministries determined by its traditional departments.
 - vi. The civil service lacks adequate numbers of people with knowledge and skills that are core to the delivery of key services and implementation of the MGDS and Malawi 2063. The civil service has a number of non-core staff, including administrative and support staff, and it is not clear whether all of them are required. Furthermore, it is not clear whether all the employees in the civil service are optimally utilised to contribute to the strategic results of MDAs (see Chapter 4 on Conditions of Service)
 - vii. Chapter IX of the Constitution does not create the position of Deputy Chief Justice. This position is important in terms of ascertaining the stability of the judiciary, and is common practice across comparable jurisdictions (see, for example, Article 163 of the Constitution of Kenya; Article 143 of the Constitution of Rwanda; Article 93(1) of the Constitution of Zambia).
 - viii. Justice delivery is inefficient. Although the rules of practice require delivery of judgements within 90 days after the completion of trial and filing of submissions, or for chamber matters 30 days after, it is very rare to get court decisions in those timelines. Cases of judgements delayed for even 19 years have been cited, and delays of up to ten years are quite common. An overload of the judiciary is cited as a cause for this, in addition to corruption, incompetence, impunity, poor professional conduct and a weak sanctioning regime.
 - ix. The matter of incompetence among judicial officers has been highlighted in several publications, and the quest for a more transparent and accountable system of appointing and disciplining judicial officers features frequently in this discourse (see, e.g., Nkata, 2018; 2018). This raises questions regarding the effectiveness of both the Judicial Service Commission and the President, in accordance with the provisions of sections 111 and 118 of the Constitution.

These factors clearly lead to gross inefficiencies and ineffectiveness in public service delivery. In fairness, the issues of incompetence, poor appointment processes, corruption and a weak framework of disciplining improper conduct cut across the entire Public Service and require a holistic approach to be resolved, and could not be effectively addressed within the limited timeframe of the Taskforce.

¹⁰ See the Sunday Times, May 2, 2021, p8; an article credited to George Jivason Kadzipatike.

6.8.2 Recommendations on the size and character of the Public Service

The Taskforce makes the following recommendations on the size and character of the Public Service



Recommendation 6.12:

Legislate top-level Government size

- a. Amend section 76(2) of the Constitution to provide that the number of constituencies shall not exceed 200.
- b. Amend section 93 of the Constitution to stipulate the exact list of government ministries, guided by the principles of national policy stipulated in section 13 of the Constitution, as follows¹:
 - Ministry of Agriculture and Food Security
 - Ministry of Defence
 - Ministry of Education
 - Ministry of Emergency and Disaster Management
 - Ministry of Finance and Economic Management
 - Ministry of Foreign Affairs
 - Ministry of Gender, Social Welfare and Community Development
 - Ministry of Health
 - Ministry of Home Affairs and Internal Security
 - Ministry of Justice
 - Ministry of Industry and Trade
 - Ministry of Information and Communication
 - Ministry of Labour
 - Ministry of Lands, Housing and Physical Planning
 - Ministry of Local Government
 - Ministry of Natural Resources and Environment
 - Ministry of Public Utilities and Supplies
 - Ministry of State Affairs
 - Ministry of Transport and Infrastructure Development
 - Ministry of Tourism
 - Ministry of Youth, Sports and Culture
- c. Carry out an assessment on how some ministries and departments or their functions could be combined both at the central and local government levels.
- d. Amend section 93 of the Constitution to limit the number of deputy ministers to five, to be assigned at the discretion of the appointing authority.
- e. Amend Chapter IX of the Constitution to create the position of Deputy Chief Justice².



- f. In view of the proposal to create a Court of Appeal in the ongoing review of the judiciary, amend section 105(1) of the Constitution to limit the number of Supreme Court judges to nine, inclusive of the Chief Justice and Deputy Chief Justice;
- g. Enact law to define the key departments and/or directorates of each ministry
- h. After further review, amend Part III of the Courts Act (1958, amended) to provide the maximum number of High Court registries as well as the minimum and maximum numbers of High Court judges per registry. Similar rationale should apply in relation to the proposed establishment of a High Court of Appeal. It is further recommended that the Chief Justice should develop guidelines for the establishment of the registry.
- i. Amend all subordinate legislation to actualize Government right-sizing.

Notes:

Development planning and population should be assigned to the National Planning Commission.

It is understood that this is already being proposed in on-going Judiciary reforms



Recommendation 6.13:

Adopt standard definitions for the main functional units of the Public Service

- a. Define what should constitute a ministry, department, directorate, section and other units of the civil service, especially in terms of the grades of the officers that head them; as follows:
 - A ministry should be headed by a Principal Secretary;
 - A department should be headed by a Chief Director;
 - A directorate should be headed by a Director
 - A section should be headed by a deputy director
 - By this definition, some ministries may be structured around two or more departments, while others may be structured around two or more divisions. The position of Chief Director will need to be created in the Constitution.
- b. The terms "division" and "zone" should apply to geographical units;
- c. Where concepts apply geographically (e.g., zone or division), standardization should seek to make them comparable across ministries in terms of their territorial jurisdiction. The grades of the officers heading them should also be comparable. Thus, for example, an agricultural division should be geographically the same as an educational division.
- d. The above definitions should be extended to the rest of the Public Service.



Recommendation 6.14

Conduct a comprehensive functional review of the Public Service

- a. Assess the organisational functions, structure and operations of the Public Service in order to identify those that support or do not support efficient and effective service delivery. Accordingly, interrogate the fitness-for-purpose of all state agencies and operations, and make recommendations to consolidate, restructure or close some, as the case may be.
- b. Assess the framework of appointments, sanctions, transparency and accountability within the entire Public Service, including an interrogation of why the application of existing provisions that would deter bad conduct faces challenges and, accordingly, make recommendations to strengthen the regime.

6.9. Decentralisation and Devolution

Chapter XIV of the Constitution creates local government authorities as a basis for decentralization and devolution of local development and democratization functions and processes. Section 6 of the Local Government Act (1998, amended), inter alia, gives responsibility for local development and the delivery of public services to local assemblies with attendant responsibilities for policy and resource mobilisation. In addition, and more specifically, sections 2, 3 and 6 of the Decentralisation Policy (1998), inter alia:

- a. Devolves administration and political authority to the local authorities;
- b. Transfers the implementation of government programmes from the centre to the districts; and
- c. Promotes popular participation in governance and development.

The Local Government (Amendment) (Bill 2017) seeks to align the Act with the Decentralisation Policy.

6.9.1 Findings on decentralization and devolution

- a. Some devolution activities have hitherto been implemented, including devolution of the payroll and the development budget in 2016, issuance of human resource establishment warrants for local authorities in 2017. These are subsequent to the devolution of the recurrent budget implemented much earlier.
- b. Despite the existence of this elaborate legal and policy framework, and notwithstanding actions already taken, devolution has been a slow and partial process in Malawi. An example is asset devolution which has not yet been implemented. Moreover, local authorities lack human resources, finances and competences to

be effective in the delivery of the devolution mandate, such that the benefits of devolution are not being fully realized. Most staff that are currently in the local authorities – especially the district authorities – are not trained or oriented into their roles. There is also a clear lack of implementation of performance management in the authorities (Palladium, 2018).

- c. There is also evidence that staff are transferred between districts, and between local and central government, which contradicts the principle that staff should be recruited by specific authorities (Palladium, 2018). As highlighted in section 2.7 of this report, this practice is promoted by the existence of common services in the public sector. Additionally, failure to have staff appointed by the authorities arises from legal inconsistencies and political interference in the human resource management function within the Public Service.
- d. The primary reason for these outcomes is the low level of political will to transfer responsibility to the local authorities, and to adequately capacitate them to deliver.

6.9.2 Recommendation on decentralization and devolution

The Taskforce makes the following recommendation to enhance the benefits of decentralization and devolution:



Recommendation 6.15:

- a. Fast-track complete devolution (as in Public Service Reforms Policy (2018))
- b. The delivery of public services should be a local government function.
- c. The Central Government should focus on the following, in line with the Decentralisation Policy (1998) and the Local Government Act (1998, amended): (i) Policy-making; (ii) Capacity building; (iii) Resource mobilization; (iv) Monitoring of programmes, setting standards and quality control; and (v) Harmonization of terms and conditions of service across the Public Service¹.
- d. An established training and capacity building programme for local authorities should be designed and implemented by the Staff Development Institute and the Malawi Institute of Management, focusing on, inter alia, human resource management, financial management, governance and managing for development results.
- e. Amend the Local Government Amendment Act (2010) to restore the power of the local council to appoint its staff.

6.10. Governance and Management of State-Owned Enterprises

Malawi established the Department of Statutory Corporations (DSC) through a Presidential Order of 1982 in order to “ensure proper resource management and

utilization in the growing parastatal sector” (see section 1.2 of the State Corporations Policy (2012).

The implementation of economic liberalization programmes since the adoption the Structural Adjustment Policies in 1982 has led to the restructuring of state-owned enterprises (SOEs), as part of the conditionalities attached to programme financing. Among these has been the conversion of some SOEs into limited liability investments registered under the Companies Act (1984, amended), but most other SOEs are still created by specific statutes as statutory bodies. Examples of SOEs registered under the Companies Act include:

- a. The Agricultural Development and Marketing Corporation (ADMARC) Limited;
- b. The Electricity Supply Corporation of Malawi (ESCOM) Limited;
- c. Sunbird Hotels and Resorts Limited;
- d. National Oil Company of Malawi (NOCOMA) Limited; and
- e. Electricity Generation Company (EGENCO) Limited.

Section 2 of the Public Finance Management Act (2003) provides the following definition of a statutory body:

“statutory body” means a body of persons, whether corporate or unincorporated, other than the Reserve Bank of Malawi, established by any written law, and includes an Assembly established under the Local Government Act, 1998 and any corporation or a subsidiary of a corporation where the Government directly or indirectly -

- a. controls the composition of any board of directors of the body; or
- b. controls more than fifty per cent of the voting power of the body; or
- c. holds more than fifty per cent of any of the issued share capital of the body either directly or through another agency or statutory body (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital)

In addition, Part VIII of the Public Finance Management Act (2003) makes provisions for the financial management of statutory bodies as a function of the Treasury, in its capacity as the custodian of State assets. Although a recent legal interpretation of State-owned “private” companies registered under the Companies Act (1984) is that they are not bound to State control, this is contrary to the said Part VIII, whose superiority over the Companies Act in safeguarding public money and public interest is provided under Section 94, as follows:

“Where any provision of this Act conflicts with a provision of any other written law, other than the Constitution, the provisions of this Act shall prevail.

As noted in the preceding Sections of this chapter, SOEs render public services as defined under the Public Service Act (1994), the Public Service Management Policy (2018) and the Public Service Bill (2019).

“The Chairpersons of the Board of Directors were doubling as Chief Executive Officers of parastatals. The arrangement resulted into gross abuse of the parastatals’ resources as the executing officer was also responsible for providing policy guidance and approval. After the creation of DSC, the executive boards were changed to non-executive boards and DSC took over the oversight role of the parastatal sector”

A draft State Corporations Policy was prepared in 2012, but has not yet been finalised. Section 5.2 of the draft policy states that its overall objective is “to establish a coordinated mechanism for effective governance and management of the parastatal sector in Malawi”. The specific objectives are listed as follows:

- a. Provided guidance for management of parastatals, including the creation, merging and dissolution of parastatals;
- b. Clarify the definition and ownership of parastatals;
- c. Strengthen the governance processes of parastatals;
- d. Clarify reporting lines for parastatals; and
- e. Define the financing mechanism, subvention, dividend and surplus framework for parastatals.

The Reserve Bank of Malawi is created as a State instrument in Section 185(1) of the Constitution.

6.10.1 Observations on the governance and management of SOEs

- a. Malawi’s current legislation provides a reasonably adequate framework for safeguarding Government interests in SOEs, and protecting public money, and it is therefore absurd to create government-owned private companies that are not bound to the country’s public financial legislation.
- b. The creation of “private” State-owned companies and, more particularly, their legal interpretation as investments outside the scope of government control, despite being owned by the State, create enormous risks of asset stripping and contingent liabilities on the State, contracted without the State’s authorisation.
- c. The enactment of the Public Finance Management Act (2003) and specific statutes establishing SOEs rendered the DSC irrelevant, because these create an elaborate legal framework for the governance and resource management structures of the enterprises - the very issues which the DSC was established to address. By extension, the creation, merging and dissolution of SOEs resides in line ministries, such that the necessity for a mechanism for the coordination of SOEs, as envisaged by the draft State Corporations Policy (2012), does not arise.
- d. The constitutions of the boards of directors of SOEs are not based on standard or common principles. While most of them are chaired by independent persons, others are chaired by ex-officio persons. Among the latter, some chairs are derived from the line or parent ministries of the enterprises, examples of which is the Smallholder Farmers Fertilizer Revolving Fund (SFFRF), chaired by the Secretary for Agriculture. However, other boards are chaired by ex-officio persons from outside their line ministries with unclear basis, examples of which

are the following:

- NOCOMA, chaired by the Secretary to the President and Cabinet despite being in the energy sector;
 - EGENCO, chaired by the Secretary to the President and Cabinet despite being in the energy sector;
- e. The RBM renders a public service as defined in the “Public Service Act (1994), the Public Service Management Policy (2018) and the Public Service Bill (2019). Despite its exclusion in the definition of statutory bodies in section 2 of the Public Finance Management Act (2003), it is a wholly-owned state institution which should be bound to the same rules and regulations as all other State agencies. The exclusion practically contradicts section 185(1) of the Constitution.
- f. The exclusion of the Reserve Bank of Malawi from the definition of statutory bodies has had adverse effects on the role and management of the bank. The bank has retained the disputed arrangement of having its Chief Executive Officer as the chairman of its board, on the basis that this is in keeping with the global trend. Unfortunately, over time, the management of the bank has used this arrangement to create an institution whose structure of remuneration, allowances and incentives is completely detached from the stance of the economy and the rest of the public institutions. It has also created a potential conduit for rent-seeking and extraction.
- g. Although chief executive officers are no longer chairpersons of their own boards of directors, they practically remain significantly much better remunerated, more powerful and more respected than the senior management of the line ministries under which they are. As a result, line ministries become subservient to their own agencies.

6.10.2 Recommendations on the governance and management of SOEs

The Taskforce makes the following recommendations on the governance and management of SOEs:



Recommendation 6.16:

Rationalise the framework for managing state-owned enterprises

- a. The creation, merging and dissolution of SOEs should be the express responsibility of line ministries.
- b. Policy formulation and direction for specific SOEs should be the express responsibility of the governing boards of SOEs, in consultation with line ministries
- c. Further review should be undertaken to examine the relevance of the DSC and the proposed state corporations policy, in view of the fact that the legal and regulatory instruments are adequate for providing the appropriate governance and financial management of SOEs.



Recommendation 6.17:

Adopt a standard for the constitution of the boards of SOEs

- a. Amend affected statutes so that all state-owned enterprises should be chaired by fitting independent private citizens, and their ex-officio board membership should be restricted to line ministries and related bodies.
- b. Reconstitute all boards affected by the implemented of (a) above.



Recommendation 6.18:

Improve the accountability framework of the Reserve Bank of Malawi

- a. Amend section 2 of the Public Finance Management Act to remove the exclusion of the RBM from the definition of statutory bodies; and
- b. Further review the governance structure of the RBM, taking cognizance of the practical challenges of having an executive chairperson as well as the experiences of the global community.

6.11. Political Interference in the work of Public servants

Section 93(1) states that “there shall be Ministers and Deputy Ministers who shall exercise such powers and functions, including the running of Government departments, as may be prescribed by the President ...”

Section 93(2) of the Constitution places the supervision of government departments

as a responsibility of Principal Secretaries. Section 96(1) of the Constitution stipulates the duties and function of the Cabinet which include the following, inter alia:

- a. To advise the president;
- b. To direct, coordinate and supervise the activities of Government departments, including parastatal bodies;
- c. To initiate Bills for submission to the National Assembly and to explain those Bills;
- d. To prepare, explain and formulate for the Parliament the budget of the State and its economic programmes;
- e. To be available to Parliament for the purposes of answering any queries or participating in any debate pertaining to the content of the policies of the Government
- f. To assist the President in determining what international agreements are to be concluded or acceded to and to inform Parliament thereon; and
- g. To take responsibility for the implementation and administration of laws.

Section 2 of the Public Service Bill (2019) excludes politicians in the definition of public servants.

6.11.2 Findings on political interference in the work of public servants

- a. The legal and regulatory framework is vague in terms of the distinct roles of the Minister and Principal Secretary. Thus, both are required to supervise Government departments, while the Minister also has implementation responsibilities. In practice, Ministers use this as a basis for delving into the day-to-day management of government ministries and departments including, in extreme cases, chairing management meetings. Thus, ministers formulate, implement and supervise the implementation of Government policies.
- b. Although it is commonly said that Principal Secretaries are chief executive officers of government ministries or departments, this is not legislated, contrary to provisions in other countries in the region.

6.11.2 Recommendations on political interference in the work of public servants

The Taskforce makes the following recommendations to minimize political interference in the work of public servants



Recommendation 6.19:

Clarify the separate functions and duties of minister and principal secretary

- a. Amend Section 93(1) of the Constitution to delete the provision that Ministers and Deputy Ministers shall be responsible for “the running of Government departments”, as this is a management function.
- b. Amend Section 96(1) of the Constitution, specifically in relating to the role of the ministry, to explicitly state that the Minister is responsible for:
 - Policy formulation and direction in consultation with the principal secretary; and
 - Supervision of policy implementation by the Principal Secretary.
- c. Amend Section 93(2) of the Constitution to explicitly state that the Principal Secretary shall be chief executive officer of a ministry or department, responsible for:
 - Advising the minister in policy formulation;
 - Implementation of government policies; and
 - Overall and day-to-day management of the ministry including its human resource function.

6.11. Conclusion

The foregoing account highlights the importance of restructuring the public service to ensure its efficiency, effectiveness, and accountability to the public. Restructuring will also promote technocracy in the operational approach which will in turn minimize unnecessary political interferences. Minimizing political interference will in turn improve the professional integrity of the public service and its commitment to the achievement of the country’s development goals.

Care should be taken to ensure that there is no breach of employment contracts in the implementation of these recommendations.

PART B:
**ANALYSIS
AND DISCUSSION
OF KEY
FINDINGS**

**CHAPTER 7:
CONCLUSIONS**

This report contains proposals for radical change, and, in some cases, a complete departure from the old practices, in an attempt to address the challenge of dysfunctional government systems, rigged with bad or old laws, procedures, and policies that facilitate waste, abuse, and theft in the Malawi Public Service. The Taskforce noted that the successful implementation of these proposals will depend on four related factors. First is the requirement to drive the process of change from the top. No meaningful reform or transformation will occur without the three branches of Government - Executive, Judiciary, and Legislature - taking the lead. The principals in these three branches of Government should drive the process of change. At the lower level, mindset change should start with the top managers in public institutions in order for the lower ranks to follow. Without the top managers setting the example, junior offers will not feel obliged to embrace change.

Second is the requirement for systematic legal reforms. The Taskforce observed that a number of recommendations that it has made have legal implications, or require that some laws be amended. The Taskforce was conscious that the implementation of some of its recommendations, especially relating to employment contracts and conditions of service, including provisions of remunerative and non-remunerative allowances, could affect the constitutional and/or contractual rights of some public servants, particularly in the parastatals, and put the Government in breach of its obligations towards those public servants. It therefore recommends that the Attorney General should be consulted to render appropriate legal advice on the constitutional, legal and legislative steps needed to be taken to support the implementation of any such recommendation.

The third factor relates to the relationship between good economic performance and successful implementation of public sector reforms. The implementation success of the majority of the recommendations proposed in this document will depend on the performance of the national economy. Growing the economy, minimizing wastages and leakages will be key to the success of the proposed reforms. A good mixture of result-oriented development policy implementation, focused on effective delivery, and making the right investments with prudence and providence, will be followed by the right outcomes.

The last factor is the requirement for buy-in from both the public and the public servants. Reform and change will not occur if the general public and the public servants that provide services to the public are not brought onboard. The public will need to be regularly informed and reminded about why change is necessary. Embracing change requires the adoption of new normative and ethical values at various levels of society. When and where certain subcultures are so entrenched, there is always fear and resistance to change.

PART B:
**ANALYSIS
AND DISCUSSION
OF KEY
FINDINGS**

**CHAPTER 8:
CONSOLIDATED
ACTION PLAN**

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
1	<p>Implement full-board facility for local travel, with effect from 1st July 2021 for grades E and above, and transition all other ranks to full-board according to grade with effect from 1st April 2022. This will eliminate or at least reduce chasing of allowances for personal gain, while making sure that public officers on duty are properly accommodated.</p> <p>The recommendation should be accompanied by the following activities:-</p> <ul style="list-style-type: none"> • Negotiate use of IFMIS-generated Local Purchase Orders (LPO) for hotel/motel/lodge accommodation bookings, and payment to be made after being invoiced. • Negotiate use of IFMIS-generated Local Purchase Orders (LPO) for hotel/motel/lodge accommodation bookings, and payment to be made after being invoiced. 	<p>Copy of Negotiated Hotel, Motel and Lodges rates for Full-board Facility.</p> <p>LPO system of payment in place and operational</p> <p>Invoices paid within 30 days</p> <p>Copy of Revised Incidental Allowance Rates.</p>	1st July, 2021	1st April, 2022	PS - DHRM&D and Accountant General

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	<ul style="list-style-type: none"> • Controlling Officers must ensure that all full board invoices from hotels/motels/lodges are paid within 30 days and they will be held accountable for failure to settle bills, with sanctions following. • Review the Incidental Allowance Rates attached to full board regime and adjust them accordingly. 				
	<ul style="list-style-type: none"> • As an interim control measure, reinstate payment of allowances through cheques to stop direct electronic transfer into personal bank accounts when travel arrangements are not ready. Cheques should only be released to individual officers after all arrangements for the trip are complete. 	Copies of cheques issued to individual officers.			

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	<ul style="list-style-type: none"> All travel and voucher lists should be approved by the Controlling Officer or designated senior officer only, in accordance with the Travel Policy. Where there is no such authorization, the Accountant General's office should not process payment. 				
	<ul style="list-style-type: none"> Redesign the 'Request to Leave Duty Station' form to 'Results-based Request to Leave Duty Station' form which will link travel to workplans, availability of funds, and budget, and abolish group approval on the form to ensure personal accountability. The form should include the 'Back-to-the-Office' section which the travelling officer must sign on return together with the activity report. 	<p>Copies of "Result-based Request to Leave Duty Station" forms approved by Controlling Officers or designated senior officer.</p> <p>Copy of "Result-based Request to Leave Duty Station" Form</p>			
	<ul style="list-style-type: none"> Controlling Officers should comply with the submission of monthly travel-related returns using IFMIS-generated reports as per requirement in the Travel Policy. 	<p>Copies monthly Travel-related Returns submitted.</p>			

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	<ul style="list-style-type: none"> • Migrate to automated travel processing system within IFMIS by 1st April 2022. • In the interim introduce travel-related register to be signed by the public officer, certifying receipt of travel allowance or LPO before departure and signing upon return to the duty station. The register also be used for verification and clearance by the auditors. • Review the Travel Policy to incorporate the newly recommend local travel regime. 	<p>Travel processing system using IFMIS fully automated.</p> <p>Travel-related Register fully operational.</p> <p>Copy of revised Public Service Travel Policy.</p>			
	<p>Roll-out Full-board Facility for all grades below Grade E; and ensure all control measures stipulated above as part of the new regime for full-board are strictly adhered to.</p>	<p>Copy of Circular rolling out to Full-board Facility for all officers below Grade E.</p>	<p>1st October, 2021</p>	<p>1st April, 2022</p>	<p>PS - DHRM&D</p>

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	Controlling Officers should enforce to policy to organize workshops where the majority of participants reside, to prevent unnecessary payment of daily subsistence allowances.	Controlled Budget Expenditure	With immediate effect	1st April, 2022	Controlling officers
2	Abolishing illegal payment of meal allowances for meetings held at the duty station and strictly adhere to all established procedures for meal allowance with immediate effect.	Controlled Budget Expenditure	With immediate effect	1st April, 2022	Controlling officers
EXTERNAL TRAVEL					
3	Abolish the case-by-case system of approving the special rates for external travel by the Office of the President and Cabinet in order to bring fairness and remove unjustified distinctions. Revise rates in line with the standard cost of living for each country, and introduce uniform rates for all officers including ministers, in line with the UN system of travel.	Copy of circular on uniform standard rates for External Travel; and Controlled budget expenditure on external travel.	With immediate effect	1st April, 2022	Secretary to the President and Cabinet;

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	<ul style="list-style-type: none"> • All external travel, whether funded by the government or other agencies, should be fully justified and the Controlling Officer must be convinced that other modes of participation (for example, virtual) have been considered and found to be sub-optimal. • Controlling Officers must adhere to limitations on the frequency of trips, size of the delegation, and number of days spent outside the country as contained in the Circulars from DHRMD. • Controlling Officers should enforce non-payment of top-up allowances for fully-funded trips as stipulated in the Circular from OPC on external travel issued in October, 2014. 				

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
SITTING ALLOWANCE					
4	<p>The Parliamentary Service Commission should remove payment of sitting allowances for Members of Parliament and parliamentary staff.</p> <ul style="list-style-type: none"> • To minimize conflict of interest and compromise on the quality of their oversight function, Parliament should develop an annual programme of work for its oversight function and ensure that these activities are resourced within its budgets. • The Clerk of Parliament should enforce discipline in the allowance system of the Parliamentary Service Commission and must ensure that no parliamentary staff are claiming sitting allowances as this is not in line with regulations 	National Assembly Financial report	July 2021	October 2021	Parliamentary Service Commission

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
5	To remove incentives for frequent board meetings in parastatals, board members should not receive sitting allowances per meeting, but they should receive annual honoraria, which is paid quarterly.	Parastatal financial report	July 2021	October 2021	Department of Statutory Corporations
RISK ALLOWANCE					
6.	No public officer should receive risk allowance since all health workers already receive lump sum Top-up Allowance which are equivalent to 52% of their basic salary.	Controlled Budget Expenditure	with effect from	1st July, 2021	Secretary for Health; Accountant General; and Controlling officers
STRENGTHEN ACTION ON AUDIT QUERIES AND ACCOUNTABILITY					
7.	The Auditor General and Director of Internal Audit should submit all audit queries not acted upon for the past three years to the President, with immediate effect, for the Controlling Officers to act within 30 days or face sanctions.	Copies of Auditor General's Reports and Central Internal Audit Reports	With Immediate effect	1st July, 2021	Auditor General; and Director of Central Internal Audit

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
8.	Revive the independent audit committees, comprising knowledgeable and competent individuals, with clear ToRs and budget to enforce action on audit findings by Controlling Officers in order to strengthen the accountability and bring citizen participation into the process.	Operational Independent Audit Committees in place	Immediate effect	1st April, 2022	Secretary to the Treasury
	Secretary to the Treasury to ensure adequate funding for the Central Internal Audit sufficient to finance Independent Audit Committee activities.				Secretary to the Treasury
9.	With immediate effect, OPC should institutionalize enforcement of action on audit queries received from the Secretary to the Treasury, Auditor General and the Director of Central Internal Audit.	Quarterly reports on action on audit queries.	With immediate effect	1st April, 2022	Secretary to the President and Cabinet

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
10.	The SPC and the Secretary to the Treasury should exercise their powers with regard to ensuring action by Controlling Officers on all financial irregularities in line with the Public Finance Management Act (2003), Sections 11, 87 and 88, and the Public Audit Act (2003), to hold Controlling Officers and any senior public officer, accountable for non-adherence to financial rules and regulations and loss of government money due to negligence of duty.	List of Controlling officers sanctioned for not acting on audit queries.	With immediate effect	1st April, 2022	Secretary to the President and Cabinet; and
11.	Considering the importance of the position of the Auditor General in enforcement and accountability of financial rules and regulations, the State President should, with immediate effect, appoint an Auditor General whose position has been vacant since 2018.	Auditor General appointed and executing his/her duties	With immediate effect	1st October, 2021	The State President

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
12	Expedite the conclusion of the functional review for internal audit and consider elevating the position of Head of Internal Audit in MDAs to management level.	Approved Functional Review with elevated position of head of internal audit in MDAs.	With immediate effect	1st April, 2021	Secretary for Human Resource Management & Development
ENFORCEMENT OF SANCTIONS					
13.	The Public Finance Management Act should be amended in order to empower the Secretary to the Treasury to surcharge the public officer who has caused the loss of public funds and property, in order to recover the loss and attach personal liability to the officer concerned.	Copy of revised PFMA Bill with Procedures for Surcharge incorporated.	Immediate effect	1st October, 2021	Secretary to the Treasury
14.	Enforce prevailing sanctions for non-compliance and non-adherence to rules and regulations governing the administration and management of allowances	Monthly returns to the Treasury	With immediate effect	1st July, 2021.	Secretary to the President and Cabinet and Controlling Officers

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
15.	Review the Code of Conduct and Ethics for the public service to include sanctions for non-compliance and ensure that all public officers sign the revised Code of Conduct and Ethics.	Revised copy of Code of Conduct and Ethics	With immediate effect	By 1st October, 2021	Secretary for Human Resource Management and Development
16.	The State President should introduce performance appraisals of the SPC, supported by independent external evaluators to ensure that all key responsibilities outlined in the PSA, PFMA, and other laws are addressed in the appraisal, with the first round to be completed by	Performance Appraisal report	With immediate effect	By 1st June 2022 for first round	The State President
17.	SPC should implement annual performance appraisals for Controlling Officers in line with Performance Contracts of MDAs and in particular, adherence to set regulations and procedures governing allowances, other financial management issues and action on audit findings.	Performance Appraisal report	With immediate effect	By 1st June 2022 for first round	Secretary to the President and Cabinet

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	Submit all appraisal reports to the State President	Appraisal reports		By 1st June 2022 for first round	Secretary to the President and Cabinet
	Develop and implement mechanisms for rewarding, protecting, and supporting Controlling Officers and Directors taking initiatives to enforce regulations governing the administration and management of allowances.	Mechanism for rewarding, protecting, and supporting controlling officers in place and operational	With immediate effect	1st April, 2022	Secretary to the President and Cabinet
18.	Following on the example from Rwanda, the State President should introduce a system for annual public participation for the appraisal of Ministers to be chaired by him. Public participation of the hearings and justifications should be done through radio, television and other digital platforms.	Scorecards for ministers		1st June 2022	The State President

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
STRENGTHENING LEGAL AND POLICY FRAMEWORK					
19.	Review and update the Travel Policy to incorporate recommendations of the Taskforce and sanctions for non-compliance.	Copy of updated Travel policy	With immediate effect	1st October, 2021	Secretary for Human Resource Management and Development
20.	Develop legal framework for internal audit function as part of the Public Finance Management Act review which is at an advanced stage, by November 2021.	Copy of Draft PFMA Bill with internal audit function incorporated, and Treasury Instructions developed.	With immediate effect	1st October, 2021	Minister of Finance
	Revise Public Service Bill to include external evaluation of performance of the SPC and DSPC; and Public participation type of appraisal for SPC, DSPC and Controlling Officers and Ministers, and submit to Parliament at the next sitting.	Copy of the Public Service Act (2021) as enacted by Parliament.	With immediate effect	1st April, 2022	Secretary for Human Resource Management and Development

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	Update and re-align the MPSR and Public Service Bill with various Acts, based on the recommendations of the Taskforce, to ensure penalties in the MPSR are consistent with various pieces of legislation including: The Constitution of Malawi, the Public Service Act, PFMA, Public Audit Act, Procurement Act, Employment Act, and Labour Relations Act for presentation to Parliament in the next sitting.	Copy of updated MPSR, and Public Service Bill	With immediate effect	1st October, 2021	Secretary for Human Resource Management and Development in liaison with Solicitor General and Secretary for Justice

CAPACITY DEVELOPMENT, SELECTION AND EFFECTIVE DEVELOPMENT

21.	Introduce mechanisms for interviews to select Controlling Officers that will not only identify academic/knowledge/skill qualifications but also demonstrable leadership qualities and integrity; assess suitability of Controlling Officers according to criteria stipulated in PSs' handbook.	Mechanisms for selection of controlling officers introduced and operational	With immediate effect	1st October 2022.	Secretary to the President and Cabinet
	Incorporate the requirement to interview for the position of Controlling Officer in the draft revised Public Service bill.	Issue of interview for position of controlling officer incorporated in Draft revised Public Service Bill	With immediate effect	1st October, 2021	Secretary for Human Resource Management and Development

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	Establish a list of all essential documents for all Controlling Officers to enable them manage their responsibilities and lead their MDAs effectively in line with Principal Secretaries' Handbook.	A list of essential documents including Principal Secretaries' Handbook		1st July, 2021	Secretary to the President and Cabinet
22.	Revive mandatory training programmes for public officers and Controlling Officers linked to promotion, to include: <ul style="list-style-type: none"> • Induction courses at Staff Development Institute and Malawi Institute of Management for all officers joining the public service; • Re-introduce promotional courses as a condition for effecting promotion; and • Annual executive leadership programme for Controlling Officers and Directors. 	Mandatory training programmes linked to promotion.	With immediate effect	1st October, 2021	Secretary for Human Resource Management and Development and Executive Director for SDI and MIM
	Introduce Moral Value and Ethics as a mandatory subject in all induction, promotional, and refresher courses.	Moral values, ethics, and integrity introduced in all courses.	With immediate effect	1ST October, 2021	Executive Director for SDI and MIM
	Re-introduce centralised training fund for mandatory training.	Centralized funding established	With immediate effect	1st July, 2021	Secretary for HRM&D

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	Introduce promotional interviews for selecting Controlling Officers, Directors and Deputy Directors based on relevant documents including Principal Secretaries' Handbook.	Interviews for Grade E and above introduced.	PS - DHRM&D	By 1st April, 2022	Attendance lists and Reports on Induction courses
23.	Staff Development Institute and Malawi Institute of Management to Introduce in the curriculum Moral value and ethics as a mandatory subject in all induction, promotional, and refresher courses.	More values and ethics incorporated in the curriculum	With immediate effect	1st October, 2021	Executive Director, Staff Development Institute; and Executive Director, Malawi Institute of Management
MORAL VALUES, ETHICS, INTEGRITY AND DISCIPLINE IN THE PUBLIC SERVICE					
24.	Embark on the process of identifying National Champions and develop a programme for restoring the moral and ethical values of the public service and society at large	National champions for restoration of moral and ethical values in place and operational	1st October, 2021	On-going	The State President

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
	Staff Development Institute and Malawi Institute of Management to Introduce in the curriculum Moral value and ethics as a mandatory subject in all induction, promotional, and refresher courses.	Reports on sensitization workshops and Attendance Lists	With immediate effect	1st October, 2021	Secretary for Human Resource Management and Development
25.	Facilitate the introduction of Moral Values, Ethics, Integrity and Discipline as an examinable subject in all public schools by working in consultation with religious institutions, such as, the Public Affairs Committee (PAC), Evangelical Association of Malawi (EAM), Malawi Council of Church (MCM), Episcopal Conference of Malawi (ECM), Moslem Association of Malawi (MAM),	Examinable subject in Moral Values, Ethics, Integrity, and Discipline in place	With Immediate effect	1st April, 2022	Secretary for Education
	Introduce a national week of advocacy for patriotism, integrity and high standard of moral values with immediate effect.		With immediate effect	1st April, 2022	Secretary for Civic Education and National Unity

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
26.	Ensure that all public officers attend the mandatory Code of Conduct and Ethics training and ensure that every officer signs to show that they understand the contents. Subsequently, any officer who violates it should be held liable with immediate effect.		With immediate effect	1st April, 2022	Secretary to the President and Cabinet; and Controlling Officers
LEGAL AND REGULATORY FRAMEWORK					
27	The Public Service Bill (2019) should be reviewed and enacted into law. This will provide a harmonized and fair recruitment or appointment process into the public service, in line with employment principles.	The Public Service Act enacted	June 2021	November 2021	OPC and Ministry of Justice
28	The draft MPSR (2015) should be reviewed and adopted, considering that the current regulations, which came into force in 1966, have been overtaken by the legal jurisprudence and other socio-economic dynamics.	New MPSR	June 2021	November 2021	OPC and Ministry of Justice

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
29	Clear guidelines should be developed, defining recruitment processes and oversight for employment of contracts for jobs on Grades E and above, in both parastatals and civil service, based on the current legislation.	New Guidelines	June 2021	December 2021	OPC , Boards and Ministry of Justice
30	For statutory corporations, unless the relevant Act specifically provides that the appointment or recruitment of any of its staff will be made by the President, the appointment should be done by the appropriate Board, as provided for in the specific parastatal's Act.	Implementation and enforcement of applicable law	Immediately	Ongoing	Board of Parastatals

TYPES OF CONTRACTS

31	The Presidential appointees on employment contracts for a specified period such as minister's personal assistants, diplomats who are not career civil servants, and non-statutory political appointees such as Special Presidential Advisers, should not transition into the mainstream civil service.	Enforcement of contract termination at the expiry of contract	Immediately	Ongoing	OPC
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No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
32	The length of the employment contract for political appointees should be aligned to the terms of Office of the President, Vice President, Ministers, and Deputy Ministers as the case may be.	Contracts aligned to term of appointee	Immediately	Ongoing	OPC
33	DHRMD and the Ministry of Foreign Affairs should ensure that the review of the MPSR includes clear guidelines on eligibility, recruitment, and selection of diplomats to serve in Malawi's Foreign Missions.	Revised MPSR	June 2021	December, 2021	Ministry of Foreign Affairs and OPC
34	The placement of diplomats in Foreign Missions should be aligned to the Government's foreign policy strategic goals.	Aligned contracts	Immediately	December 2021	Ministry of Foreign Affairs and OPC
35	Review the Missions' staff organization chart, update the job descriptions appropriately and ensure that the staff meet the qualification requirements.	Updated job descriptions	Immediately	December 2021	Ministry of Foreign affairs and OPC

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
36	Strengthen procedures for selection, promotion and performance monitoring of Controlling Officers and other officers. For Grades E and above, promotion should be upon successful training and subject to oral and written interviews.	Revised selection, promotion and performance procedures	June 2021	December 2021	OPC
37	Individual performance appraisal must be effectively enforced for all officers in Public Service, including Principal Secretaries.	Performance appraisal reports	June 2021	Ongoing	OPC, Boards
38	An effective performance appraisal system should determine the renewal and termination of contracts in the public service.	Enforcement of regulation on performance-based renewal of contracts	June 2021	Ongoing	PED, OPC, Boards
39	The process of winding up a contract of employment should start and be determined within the notice period or at least three months before the expiry of the existing contract and not earlier.	Contracts terminated or renewed with appropriate notice periods	Immediately	Ongoing	OPC, Boards

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
40	Section 11(a) of the Public Service Bill provides for a competitive process for appointment of officers from Grades E and above, and does not give an option to the President to appoint such officers outside those listed following the process.	Procedure based recruitment	Immediately	Ongoing	OPC
41	Both DHRMD and OPC should develop guidelines on employment of persons from outside of the civil service, who are deemed to possess rare skills. This will ensure that there is documentation from the government that it has indeed failed to get a suitable candidate from within the civil service.	New guidelines on recruitment of rare skills / experts	June 2021	December 2021	DHRMD and OPC
42	The Schedule to the President's (Salaries and Benefits) Act should be amended, to include specific and approved offices to which the President can make appointments. These appointments should not be assimilated into the civil service, once the term of the appointing authority expires.	Procedural appointed of officers listed in the law	June 2021	November, 2021	OPC

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
43	Develop operational guidelines for implementing of the 40 / 60 gender quotas in the public service.	New guidelines on operationalising the 40/60 gender quotas	June 2021	December, 2021	DHRMD, OPC, Malawi Human Rights Commission and Ministry of Justice

PROCESSES AND PROCEDURES

44	Recruitment procedures must be followed to the letter, and where they are flouted, the responsible officers, including boards, must be held to account.	Number of officers held to account and sanctioned as appropriate	Immediately	Ongoing	OPC, Boards
45	Government and parastatal boards must carry out Human Resource Audits, or take action on existing Audit reports, to confirm un-procedural recruitments. Contracts for all those irregularly and illegally employed must be terminated.	HR Audits on recruitment and action taken	Immediately	Ongoing	OPC, NAO
	Discontinue immediately the practice commonly known as "Quarantine," "Guantanamo Bay" or "Warehousing", where officers are deployed without being assigned to appropriate functions, but still get paid.	Number of officers not victimised	Immediately	Ongoing	OPC

No.	Recommendation	Key Performance Indicators (KPIs)	Beginning Date	Date of Completion	Responsible Person
46	Follow appropriate procedures for addressing indiscipline and under-performance, including termination of services, if this is required.	Number of Procedural disciplinary actions	Immediately	Ongoing	OPC, Boards
47	The reasons for transfer or exigencies have to be stipulated in the letter of posting and there is need for proper guidelines for posting and redeployment of public officers.	Guidelines on transfer and redeployment of officer	August 2021	December 2021	OPC
OVERSIGHT					
48	Establish a central remuneration body within the Public Service Commission, anchored in the Constitution, to handle remuneration and benefits matters in the whole public sector as outlined in the Chapter on Restructuring.	Establish the National Remuneration Directorate within the New Public Service Commission	June 2021	November 2021	OPC
49	DHRMD should enhance the capacity and coordination among the oversight institutions (Department of Statutory Corporation, and Boards)	Improved coordination	Immediately	Ongoing	OPC, Public Service Commission

CONDITIONS OF SERVICE

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
Recommendation 1: Rationalize Salaries in the Public Service					
50	DHRMD, DSC, MoF and MoJ in liaison with the Boards of Directors of parastatals should review salary structures in the public service in order to achieve parity and equal remuneration for work of equal value. In order to achieve this, the following factors should be taken into account or applied, as the case may be:	Reduced salaries for highest paying parastatals	May, 2021	30th March, 2022	DHRMD, DSC, MoF, MoJ and Boards of Directors
	(a) Freezing the salary structures of the highest paying parastatals (allowing notch movement only and not revising the salary structures)	Circular letter from OPC freezing salary structures	May, 2021 (Immediate on announcement)	May, 2021	OPC to issue a circular and advise Boards of Directors

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
	(b) Terminating employment for existing permanent employees and paying them severance benefits and rehiring those still interested on new and approved salary structure, provided that the severance pay is paid during the transition. This practice was done before when migrating CEOs from permanent and pensionable to fixed term contracts of employment.	(i) Migration of employees to new terms Severance payment	1st July, 2021	31st December, 2021	Boards of Directors in liaison with DHRMD, DSC, and MoF
	(c) Drawing new and realistic contracts for all new recruits on fixed term contract while allowing the existing contracts to expire.	New employment contract template implemented.	May, 2021 (Immediate on the date of announcement)	1st July, 2021	Boards of Directors in liaison with DHRMD, DSC, and MoF
51	Improve the salaries for the civil service and other low paying institutions to make them comparable to those in medium to high paying parastatals after the salary restructuring as per recommendation two (2) below.	Improved salary structures for the civil service and low paying parastatals	May, 2021	30th March, 2023	DHRMD, DSC, MoF, MoJ and Boards of Directors

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
52	Monitor the fixed ratio between the lowest and the highest paid employee to ensure adherence to the principles of equity and to control arbitrary salary increases for the top management.	<ul style="list-style-type: none"> Acceptable threshold ratio established. Salary structures to determine the wage ratio reviewed 	May, 2021	30th March, 2022	DHRMD, DSC, MoF, MoJ and Boards of Directors
53	Government should issue policy and guidelines to govern salary adjustments and employment contract negotiations. The State Corporations Policy and State Corporations Bill and the Public Service Act for the civil service to provide for the same.	Policy directive and guidelines on salary adjustment and employment contract negotiations issued	May, 2021	30th March, 2022	DHRMD, DSC, MoF, MoJ and Boards of Directors
<p>Recommendation 2: Improve the salaries of civil servants so that the lowest paid employee should receive a salary equivalent to the Basic Needs Requirement of K240,000</p>					
54	Implement Scenario Two of the three options on salaries and move towards Scenario Three in the Short Term, and to a salary of not less than the prevailing cost of living wage in the medium term.	Scenario Two and, thereafter, Three implemented	July, 2021	30th March, 2023	DHRMD/ MoF/PSC

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
55	Introduce a contribution towards housing and transportation through appropriate non-taxable allowances, to be implemented progressively, starting with K40,000 for Grade R in Year 1, K60,000 in Year 2 and K70,000 in Year 3.	Housing and transport allowances introduced	July, 2021	30th March, 2023	DHRMD/ MoF
Recommendation 3: Ensure that Contracted Salaries are within the Salary Scale Segment of the Employee's Grade					
56	DHRMD, DSC, Attorney General and Boards of Directors of statutory bodies, must urgently review salaries of statutory bodies and investigate the basis for salaries that are outside the approved salary structures, determine their legality and report to OPC for appropriate disciplinary and corrective action.	Report to the Public Sector Reforms Secretariat and OPC	June, 2021	30th March, 2022	DHRMD, DSC, Attorney General and Boards of Directors of statutory bodies
57	Henceforth, no employment contracts should depart from the approved conditions of service and salaries should be pegged at the minimum salary applicable for the grade.	Circular letter issued to ensure adherence to the salary structure during contract negotiations	May, 2021 (Immediately on announcement)	June, 2021	OPC

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
58	Improve governance by establishing systems of checks and balances by finalising the State Corporation Policy, State Corporations Bill and the Public Service Bill to establish the Public Service Commission as recommended in chapter 5 of this report to avoid ad-hoc salary and conditions of service adjustments.	State Corporations Policy; State Corporations Act enacted	June, 2021	30th March, 2022	DHRMD, DSC, Attorney General
Recommendation 4: Introduce and/or Maintain Uniform Remunerative Allowances.					
59	Review those remunerative allowances which are cross-cutting and introduce non-taxable allowances towards critical expenditure items, namely housing and transportation.	Cross-cutting remunerative allowances and housing and transport allowance introduced	June, 2021	30th July, 2022	DHRMD, MoF, MoJ
Recommendation 6: School fees benefit for children of members of executive management of public institutions					
60	Abolish the schools fees benefit in public institutions and revise employment contracts accordingly.	Circular letter abolishing school fees for children of members of Executive Management	May, 2021	June, 2021	DHRMD/ DSC/MoJ

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
61	Current contracts to run their course before adopting this change in policy, and any new contract from the date of approval shall be on the new fixed contract template.	New employment contract template	May, 2021	May, 2021	DHRMD/DSC/MoJ
Recommendation 7: Revise Motor vehicle entitlements for employees in Grades C or their equivalent in the public service, including Chief Executive Officers of parastatal organisations					
62	Revise motor vehicle entitlements in the public service	Revised motor vehicle entitlements	May, 2021	1st June, 2021	Cabinet/OPC/DHRMD/DSC
Recommendation 8: Revise fuel entitlements for employees in Grades C or their equivalent in the public service, including Chief Executive Officers of parastatal organisations					
63	Revise fuel entitlements in the public service	Revised fuel entitlements	May, 2021	1st June, 2021	Cabinet/OPC/DHRMD/DSC
Recommendation 9: Roll out medical cover in a phased approach to all cadres in the long term.					

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
64	Immediately extend medical cover to Grade I with a contributory scheme of 80:20 in the first year and move towards 90:10 contributory scheme in two years, and, in the medium term, the Ministry of Finance and DHRMD should examine the logistics of extending coverage to employees in Grade J to R given the numbers involved and their wide-spread location in rural areas where there are no Medical Aid Society of Malawi supported health facilities.	Medical cover rolled out to all cadres in the civil service	1st July, 2021	30th March, 2025	DHRMD/ MoF
Recommendation 10: Enforce the Performance Management System (PMS) in the Public Service					
65	Revive and strengthen the current performance management system through controlling officers and heads of institutions taking the lead in management, reward and/or discipline of officers.	Performance based rewards and sanctions implemented	May, 2021	30th Dec, 2021	OPC/ DHRMD/ DSC/ Boards of Directors
66	Introduce rewards and sanctions scheme (cost-saving or surplus schemes) aligned to performance management system.	Rewards and Sanctions Schemes introduced	May, 2021	30th Dec, 2021	OPC/ DHRMD/

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
67	Institute implementation of the PMS as a key performance framework for the controlling officers and training of controlling officers and heads of institutions	Implementation of the PMS made a key performance framework for the Controlling officers; Number and percentage of Controlling officers and Heads of Institutions trained on PMS	May, 2021	30th Dec, 2021	OPC/ DHRMD/ DSC/ Boards of Directors
68	Controlling Officers to enforce adherence to Institutional Service Charters	Institutional Service Charters developed, publicized and enforced	May, 2021	30th Dec, 2021	OPC/ DHRMD/ DSC/ Boards of Directors
Recommendation 11: Apply a transparent and equitable discipline and grievance management process which adheres to principles of natural justice in order to maintain a disciplined work force					
69	Institutionalize discipline and grievance management system through dissemination of grievance handling procedures in the Human Resource and Development Procedure Manual.	Grievance handling procedures disseminated	May, 2021	30th March, 2022	DHRMD

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
70	Strengthen the capacity of supervisors and leaders on discipline and grievance management	Number and percentage of supervisors and leaders trained on discipline and grievance management	May, 2021	30th March, 2022	DHRMD
71	Ensure that every public servant is aware of what constitutes indiscipline, unethical conduct and grievance under the Code of Ethics for Public Servants, and Malawi Public Service Regulations.	Code of Ethics for Public Servants, and Malawi Public Service Regulations disseminated	May, 2021	On-going	DHRMD
72	Entrench the guiding principles and values outlined in the Public Service Management Policy among all public servants in order to institutionalise a customer and citizen-centric and service culture in the public service	Public Service Management Policy disseminated	May, 2021	On-going	DHRMD
73	Train senior managers in labour relations principles and the legislative framework for labour relations	Number and percentage of senior managers trained	May, 2021	30th March, 2022	DHRMD/ MoL
74	Disseminate to all employees in simple easy-to-understand language key elements of labour relations laws and regulations	Number of brochures on elements of labour relations laws and regulations developed and disseminated	May, 2021	On-going	MoL/ DHRMD

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
75	Develop a step-by-step manual for the enforcement of discipline based on the principles of natural justice in order to promote administrative justice.	Manual developed	May, 2021	December, 2021	DHRMD/ MoJ/MoL
76	Develop a Disciplinary Action Booklet that summarises all acts of misconduct and penalties as stipulated in various laws and regulations.	Booklet developed and disseminated	1st June, 2021	1st October, 2021	DHRMD/ MoJ
77	Institutionalise Graduate Internship Programme and make it part of the National Service and to apply to private companies as well.	Graduate Internship Programme institutionalised	May, 2021	30th March, 2023	MoL/ MoF/ DHRMD
78	Introduce a gap year, after secondary school completion, for National Youth Service Programme as a prerequisite for employment. Civics and leadership to be part of the curriculum during the gap year.	Gap year introduced	May, 2021	30th July, 2023	DHRMD/ MoJ/MoL
79	Re-introduce and strengthen the institution-based Appointments and Disciplinary Committees and institutionalize Grievances Handling Committees and resource them accordingly.	Institution-based Appointments and Disciplinary Committees and institutionalize Grievances Handling Committees and resource re-introduced and strengthened	May, 2021	30th March, 2022	DHRMD/ MoJ

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
Recommendation 12: Institutionalize meritocracy in appointments, deployments and promotion of public officers and appointment of Board Members of Statutory Bodies and SOEs					
80	Appointments and Deployments of public officers: by enforcing the provisions of the Malawi Public Service Regulations in the appointment of public officers through the Public Service Commissions and reviving institutional Appointments and Disciplinary Committees	No public servant appointed outside or contrary to the Malawi Public Service Regulations procedure	May, 2021	30th March, 2022	OPC/ DHRMD/ DSC/ Boards of Directors
81	Promotion of public officers: a) by ensuring that promotions to all positions in the civil service are based on the principles of competition, performance and examinable training at the Malawi School of Government. Training results to be submitted to Public Service Commission and relevant authorities which should thereafter interview the candidates for promotion.	<ul style="list-style-type: none"> Except for Grade A (S1/P1), no promotion without following the principles of competition, performance and examinable training at the Malawi School of Government. Amend section 6 of the Public Service Act to prevent appointments from Grades E to B without following principles of competition, performance and examinable training at the Malawi School of Government. 	May, 2021	30th March, 2023	OPC/ DHRMD/ DSC/ Boards of Directors

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
82	<p>b) by finalising the establishment of the Malawi School of Government with a curriculum based on the existing capacity gaps and needs in the public service, in particular</p> <ul style="list-style-type: none"> (i) Leadership and Management (ii) International Relations and Foreign Service (iii) Health (iv) Labour Relations (v) Law, including labour law and principles of constitutional and administrative law (vi) Administrative justice and procedure 	Malawi School of Government functional	May, 2021	30th March, 2023	DHRMD/MoE
83	<p>Appointment of Board Members of Statutory bodies and SOEs All Board members positions to be advertised and interviews conducted by the Public Services Commission. The DSC shall serve as Secretariat to the process on behalf of the Office of the President and Cabinet or Minister responsible.</p>	All board appointments to be made after interviews	May, 2021	30th March, 2023	OPC/PSs Committee/ Public Services Commission

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
Recommendation 13: Review and Improve the Legal and Regulatory Framework					
84	Finalise proposed legislative instruments for the management of the public service - Public Service Bill, draft Malawi Public Service Regulation, State Corporation Bill Policy and State Corporation Policy, National Remuneration Commission Bill, Foreign Relations and Service Bill and harmonise the MPSR with the Employment Act.	Public Service Act, Malawi Public Service Regulations, State Corporations Policy, State Corporations Act, National Remuneration Act, MPSR and Employment Act harmonised	May, 2021	30th March, 2023	DHRMD/DSC/MoJ
Recommendation 14: Improve the Public Service Pension Scheme					
85	Contributions from the contributory pension scheme should be used to meet obligations under the Pay-As-You-Go Scheme	Commencement instruction to start using contributory pension funds to meet obligations under the Pay-As-You-Go Scheme	May, 2021	30th March, 2023	DHRMD/MoF/MoJ

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
86	Establish a Government institution with in-house capacity of, e.g. Actuarial/Fund Managers, to manage the pension funds. After nineteen (19) years, upon the expiry of the Pay - As - You - Go Scheme, the institution should be licensed as a fully-fledged in-house pension fund which will manage the Government pension fund much like at Press Corporation Limited, ESCOM Limited and National Bank of Malawi plc, etc.	Institution established	May, 2021	30th March, 2023	DHRMD/ MoF/MoJ
87	Exit any contract(s) with external pension funds managers	Contract(s) exited	May, 2021	30th Dec, 2022	DHRMD/ MoF/MoJ
Recommendation 15: Rationalize the Staff Complement in the Central and Local Governments					
88	Decentralisation must be fully implemented	Functions fully devolved to Local Councils	May, 2021	30th March, 2023	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
89	Implement full devolution of the HRM function to Local Councils	HRM function for staff providing decentralised services devolved to Local Councils	May, 2021	30th March, 2023	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs
90	Fully devolve assets and the budget to ensure efficient and effective service delivery at the local level	Assets and budget management fully devolved to Local Councils	May, 2021	30th March, 2023	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs
91	Undertake business process re-engineering to identify jobs that are still relevant, those that can be combined and any excess/irrelevant numbers. This will right-size and rationalize the structure of the civil service	Business process re-engineering undertaken and a report thereof implemented	May, 2021	30th March, 2022	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
92	Retrain and or redeploy any excess/irrelevant number elsewhere within the public service, for example, in Local Councils where their services are still required. To finance the payroll costs of the redeployed staff, Local Councils should be allowed to retain a proportion of their locally generated resources	Excess/irrelevant numbers identified and redeployed or acted upon accordingly	March, 2022	30th Dec, 2023	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs
93	Create avenues to absorb excess labour for those jobs that may become redundant as a result of restructuring and reforms, for example, by promoting SMEs through mechanisms such as the National Economic Empowerment Fund (NEEF)	A support plan of action for any excess/irrelevant numbers developed and implemented	May, 2022	30th March, 2023	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs
94	Undertake a peer review of the Decentralisation Policy and drive in Malawi and take corrective measures to complete the decentralization process.	Peer review of the Decentralisation Policy and drive in Malawi undertaken	May, 2021	30th March, 2022	OPC/ MLG&RD/ MoA/ MoE/ MoH/ MoHS/All relevant MDAs

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
95	Reduce working hours for lower cadres whose jobs do not require them to serve the full 8-hour working day subject to detailed study by DHRMD in consultation with the Ministry of Finance, Ministry of Labour, Ministry of Trade, Ministry of Industry and other relevant stakeholders. This will help them to complement their incomes elsewhere, help to reduce the wage bill by paying them hourly rates. This will also have multiplier effects from the additional economic activities they will be undertaking.	Working hours for lower cadres introduced	May, 2021	30th March, 2024	DHRMD/ MoF/ MoL/ MoT/ Mol
96	In the long term, Government should consider phasing out and outsourcing functions performed by lower cadres employees	Lower cadre services completely outsourced	May, 2021	30th March, 2024	DHRMD/ MoF/ All MDAs
Recommendation 16: Introduce staff welfare initiatives for public officers					

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
97	Revamp the Civil Service Revolving Loan Scheme [and make all loans mentioned under the MPSR functional. Replenish emergency advance scheme and motor vehicle loan scheme as the bank is not working] with clear mechanisms for safeguarding against non-repayment of the loans by beneficiaries and reimbursement between MDAs where employees move from one MDA to another	Civil Service Revolving Loan Scheme functional	May, 2021	30th March, 2022	DHRMD/ MoF
98	Develop comprehensive national policies that cover the welfare of staff in all aspects such as physical, mental and spiritual health as well as family life of employees	Employee welfare policy development and implemented	May, 2021	30th March, 2022	DHRMD/ MoF
99	MoF and DHRMD to conduct a detailed study for compensation of officers working beyond normal working hours	Study on compensation to officers working beyond normal working hours	May, 2021	30th March, 2022	DHRMD/ MoF
100	Ministry of Labour, in conjunction with DHRMD to conduct a study establishing minimum working conditions that need to be encapsulated into the public service	Study on study establishing minimum working conditions in public service conducted	May, 2021	30th March, 2023	MoL/ DHRMD

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
101	OPC should rehabilitate the Civil Service Club sporting facilities and complete the construction of the clinic at Capital Hill. Local councils should provide similar facilities for their employees.	Civil Service Club sporting facilities rehabilitated	May, 2021	30th March, 2023	OPC/ DoB/ MoS/ MoF
102		Construction of the clinic at Capital Hill completed	May, 2021	30th March, 2023	OPC/ DoB/ MoH/ MoF
103		Local councils should provide similar facilities for their employees.	May, 2021	30th March, 2023	MLG&RD/ NLGFC/ LCs
<p>Recommendation 17: Government through DHRMD to implement a strategic and systematic approach to human resource development in the public service based on the human resource plans, the competency requirements of the public service and performance weaknesses of employees</p>					
104	Enforce comprehensive induction to all new employees at all levels to ensure they embrace public service ethos, policies, programmes, regulations and procedures and are able to meet job performance expectations and career aspirations within six months of Appointment	Comprehensive induction to all new employees at all levels enforced	May, 2021	30th March, 2022	DHRMD/ Boards of Directors

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
105	The Malawi School of Government to develop a comprehensive training plan and determine the timing of the inductions courses to ensure availability of the course offering for all professional and levels at all times	Comprehensive training plan and timing of the inductions courses determined	May, 2021	30th March, 2022	DHRMD/ Boards of Directors
106	Endeavour to provide continuous training and development of staff based on needs assessment through formal institution such as the Malawi School of Government and institutionalize on the job training through mentoring and coaching within the public service.	Staff continuously trained based on training needs assessment	May, 2021	30th March, 2022	DHRMD/ Boards of Directors
107	Create a fund to support and sustain strategic human resource development in the public service in a transparent way.	Fund created	May, 2021	30th March, 2023	DHRMD/ MoF

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
Institutional Framework					
108	Clarify and streamline work flow processes for procurement prior reviews to ensure that: By its own name, the PPDA is the only 'Authority' to vet and authorize procurements; OPC stops approvals of procurements after the PPDA as the SPC already sits on the PPDA. The administrative roles of the MoJ and GCU in contract negotiations and contract vetting should be carried out within 2 months of 'No objection'.	Procurement prior review process streamlined	July 2021	December 2021	PPDA, OPC
109	Clarify the role of the ACB in procurement prior reviews through subsidiary regulations	Regulations developed and gazetted	July 2021	December 2021	PPDA, ACB
	Evaluate the role of the ACB in procurement prior review focussing on efficacy and implications on institutional ability to investigate and prosecute crimes	Independent Evaluation report	December 2022	December 2022	PPDA
110	Capacitate the GCU to assist and train MDAs in contract negotiations, drafting and management.	Personnel recruited for GCU; Training curriculum developed	July 2021	June 2022	GCU, DHRMD

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
PPDA Functional Competence					
111	The PPDA must expedite the filling of vacant technical positions and treat this with a sense of urgency and priority	Vacant positions filled	immediately	December 2021	PPDA Board
112	PPDA should commence regular reviews of the performance of each of the entities and gradually increase thresholds for prior reviews.		immediately	On-going	PPDA
113	PPDA and Treasury should invest in improving the capacity of MDAs in procurement planning, based on approved annual budgets.				
114	The PPDA should develop standard specifications to be used for procurement of commonly used items.	Specifications developed	July 2021	June 2022	PPDA
115	PPDA should sanction procurement officers who rig procurement methods to undermine competition, fairness and value for money and refer them to the MIPS for hearings on professional misconducts.	System and framework for sanctioning developed	July 2021	December 2021	PPDA and MIPS

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
116	Parliament should commence open accountability sessions for the PPDA under Section 20 (4) of the Public Procurement and Disposal of Public Assets Act, on its performance in enforcing.	Parliamentary hearings; Records of proceedings	Immediately	On-going	Speaker of Parliament
117	Review the existing law to include decision making to award contract based on the 'most economically advantageous bid' principle.	Amendment of the PPD Act	July 2021	June 2022	PPDA. MoJ
118	The PPDA should require entities to prepare and submit reports on contract performance to establish a database and build a track record of contractors and their performance.	Regulation promulgated	July 2021	December 2021	PPDA
119	Procurement and disposal entities should only initiate procurements on certainty of funds being available to finance the eventual contract.	Regulations promulgated	July 2021	December 2021	PPDA

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
120	The Secretary to Treasury and the Accountant General should first ascertain certificates of works carried out with GCU and Consulting engineers in order to effect payments to contractors for works and ascertain delivery notes for goods and supplies claimed to have been delivered.		July 2021	On-going	Secretary to Treasury and Accountant General
121	Hold those managing contracts liable for quality lapses in works.		July 2021	On-going	GCU, Roads Authority, National Construction Industry Council
122	PPDA and GCU should be given roles in scrutinizing contract variations diligently to ensure that the variation does not amount to a mockery or rigging of the procurement process and that the variation is reasonable and represents value for money.	Regulations developed	July 2021	June 2022	PPDA , GCU

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
123	The PPDA should expedite roll out of the electronic procurement system since it is extremely important to address a lot of the malfeasances in public procurement.	E-procurement project rolled	On-going	On going	PPDA, Ministry of Finance
Public Procurement Contracting					
124	PPDA should invoke and apply Section 56 of the Act on disbarment of any supplier, contractor, consultant or any bidder who is guilty of misconduct from participating in public procurements.	Published lists of suppliers, contractors, consultants etc	July 2021	On-going	PPDA
125	Director General of the PPDA should promulgate codes of ethics for public officials and suppliers to guide the conduct of those involved in public procurement according to Section 58 of the PPD Act.	Published Code of Ethics	July 2021	June 2022	PPDA
126	A functional review of the Department of Buildings (DoB) is strongly recommended, and that once done, ensure that it is given adequate capacity for its role.	Functional review report	July 2021	June 2022	Ministry of Public Works and DHRMD

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
127	The Ministry of Finance should issue guidance on the management of project supervision budgets and stop the inclusion of DoB supervision budget in the construction contract because it breeds an incentive to approve unreasonable contract variation;	Treasury instruction	July 2021	July 2021	Ministry of Finance
128	The Ministry of Finance and the Ministry of Economic Planning and Development should review processes and procedures for the development of the Public Sector Investment Programme (PSIP) to ensure that the process is sufficiently consultative and inclusive and that the criteria for selecting projects into the PSIP is transparent.		July 2021	March 2022	Ministry of Finance; Ministry of Economic Planning
129	Enforce minimum requirements and categories for consulting engineers.	Public notice of minimum requirements	July 2021	On-going	NCIC, Board of Engineers
130	Place professional liability on consultants through regulations and enforce joint-debarment for contractors and consulting engineers	Amendment of regulations	July 2021	December 2021	PPDA

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
131	PPDA must intensify regular post reviews of all public procurements	Post review reports	July 2021	On going	PPDA
132	The circular on motor vehicles should be withdrawn and the practice of issuing directives that contravene existing legal framework should be stopped.	New circular issued	July 2021		OPC
133	Government must as a matter of priority terminate the MoU signed with PHAMAM as it causes serious breaches of the public procurement law.	Publication of notice of cancellation of the MoU	Immediately	By December 2021	Ministry of Health, Ministry of Trade, Ministry of Finance
134	The PPDA and MIPS should regularly produce, update and widen a comprehensive market price index. The index should be expanded by categories included and geographical dimension.	Regular updates on price index			

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
135	<p>MIPS should work with the PPDA to maintain price data base of bills of quantities for construction works such as buildings and roads.</p> <p>This should always be benchmarked with prevailing rates in the region be it SADC or COMESA to determine construction unit cost to avoid overreliance on engineer's estimates</p>	Database	July 2021	On going	MIPS , PPDA
136	PPDA should institute mechanisms for reporting persons interfering with public procurement process	Reporting mechanisms open to the public instituted	July 2021	December 2021	PPDA
137	The procurement function should be upgraded in all MDAs to a level that is not subject to management override.	Rapid functional review report	July 2021	June 2021	DHRMD
138	Upskill procurement officers through various professional training programs through the Malawi Institute of Procurement and Supply and other credible institutions.	Menu of training program			MIPS

S/N	RECOMMENDATION	KEY PERFORMANCE INDICATOR	START DATE	END DATE	RESPONSIBILITY
139	Promulgate guidelines for preferential procurement as provided under Section 44(10) of the Public Procurement and Disposal of Assets Act (2017) and the Small Medium Enterprises Order (2020).	Guidelines issued	July 2021	July 2021	PPDA

PUBLIC SERVICE RESTRUCTURING ACTION PLAN

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
140	Provide clear definitions of "State" and "Government", as well as their organs, in the law	(a) The definition of "Government" is inserted in the Constitution (b) Definitions of "State" and "Government" as well as their separate organs are included in the Public Service Bill (2019).	Jun 2021	Sept 2021	Ministry of Justice

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
		(c) All other statutes affected by the above amendment of the Constitution and the Public Service Bill are amended accordingly			
141	Define "Public Service(s)" both in the Constitution and in the statutes	(a) A chapter on the Public Service is introduced in the Constitution. (b) All other statutes affected by the above amendment of the Constitution are amended accordingly	Jun 2021	Sept 2021	Ministry of Justice
142	Align the definition of "Public Service" between the Bill and the Policy	(a) The Public Service Bill (2019) is revised to adopt the definition of "Public Service" in the Public Service Management Policy (2018)	Jun 2021	Sept 2021	Ministry of Justice

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
143	Legislate effectual headship of the Public Service	<p>(a) The Public Service Commission is created in the Constitution</p> <p>(b) The Public Service Commission is operational</p> <p>(c) The position of Secretary to the President and Cabinet is created in the Constitution</p> <p>(d) The Constitution assigns headship of the Civil Service to the Secretary to the President and Cabinet</p> <p>(e) Headship of the Public Service Commission by the Secretary to the President and Cabinet is removed from the Public Service Bill (2019)</p>	<p>(a) Jun 2021</p> <p>(b) Oct 2021</p> <p>(c) June 2021</p> <p>(d) June 2021</p> <p>(e) June 2021</p>	<p>(a) Sept 2021</p> <p>(b) Mar 2022</p> <p>(c) Sept 2021</p> <p>(d) Sept 2021</p> <p>(e) Sept 2021</p>	<p>(a) Ministry of Justice</p> <p>(b) Office of the President and Cabinet</p> <p>(c) Ministry of Justice</p> <p>(d) Ministry of Justice</p> <p>(e) Ministry</p>
144	Review joint membership of Cabinet and Parliament	<p>(a) Review report is produced and adopted</p>	Jul 2021	Oct 202	Public Sector Reforms Management Unit

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
145	Conduct a Referendum on the System of Government for Malawi	(a) Constitutional Conference report is produced (b) Referendum result is delivered	(a) May 2022 (b) Oct 2023	(a) May 2023 (b) May 2024	(a) Law Commission (b) Malawi Electoral Commission
146	Define "operational independence" of eligible public bodies	Separation of powers and independence denoted operational independence in the Constitution and other statutes	Jun 2021	Sept 2021	Ministry of Justice
147	Rationalise public service harmonisation	A harmonized grading system is established in the Public Service	Jan 2022	Dec 2022	Department of Human Resource Management and Development
148	Create a National Remuneration Directorate as part of the Public Service Commission	A National Remuneration Directorate is operational within the Public Service Commission	Oct 2021	Mar 2022	Office of the President and Cabinet

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
149	Establish a "True" Public Service Commission in line with the broad definition of the Public Service	The Public Service Commission established under recommendation 4 has comprehensive powers and functions	Oct 2021	Mar 2022	Office of the President and Cabinet
150	Create a Directorate of Public Service Management as part of the Public Service Commission	A Public Service Management Directorate is operational within the Public Service Commission	Oct 2021	Mar 2022	Office of the President and Cabinet
151	Create a Directorate of Public Common Services as part of the Public Service Commission	A Directorate of Common Services is operational within the Public Service Commission	Oct 2021	Mar 2022	Office of the President and Cabinet
152	Legislate top-level Government size	(a) The number of constituencies limited to 200 in the Constitution (b) The list of government ministries is stipulated in the Constitution	(a) Jun 2021 (b) Jun 2021	(a) Sept 2021 (b) Sept 2021	(a) Ministry of Justice (b) Ministry of Justice

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
		<p>(c) The number of deputy ministers is limited to five in the Constitution</p> <p>(d) The position of Deputy Chief Justice is created in the Constitution.</p> <p>(e) The number of Supreme Court judges is limited to nine in the Constitution</p> <p>(f) A law is enacted to define the key departments and/or directorates of each ministry</p> <p>(g) The maximum number of High Court (and High Court of Appeal) registries, as well as the minimum and maximum numbers of High Court (and High Court of Appeal) judges per registry are stated in the Courts Act (1958, amended) of a High Court of Appeal.</p> <p>(h) Government right-sizing is reflected in all relevant legislation</p>	<p>(c) Jun 2021</p> <p>(d) Jun 2021</p> <p>(e) June 2021</p> <p>(f) Jan 2022</p> <p>(g) Jul 2021</p> <p>(h) Apr 2022</p>	<p>(c) Sept 2021</p> <p>(d) Sept 2021</p> <p>(e) Sept 2021</p> <p>(f) Dec 2022</p> <p>(g) Jul 2022</p> <p>Dec 2023</p>	<p>(c) Ministry of Justice</p> <p>(d) Ministry of Justice</p> <p>(e) Ministry of Justice</p> <p>(f) Office of the President and Cabinet; Ministry of Justice</p> <p>(g) Judicial Service Commission; Ministry of Justice; Department of Human Resource Management and Development</p> <p>(h) Public Service Commission; Ministry of Justice</p>

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
153	Adopt standard definitions for the main functional units of the Public Service	<p>(a) Definitions of "ministry", "department", "directorates", "section" and other units of the Civil Service are formalized and adopted</p> <p>(b) Definitions of "division" and "zone" are formalized and adopted as geographical units and harmonised across the Civil Service;</p> <p>(c) The above definitions are extended to the rest of the Public Service</p>	<p>(a) Apr 2022</p> <p>(b) Apr 2022</p> <p>(c) Jan 2023</p>	<p>(a) Dec 2022</p> <p>(b) Dec 2022</p> <p>(c) Jun 2023</p>	Public Service Commission
154	Conduct a comprehensive functional review of the Public Service	<p>(a) A review report on the organizational functions, structure and operations of the Public Service is generated</p> <p>(b) The recommendations and action plan of the review report in (a) are adopted</p> <p>(c) A review report on the framework of appointments, sanctions, transparency and accountability within the entire Public Service is generated</p> <p>(d) The recommendations and action plan of the review report in (c) are adopted</p>	<p>(a) Apr 2022</p> <p>(b) Apr 2023</p> <p>(c) Apr 2022</p> <p>(d) Jul 2023</p>	<p>(a) Mar 2023</p> <p>(b) Apr 2023</p> <p>(c) Jun 2023</p> <p>(d) Jul 2023</p>	Public Service Commission

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
155	Fast-track complete devolution (as in Public Service Reforms Policy (2018))	<p>(a) The delivery of public services becomes a local government function.</p> <p>(b) Central Government functions practically cover policy-making, capacity building, resource mobilization; monitoring and evaluation, setting standards and quality control and harmonization of terms and conditions of service.</p> <p>(c) A training and capacity building programme for local authorities is designed and rolled out.</p> <p>(d) The power to appoint their staff reverts to Local councils through and amendment of the Local Government Amendment Act (2010)</p>	<p>(a) Jun 2021</p> <p>(b) Jun 2021</p> <p>(c) Jun 2021</p> <p>(d) Jun 2021</p>	<p>(a) Dec 2021</p> <p>(b) Dec 2021</p> <p>(c) Dec 2021</p> <p>(d) Dec 2021</p>	<p>(a) Ministry of Local Government</p> <p>(b) Ministry of Local Government</p> <p>(c) Malawi Institute of Management; Staff Development Institute</p> <p>(d) Ministry of Local Government</p>

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
156	Rationalise the framework for managing state-owned enterprises	<p>(a) The creation, merging and dissolution of SOEs formally becomes the responsibility of line ministries</p> <p>(b) Policy formulation and direction for specific SOEs practically becomes the responsibility of the governing boards of SOEs in consultation with line ministries.</p> <p>(c) Review reports on the relevance of the DSC and the proposed state corporations policy are developed and adopted</p> <p>(d) Recommendations from the review report in (c) are implemented</p>	<p>(a) Jun 2021</p> <p>(b) June 2021</p> <p>(c) June 2021</p> <p>(d) Feb 2021</p>	<p>(a) not applicable</p> <p>(b) Not applicable</p> <p>(c) Dec 2021</p>	Office of the President and Cabinet

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
157	Adopt a standard for the constitution of the boards of SOEs	<p>(a) Affected statutes are amended to ensure that all SOEs are chaired by independent private citizens, and their ex-officio board representation is drawn from line ministries and related bodies.</p> <p>(b) The boards affected by the implemented of (a) above are reconstituted</p>	<p>(a) Jun 2021</p> <p>(b) Oct 2021</p>	<p>(a) Sept 2021</p> <p>(b) Dec 2021</p>	<p>(a) Ministry of Justice</p> <p>(b) Office of the President and Cabinet</p>
158	Improve the accountability framework of the Reserve Bank of Malawi	<p>(a) The exclusion of the RBM from the definition of statutory bodies in the Public Finance Management Act (2003) is eliminated.</p> <p>(b) A review report on the governance structure of the RBM is prepared and adopted.</p>	<p>(a) Jun 2021</p> <p>(b) Jun 2021</p>	<p>(a) Sept 2021</p> <p>(b) Dec 2021</p>	<p>(a) Ministry of Justice</p> <p>(b) Public Sector Reforms Management Unit</p>

No.	Recommended Action	Key Performance Indicator(s)	Beginning Date	Completion Date	Responsible Institution
159	Clarify the separate functions and duties of minister and principal secretary	<p>a) The provision that Ministers and Deputy Ministers shall be responsible for "the running of Government departments" is deleted from the Constitution</p> <p>b) The Constitution is amended so that the minister is responsible for policy formulation and direction, and the supervision of policy implementation</p> <p>c) The Constitution is amended to designate the principal secretary as chief executive officer of a ministry or department, responsible for advising the minister in policy formulation, implementation of government policies, as well as overall and day-to-day management of the ministry</p>	<p>(a) Jun 2021</p> <p>(b) Jun 2021</p> <p>(c) Jun 2021</p>	<p>(a) Sept 2021</p> <p>(b) Sept 2021</p> <p>(c) Sept 2021</p>	<p>(a) Ministry of Justice</p> <p>(b) Ministry of Justice</p> <p>(d) Ministry of Justice</p>

APPENDICES

Appendix 1.1: Names and details of the Taskforce members

No	NAME	DESIGNATION & INSTITUTION
1	The Right Honourable Dr Saulos Klaus Chilima	Vice President of the Republic of Malawi and Minister of Economic Planning and Development and Public Sector Reforms - Chairperson of the Taskforce.
2	Prof. Ronald Mangani	Associate Professor of Economics, University of Malawi
3	Prof. Nyovani Madise	Director of Development Policy and Head of the Malawi Office, African Institute for Development Policy.
4	Prof. Wiseman Chijere Chirwa	Professor (Retired) Consultant - Governance and Social Development
5	Dr Aubrey Mvula	Organisation Development and Human Resource Consultant
6	Ambassador Stephen Matenje SC	Chairperson, Association of Retired Principal Secretaries
7	Mr Waki Mushani	Consultant - Dezzo Management Consulting
8	Mr John Suzi Banda	Chairman - Public Procurement and Disposal of Assets Authority
9	Rev. Elsie Tembo	Treasurer - Association of Retired Principal Secretaries
10	Ms. Tione Chilambe	Head of Coordination and Capacity Building - National AIDS Commission
11	Mrs Zunzo Mitole	Company Secretary and Legal Counsel - National Bank of Malawi plc
12	Ms Nwazi Mnthambala	Comptroller - Statutory Corporations
13	Prof. Ngeyi Kanyongolo	Associate Professor of Law, University of Malawi
14	Ambassador Hawa Ndilowe	Retired Secretary to the President and Cabinet and Member of the Association of Retired Principal Secretaries.
15	Dr Henry Chingaipe	Director - Institute for Policy Research and Social Empowerment

Appendix 1.2 Members of the Secretariat

No	NAME	DESIGNATION & INSTITUTION
1	Mr Wezi Kayira	Principal Secretary - OVP
2	Mr Sibusiso Jere	Director P/M - PSRMU (OVP)
3	Mr Pilirani Phiri	Press Officer of OVP
4	Mr Stanley Longwe	Executive Assistant to the Vice President
5	Ms Imfairenga Kumwenda	Chief Reforms Officer (PSRMU) OVP
6	Mr Blessings Mbewe	Chief Reforms Officer (PSRMU) OVP
7	Mr Arthur Manyunya	CHRMO, Department of Human Resource Management and Development
8	Mr Headwick Banda	Chief Economist Department of Statutory Corporation
9	Mr Precious Chimbamba	Chief Budget Officer, Treasury
10	Dr Gerald Manthalu	Deputy Director, Health Strategy Coordination & Planning, Ministry of Health
11	Mr Lawrence Ngwalangwa	Chief Budget Officer, Treasury
12	Mr Emily Chirwa	Deputy Director, Health Financing & Budget, Ministry of Health
13	Prof. Ngeyi Kanyongolo	Associate Professor of Law, University of Malawi
	Mr Pirirani Masanjala	Senior State Advocate, Ministry of Justice
14	Mr James Mpando	Chief Human Resource Management Officer, Department of Statutory Corporations
15	McCarthy Mwalwimba	Senior Reforms Information Officer- PSRMU (OVP)

Appendix 2: List of Organisations Consulted

Government Ministries

Office of the President and Cabinet
Ministry of Agriculture and Food Security
Ministry of Education, Science and Technology
Ministry of Finance
Ministry of Foreign Affairs and International Cooperation
Ministry of Health
Ministry of Justice and Constitutional Affairs
Ministry of Local Government and Rural Development

Government Departments

Central Internal Audit Unit
Department of Human Resource and Development Management
National Local Government Finance Committee
Department of Statutory Corporations

Oversight Institutions

Malawi Parliament
National Audit Office
Office of the Ombudsman

Other public institutions

Reserve Bank of Malawi

Associations and Unions

Civil Service Trade Union
Malawi Congress of Trade Unions
Teachers Association of Malawi
National Organisation of Nurses and Midwives
Physician Assistants Union of Malawi

Banks

National Bank of Malawi PIC
Standard Bank of Malawi

Public Submissions via various platforms (emails, WhatsApp, etc) - Over 374

Appendix 3: List of Acts of Parliament, Published Bills of Parliament, Regulations and Other Documents Reviewed

Acts of Parliament

1. The Constitution of the Republic of Malawi
2. Companies Act, Cap. 46:01
3. Communications Act, Cap. 68:01
4. Corrupt Practices Act, Cap. 7:01
5. Electoral Commission Act, Cap. 2:03
6. Employment Act, Cap. 55:01
7. Gender Equality Act, 2013
8. General Interpretation Act, Cap. 2:01
9. Human Rights Commission Act, Cap. 3:08
10. Labour Relations Act, 1996
11. Local Government Act, Cap. 22:01
12. Local Government Service Act, 22:04
13. National Planning Commission Act, Cap. 39:01
14. Parliamentary Service Act, Cap. 2:04
15. Presidential (Salaries and Benefits) Act, Cap. 2:02
16. Public Private Partnership Act, 2011
17. Public Finance Management Act, Cap. 37:02
18. Public Audit Act, Cap. 37:01
19. Public Procurement and Disposal of Assets Act, Cap. 37:03
20. Public Service Act, Cap. 1:03
21. Reserve Bank of Malawi Act, Cap. 44:02
22. Teaching Service Commission Act, 1996

Published Bills of Parliament

23. Local Government (Amendment) Bill, 2017
24. National Remuneration Commission Bill, 2017
25. Public Service Bill, 2019

Regulations, Rules and Orders

26. Malawi Public Service Regulations (MPSR), 1991
27. Draft Malawi Public Service Regulations (MPSR), 2021
28. Public Procurement and Disposal of Public Assets (Administration of Preferential Treatment) Regulations, 2020
29. Public Procurement and Disposal of Public Assets (Participation by Micro, Small and Medium Enterprises) Order, 2020
30. Public Procurement Regulations, 2020
31. Public Service Commission Regulations (PSCR)
32. Treasury Instructions. 2004

Budget Documents

33. Budget Document No. 3: Approved 2020/2021 Financial Statement

Audit Reports, Administrative Circulars and Public Procurement Reports

34. Central Internal Audit Reports, 2017 - 2018
35. Central Internal Audit Reports, 2018 - 2019
36. Central Internal Audit Reports, 2019 - 2020
37. Performance and Reforms Report (PPDA)
38. Reports of the Auditor General on the Accounts of the Government of the Republic of Malawi for the year ended 30th June, 2017
39. Report of the Auditor General on the Accounts of the Government of the Republic of Malawi for the year ended 30th June, 2018
40. Reports of the Auditor General on the Accounts of the Government of the Republic of Malawi for the year ended 30th June, 2019
41. Report of an Investigation into Alleged Suspected Malpractice in The Procurement of Prepaid Energy Meters and Meter Boxes At Electricity Supply Corporation Of Malawi (PPDA)
42. Report of an Investigation into the Procurement of System Upgrade at Southern Region Water Board (PPDA)
43. Report on the Assessment of the Public Procurement System in Malawi (PPDA)
44. Report on Procurement Audit of Selected Procuring Entities in the Public Service, September, 2011 (SGS for PPDA)
45. Report of Procurement/Audit of Selected Procuring Entities in the Public Service for the 203 -2014 Financial Year (PPDA)
46. Report of Procurement Post Review of Local Development Fund Procurements in Thirty-Five Districts, Town, Municipal and City Councils under MASAF IV Window (PPDA)
47. Report of the Procurement Post Review for the Ministry of Local Government and Rural Development (PPDA)
48. Report of the Procurement Post Review for EGENCO for the period July 2018 - December, 2018
49. Report of the Functional Review of the Public Procurement and Disposal of Assets (DHRMD)
50. Report of the Functional Review of the Public Procurement and Disposal of Assets (DHRMD)
51. Report of the of the Ombudsman on Procurement of South African Law Firm for the Election Case (Ombudsman)
52. Circular of 23rd July, 2000, Introducing Contract Appointment for Officers from Grade E and above
53. Circular of 27th July, 2020 issued by the Chief Secretary to the Government on vetting of Public Contracts
54. Circular of 19th August, 2019 issued by the Director General of PPDA to Procuring Entities on Procurement Thresholds
55. Sigma (2011) Economic Issues in Public Procurement. Brief 2. www.sigmaxweb.com

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56. Spagnolo, Giancarlo (2009) Open Issues I Public Procurement. Swedish Competition Authority
57. United Nations (2015) Transforming Our World: The 2030 Agenda for Sustainable Development. A/RES/70/1. www.sustainabledevelopment.un.org.
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Appendix 4. Additional Tables and Figures

Table 20: Top Twelve Public Service Votes for Subsistence Allowance (Domestic and External in 2019/20)

TOP TWELVE	2019/20 APPROVED	2019/20 REVISED	2020-21 ESTIMATES
Malawi Electoral Commission	621,658,000	4,767,546,562	529,234,000
National Assembly	4,557,915,242	4,557,915,242	4,034,603,845
Ministry of Education	4,192,898,540	4,343,393,333	5,901,575,006
Ministry of Agriculture	2,344,528,818	2,656,147,652	1,777,831,491
Malawi Police Services	274,093,249	1,934,235,010	1,055,863,742
Ministry of Foreign Affairs	1,146,676,830	1,425,054,130	1,343,423,790
Ministry of Finance	1,182,610,694	1,341,209,094	1,393,007,021
Ministry of Lands Housing and Urban Development	1,068,954,663	1,139,075,992	870,590,174
Judiciary		1,048,890,390	683,583,200
Malawi Defence Force	1,020,350,025	948,033,845	454,265,903
Natural Resources	1,042,222,999	881,035,956	430,279,954
Ministry of Labour	549,170,560	565,213,985	5,129,368,497

Table 21: Scenario of Cost-savings of Moving to Full-board for Majority of Civil Servants instead of DSA.

		Total Bill for internal travel allowance
Full board option Grades C and above 69 civil servants, Grades A-C, average of 15x4 day trips each per year	Assuming cost is MK75000 for room and 20000 for dinner and incidentals.	3,933,000,000.00
Full board option Grades D-E, 500 staff eligible for travel, assuming 15x 4 day trips each per year	Assuming accommodation costs MK 45000, and 20000 for dinner and incidental	1,950,000,000.00
Full board Option, Grades F to I, 5000 eligible staff for travel, assuming 5 trips x 5 days per year per person	Assuming accommodation costs MK 40000, and 10000 for dinner and incidental	6,250,000,000.00
DSA, Grades below J and below, for 15,000 eligible staff, assuming all travel an average of 5 trips x 4 days	Assuming accommodation costs MK 30000, and 10000 for dinner and incidental	12,000,000,000.00
DSA, Grades R , for 2000 eligible staff, assuming all travel an average of 20 trips x 4 days	DSA 30000	4,800,000,000.00
	TOTAL	28,933,000,000.00
	Current bill for internal subsistence allowances	33,655,586,662.00
	Cost-savings	4,722,586,662.00

- Assumptions: 1. Public officers from central government will reduce out-of-duty station trips with full devolution.
2. Government can negotiate preferential hotel, motel rates.
3. All public servants transition to full board, with exception of the lowest paid public servants, in Grade R (e.g. drivers) who will continue to receive DSA, but in keeping with inflation.

Figure 8: Salaries for Directors in Parastatals

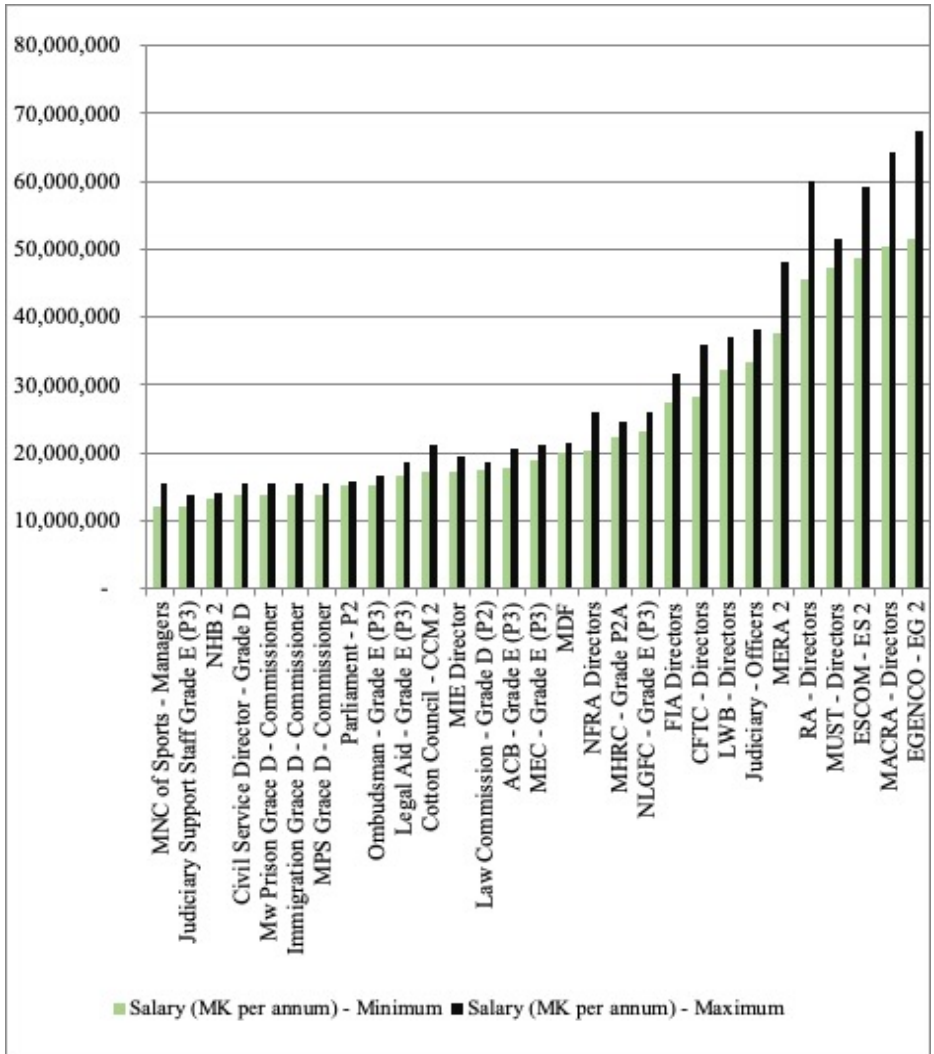


Figure 9: Salaries for Fresh University Graduates

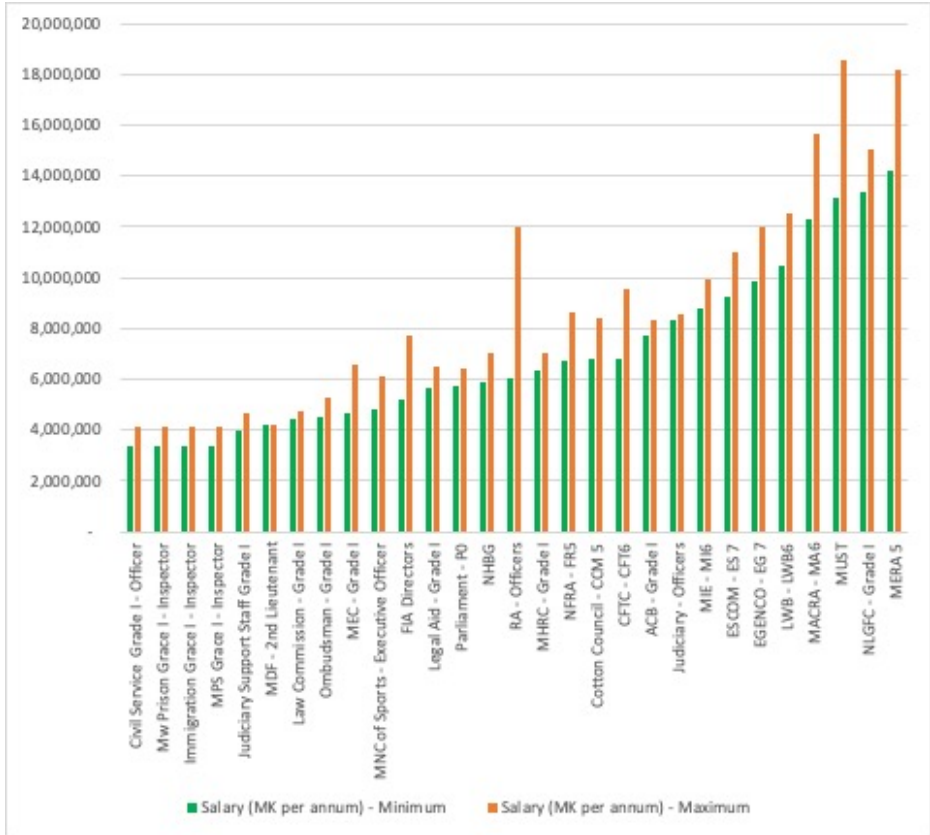


Figure 10: Salaries for Secretaries in the Public Service

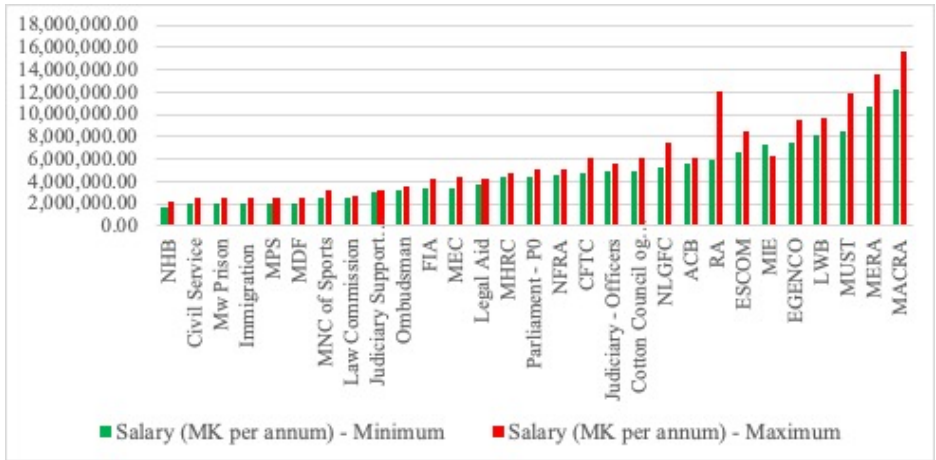


Figure 11: Salaries of Civil Service Directors Compared to Secretaries in Selected Parastatals

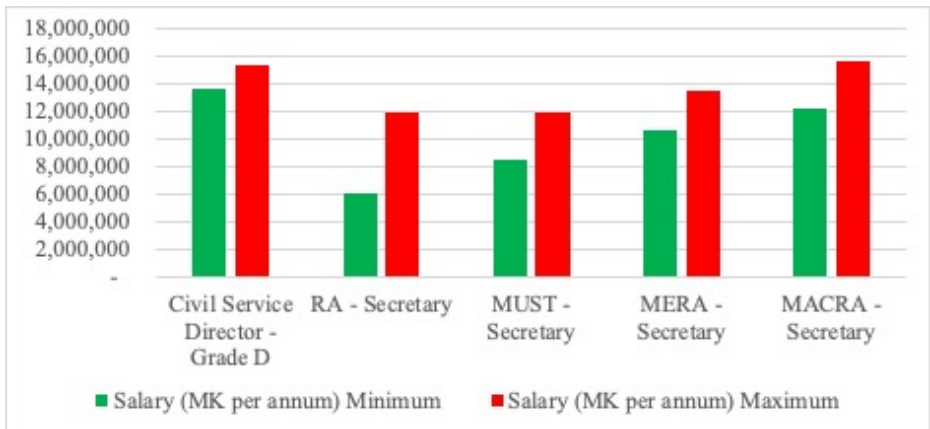
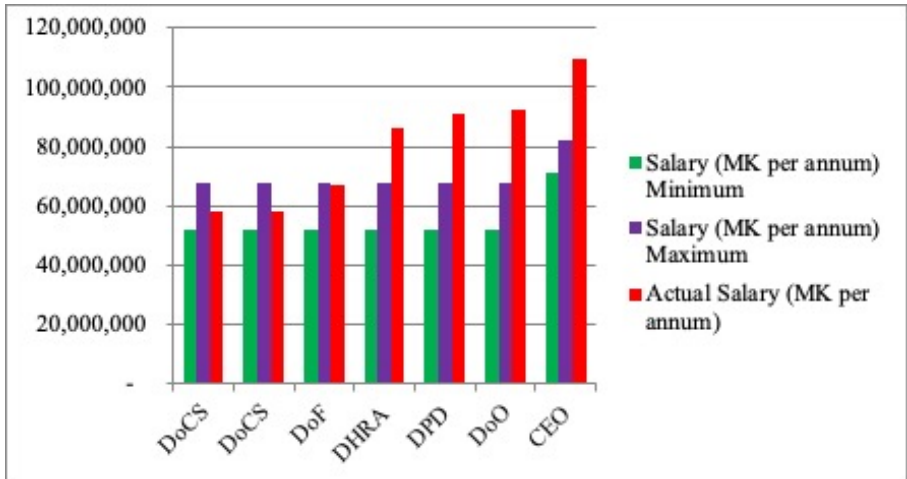


Figure 12: Actual Salaries for EGENCO Executive Management



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