

1-1-2007

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Recommended Citation

Michael Keating, *Counting the Cost of the Culture of Corruption: A Perspective from the Field*, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 317 (2007).

Available at: <https://scholarlycommons.pacific.edu/globe/vol20/iss2/6>

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Counting the Cost of the Culture of Corruption: A Perspective from the Field

Michael Keating*

I. MALAWI: THE CONTEXT

Malawi is both one of the most beautiful and most uniquely disadvantaged places on earth. Situated in south-eastern Africa, our poorest continent,¹ it is severely geographically challenged: landlocked, without resources and with three equally poor neighboring countries.²

Of the 177 countries ranked in the United Nations Human Development Index, Malawi is 164th, and most of those ranked lower are post conflict countries.³ Its economy is smaller than that of Sacramento, and highly vulnerable to external shocks, whether economic, climatic or related to disease. Of Malawi's 12.5 million people, 80% live in rural areas, working as subsistence farmers, dependant upon rain for their harvests.⁴ These farmers live on landholdings of diminishing size, as the population multiplies at one of the fastest rates in the world,⁵ working on soils of decreasing fertility in a deteriorating natural environment.

Only 5% of Malawi's population has access to electricity,⁶ and the search for energy is resulting in the destruction of Malawi's magnificent forests.⁷ 70% of the population survives on less than \$2 per day⁸ and 22% of Malawi's population

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1. Larry Elliott, *Can the World Deliver for Africa?* <http://www.guardian.co.uk/hearfrica05/story/0,1403534,00.html> (last visited Dec. 7, 2007).

2. Encyclopedia of the Nations: *Malawi*, <http://www.nationsencyclopedia.com/World-Leaders-2003/Malawi.html> (last visited Dec. 7, 2007). Malawi's neighbors include Tanzania to the northeast, Mozambique to the west and southwest, and Zambia to the east and northeast.

3. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: MALAWI: THE HUMAN DEVELOPMENT INDEX—GOING BEYOND INCOME, (2007), available at http://hdrstats.undp.org/countries/country_fact_sheets/cty_fs_MWI.html [hereinafter "UNDP REPORT"].

4. United Nations Office for the Coordination of Humanitarian Affairs, *MALAWI: Helping small-scale farmers go commercial* (August 21, 2007), available at <http://www.irinnews.org/report.aspx?ReportId=74056>.

5. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: MALAWI (2007), available at http://hdrstats.undp.org/countries/data_sheets/cty_ds_MWI.html. Malawi's total fertility rate (births per woman) from 2000-2005 was 6.1. The projected annual population growth rate for 2004-2015 is 2.2%-compared to just 0.9% for the U.S. during the same period.

6. Social and Spatial Inequalities Research Group, *Electricity Access*, http://www.sasi.group.shef.ac.uk/worldmapper/posters/worldmapper_map346_ver5.pdf (last visited Dec. 7, 2007).

7. Raphael Mweninguwe, *Massive Deforestation Threatens Food Security*, http://www.newsfromafrica.org/newsfromafrica/articles/art_9607.html (last visited Dec. 7, 2007). Charcoal production is one of the main activities causing deforestation in Malawi.

8. United Nations, *supra* note 4.

is classified as ‘ultra poor’—that is, unable to afford or obtain the basic minimum requirements for healthy survival.⁹ The country is an epicenter of diseases such as HIV and AIDS, malaria and tuberculosis.¹⁰ These, combined with widespread chronic malnutrition and limited access to basic services such as health, education and water, makes the population uniquely vulnerable.¹¹ Life expectancy is 39.8 years; maternal mortality is perhaps the highest in the world; and literacy around 60%.¹² However, what constantly amazes visitors about the people of Malawi is how they cope, and their good humor, despite this adversity.

The picture in Malawi is not entirely gloomy. In August of 2006, Malawi reached the Highly Indebted Poor Country (HIPC) completion point.¹³

As a result, much of its external debt has now been lifted,¹⁴ a testimony to the new government’s determination to restore fiscal discipline and attract investors—not just aid providers, but business as well.

Unlike many African countries, Malawi experienced a peaceful transition from autocratic one-party rule to multiparty democracy in 1994.¹⁵ Malawi now has a strong constitution which enshrines the separation of powers, rule of law and basic freedoms including those of religious practice, association and information.¹⁶ A phalanx of Constitutional bodies is in place, including a Parliament, Human Rights Commission, Ombudsman’s Office, Anti-Corruption Bureau (ACB), Law Commission and an Electoral Commission.¹⁷ Still, all of them suffer from poor funding, politically motivated challenges to their independence and agendas, and weak demand from the population for accountability.¹⁸

9. Bernd Schubert and Mayke Huijbregts, Presentation at the Conference on Social Protection Initiatives for Children, Women, and Families: An Analysis of Recent Experiences (Oct. 30, 2006), available at http://www.undp-povertycentre.org/publications/cct/Malawi_Social_Cash_Transfer.pdf.

10. UNDP REPORT, *supra* note 5. In 2005, the HIV prevalence for 15 to 49 year olds in Malawi was 14.1%. The rate of tuberculosis infections in 2004 was 501 per 100,000 people-125 times higher than the infection rate in the U.S.

11. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: MALAWI: WATER, SANITATION AND NUTRITIONAL STATUS (2007), available at <http://hdrstats.undp.org/indicators/64.html>. 34% of Malawi’s population has food intake that is chronically insufficient to meet their minimum energy requirements.

12. UNDP REPORT, *supra* note 5.

13. Press Release, International Monetary Fund, World Bank and IMF Support Malawi’s Completion Point under the Enhanced HIPC Initiative and Approve Debt Relief under the Multilateral Debt Relief Initiative, Press Release No. 06/187 (Sept. 1, 2006), available at <http://www.imf.org/external/np/sec/pr/2006/pr06187.htm>.

14. *Id.* By reaching the HIPC completion point, Malawi also becomes eligible for further debt relief from the World Bank, the IMF, and the African Development Fund (AfDF) under the Multilateral Debt Relief Initiative (MDRI). Debt service savings under the MDRI would amount to US\$1.4 billion. As a result of reaching the HIPC completion point, Malawi is expected to receive the equivalent of US\$3.1 billion in total nominal debt relief under the HIPC Initiative and the MDRI, on principal as well as interest payments.

15. U.S. Department of State, Bureau of African Affairs, *Background Note: Malawi* (October 2007), available at <http://www.state.gov/r/pa/ei/bgn/7231.htm>.

16. Constitution of the Republic of Malawi, available at <http://www.sdn.org.mw/constitut/intro.html>.

17. *Id.* at art. 120, 129.

18. U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, MALAWI:

II. SOME SNAPSHOTS

A. *The Smallholder Farmer*

In 2005, the Malawi government launched a fertilizer subsidy scheme following a disastrous harvest in 2004, caused by a combination of poor rains and failure to get seed and fertilizer into the hands of millions of smallholder farmers at affordable rates.¹⁹ The scheme was fairly simple; those deemed by village committees to be too poor to buy fertilizer were provided with coupons, each of which entitled the bearer to buy a bag of fertilizer or \$7 rather than at the market rate of \$22.

Ms. Kachingwe lives in a fairly typical village in the northern part of the country, near the lake. As a widow with seven child dependants, she was given two coupons. By working for about 40¢ U.S. a day on a large landowner's farm, and by borrowing from her extended family, she saved the \$14 that would allow her to access two bags of fertilizer at the subsidized rate. But when she approached the man in charge of the nearest Government-run fertilizer outlet, many hours walk away from her home, he declared that for her to qualify for the scheme she would need to pay him an extra \$1.50 per bag. She knew that this was not an official fee; on the other hand, it was clear that without an additional \$3, she would not be able to use the \$14 she had saved to get the two bags.

Sensing her desperation, and knowing she had no alternative, the official offered to buy the coupons from Ms. Kachingwe for \$1.50 each. Faced with the prospect of returning to the village empty handed, she was compelled to accept the \$3 in return for the two coupons, and walked back to her village without fertilizer. Her security, and that of her family, was undermined with one stroke. There is little doubt that the official sold the coupons to one of the wealthier farmers who used them to buy fertilizer at the reduced price. Sadly, this story is far from unique. It demonstrates how petty corruption resulted in a poor person being further marginalized and made more insecure, and how the wealthier were enriched at her expense.

B. *Medical Supplies*

Malawi's health facilities are permanently under siege—underpaid and insufficient numbers of doctors and nurses work in often appalling conditions without proper equipment, coping with a demand for services that far outstrips the capacity of the system.²⁰ The absence of proper facilities and equipment in

COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (Feb. 25, 2004), available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27737.htm>.

19. Stephanie Nolen, *How Malawi Went From a Nation of Famine to a Nation of Feast*, TORONTO GLOBE AND MAIL, Oct. 12, 2007, at A1.

20. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT: MALAWI:

maternity hospitals makes childbirth the most dangerous and life threatening experience that women and infants will have.²¹

In August of 2006, the chronic crisis faced by Malawi's hospitals and health centers had an acute crisis to cope with as well—the most basic medical supplies and drugs were running out. Minister of Health Marjorie Ngaunje intervened, not least on the basis of a report she received on irregularities in the way the body responsible for procurement and distribution of drugs and medical supplies was functioning. UNICEF was asked to temporarily assume responsibility for the procurement of drugs, thereby instantly sidelining those officials responsible for the system to date.²² This has resulted in negative media reports placed by interested and aggrieved parties, accusing the U.N. of undermining government ownership of the development process, and even threats against U.N. staff.

Certain officials and business people have known for some time, and many donors have long suspected, that there is a huge discrepancy between what Central Medical Supplies procures and what ends up reaching government health centers.²³ This racket has been going on for many, many years, and millions of Malawians have suffered and may have died simply because some selfish people steal medicine, leaving hospitals with nothing. In early 2006, there were stories in the media relating to the discovery of a whole warehouse full of equipment and drugs, reportedly enough to stock a district hospital for a year.²⁴ The businessman involved was jailed for 5 years, but he may have been the 'unlucky' one; such an operation requires complicity from a broad range of players. In this case, the corrupt practice is not only resulting in the enrichment of a small group; it is also directly impacting the welfare and survival chances of many hundreds of thousands of Malawians.

C. *Political Dilemmas in Fighting Corruption*

In July of 2006, Gustav Kawilo, then Director of the ACB, was suspended by the current President just after the Director had set in motion steps to arrest Elson Bakili Muluzi, the popular former President.²⁵ Stories still swirl as to exactly

COMMITMENT TO HEALTH (2007), available at <http://hdrstats.undp.org/indicators/58.html>. There are 2 physicians for every 100,000 people.

21. *Id.* Only 61% of births are attended by skilled health personnel, which includes nurses and midwives as well as doctors.

22. African Path, *Group criticises Malawi government on procurement of drugs*, http://www.africanpath.com/p_blogEntry.cfm?blogEntryID=2627 (last visited Nov. 9, 2007).

23. Norman N Lufesi et al., *Deficient supplies of drugs for life threatening diseases in an African community* (2007), available at <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1906855>. The study found a consistent and large difference between stock card recordings at the health centers and patient records. This practice makes it difficult to exclude that leakage or theft and may have contributed to the overall drug supply situation.

24. Interview by Alan Whelen with John Njunga, Network Coordinator for the Malawi Health Equity Network, (Sept. 18, 2006), available at <http://trocaire.ie/news/story?id=765>.

25. BBC News, *Malawi's Anti-Graft Chief Suspended*, <http://news.bbc.co.uk/1/hi/world/africa/5223>

what happened, but the most plausible is that while the ACB Director enjoyed the current President's support to vigorously pursue corruption cases, the timing of the move against the former President could not have been worse. This action was taken just as Parliament was sitting to pass the budget, and one of the conditions set by the International Monetary Fund and the World Bank for Malawi's success in reaching HIPC completion point (and therefore the multilateral debt forgiveness that Malawi badly needs) was that the budget be passed. Muluzi's arrest would have sunk any prospect of that, as the current government only has a minority of seats in the House and needed cross-party support to get the budget through.

In short order, steps to detain Muluzi were reversed and the ACB Director resigned, as did the Director of Public Prosecution soon after.²⁶ The budget passed through Parliament, and a few days later at the regular monthly meeting of Heads of Mission, major aid donors discussed what happened, and what the donor community's reaction should be. Malawi's donors agree that a litmus test of the Government's commitment to fighting corruption is its willingness to investigate the widespread graft and malpractice associated with former President Muluzi. They also feel strongly that the independence of actions by constitutional bodies like the ACB must be respected—and that suspension of Kawilo was appropriate.

Development actors, including the United Nations Development Programme, are supporting capacity development of these bodies, including Parliament and the ACB, and nearly all use governance indicators as an input to determining their funding decisions.²⁷ These have become particularly important in a changing aid environment, characterized by a shift away from project and program funding to the provision of general budget support through the recipient country's treasury, or of sector budget support in areas such as health and education. The basic deal on the table (associated with the Paris Declaration on Aid Effectiveness, agreed to by most donor and developing countries in 2005) is that donors will untie and increase volumes of aid and commit themselves to using recipient countries' (rather than their own) financial accountability systems, in return for recipient countries articulating and implementing nationally owned, results—and Millennium Development Goal-based development plans and for ensuring that accountability systems work effectively.²⁸

588.stm (last visited Dec. 7, 2007).

26. BBC News, *Malawi Prosecutor Told to Resign*, <http://news.bbc.co.uk/2/hi/africa/4781117.stm> (last visited Dec. 7, 2007). Director of Public Prosecution Ashmael Wadi was asked to "resign honorably."

27. Through the Governance Indicators Project, UNDP seeks to assist developing countries produce disaggregated and non-ranking governance indicators to enable national stakeholders to better monitor performance in democratic governance reforms.

28. Paris Declaration on Aid Effectiveness, available at <http://www.oecd.org/dataoecd/11/41/34428351.pdf> (Mar. 2, 2005).

At the Heads of Mission meeting, it was discussed whether it would be appropriate to recommend to the World Bank and International Monetary Fund that Malawi's application for HIPC debt relief be put on hold in light of problems with accountability systems, and whether decisions about the level of budget support to Malawi should be reviewed for the same reasons. The consensus was to do neither, on the grounds that this would be an overreaction; but rather to monitor the situation, whether with regard to the specific case against former President Muluzi or, more broadly, the Government's commitment to the independence of constitutional bodies and good governance. Malawi duly reached its HIPC completion point at the end of August 2006,²⁹ and budget support continues, albeit at perhaps lower levels than might be the case if donors had full confidence in the Government's accountability systems. The ACB Director has not yet been replaced, and Muluzi is not under arrest. Some question whether he and some of the "big fish" around him will ever be brought to book.

This is a small insight into the very real political dilemmas faced by governments in pursuing an anti-corruption agenda. It also highlights the importance attached by western donors to good governance as well as the potential consequences to a poor country like Malawi if it is judged as not taking it sufficiently seriously.

III. THE COST OF CORRUPTION

These are just three of many stories that could be told—from highly placed officials abusing their positions for personal gain, to petty corruption on a daily basis, at police roadblocks, customs offices, police stations or courts. A recent official Diagnostic Survey on Governance and Corruption revealed that more than half of contacts that the Directorate of Public Procurement had with private enterprises resulted in request for gratification.³⁰

Low salaries, the lack of an effective whistle blowing system, and the lack of performance incentive systems all contribute to the culture of corruption and its broad acceptance as a way of life—even if it is universally recognized as a problem with seriously negative consequences for development of the country. Should fighting corruption be a priority in international development efforts? The answer of course, has to be yes.

29. Press Release, International Monetary Fund, World Bank and IMF Support Malawi's Completion Point under the Enhanced HIPC Initiative and Approve Debt Relief under the Multilateral Debt Relief Initiative, Press Release No. 06/187 (Sept. 1, 2006), available at <http://www.imf.org/external/np/sec/pr/2006/pr06187.htm>.

30. WORLD BANK, MALAWI FINAL MAIN REPORT: GOVERNANCE AND CORRUPTION BASELINE SURVEY 21, available at http://www.worldbank.org/wbi/governance/capacitybuild/pdf/gac_survey_malawi_2006.pdf (2006).

First, the financial cost is massive. In 2004 the African Union estimated that Africa loses \$148 billion to corruption each year, or 25% of the continent's GDP.³¹ One scholar has recently estimated that the Government of Malawi loses up to one third of its annual revenue through waste, fraud, bribery and corruption.³² The cost of corruption also needs to be counted in terms of enjoyment of rights and Malawi's chances to achieve their Millennium Development Goals.³³ The negative impact of corruption on development is no longer questioned; corruption siphons off scarce resources and diminishes a country's prospects for development. It hinders economic growth, and diverts investments that might otherwise go into public assets like infrastructure, institutions and social services. It perpetuates inequalities, concentrates power in the hands of a few, and deprives the poor of their already severely constrained opportunities to break out of the vicious circle of oppression and marginalization. Evidence from Malawi and elsewhere confirms that corruption often takes place at the expense of those who are already living on the edge.

Moreover, corruption fosters an anti-democratic environment characterized by uncertainty, unpredictability, declining moral values, and disrespect for constitutional institutions and authority. It promotes patron-clientelism, political party interests, and electoral malpractice. It erodes democracy and principles of good governance, undermining the investment that Malawi and its partners have made in the country's transition from one party to Multiparty rule. The World Bank's Diagnostic Survey showed that corruption in Malawi has served to delegitimize the state in the eyes of the public, and to undermine public trust in politicians, public institutions and processes.³⁴ It thus poses a threat to Malawi's greatest comparative advantage in an otherwise troubled corner of the world – its uninterrupted peace.

V. WHAT CAN BE DONE?

The issue is not whether we have a responsibility to fight corruption, but how best to go about it. There are certainly ways not to go about it. Efforts by donors to fight corruption that are not rooted in a national determination are unlikely to succeed. At best, they will be unsustainable; at worst, they will come across as unacceptable intrusion by foreigners. In Malawi, current President Bingu wa

31. Transparency International, *Frequently Asked Questions on Corruption and Africa*, http://www.transparency.org/news_room/in_focus/2005/g8_summit/faq (last visited Dec. 7, 2007).

32. Mustafa Hussein, *Combating Corruption in Malawi: An assessment of the enforcing mechanisms*, AFR. SEC. REV. Vol 14, No. 4 (2005), available at http://www.iss.co.za/pubs/ASR/14No4/E_Hussein.htm.

33. UNITED NATIONS, *THE MILLENNIUM DEVELOPMENT GOALS REPORT 2006*, available at <http://www.un.org/millenniumgoals/>. These goals provide a framework for action, and by the year 2015, aim to: halve the proportion of the world's people whose income is less than one dollar a day; achieve universal primary education; promote gender equality; reduce maternal and child mortality; combat chronic illnesses including AIDS; and ensure environmental sustainability.

34. WORLD BANK, *supra* note 30 at 21.

Mutharika can be credited with bringing about a dramatic change in atmosphere with regard to corruption. Soon after his inauguration, he declared it to be a crime against humanity, and stated at the 2005 Anti-Corruption Day, “I will not relent until the roots of corruption have been pulled out from our nation. I will not relent until those who plundered our economy with impunity have been brought to book.”³⁵ His stance is praised by development partners and has made it much easier for them to provide technical and financial support to constitutional bodies like the ACB, as well as to strengthen public financial management, procurement systems, and the financial literacy of politicians. But Presidential support is not enough; fighting corruption in a place like Malawi—and perhaps everywhere, depends upon three things.

First, a popular demand for good governance; second, a robust legal and institutional framework; third, competence and high standards among the individuals responsible for accountability. If any of these three are missing, the fight against corruption is likely to be compromised. International development actors can assist in all three areas, but have tended to focus on ‘supply’ (and perhaps to a lesser extent the quality

aspects) rather than the ‘demand’. The supply side involves both policies and capacities—providing support, as the U.N. has done, to ensure a sound constitutional and legal framework and criminal justice system; to strengthen the court system; strengthen the paralegal network—which is badly needed as a means of increasing access to justice in a country with only 180 lawyers in private practice; to provide education and training opportunities; and to support constitutional bodies such as the ACB, Ombudsman’s Office, National Audit Office and Directorate of Public Procurement with resources, financial and project management skills.

Much tougher is supporting the ‘demand’ side of the equation, particularly in a country where many people have no access to information, let alone the media. Here, the agenda for development actors is perhaps less well defined—but needs to include support for greater accountability—not just at the national level through Parliament, but at district and local levels, including through local assemblies and support for grass roots organizations promoting community mobilization and civic education. This can include support to non-governmental organizations which, in addition to service delivery, aim to help people understand and claim their rights, whether as laborers, patients, students, consumers, vendors or business people. This represents a challenge for development actors: as the trend moves away from funding projects and towards the provision of budget support, the question is how to ensure that support continues for entities whose job is to hold Government accountable.

35. Bingu wa Mutharika, President of Malawi, address delivered at Anti-Corruption Day (Feb. 8, 2005).

If Ms. Kachingwe does not know her rights, or is not part of a community that is insisting that it benefits from government policies with regard to boosting food production, then she is on her own. If hundreds of thousands of women in Malawi knew that their access to healthcare and chances of surviving pregnancy are dependant upon a small group of people being prevented from exploiting the medical supply system for their personal enrichment, the dynamics would be very different.

* * *