

**STRATEGIC OBJECTIVE GRANT AGREEMENT**

**BETWEEN THE**

**UNITED STATES OF AMERICA**

**AND THE**

**GOVERNMENT OF THE REPUBLIC OF MALAWI**

**FOR THE**

**MILLENNIUM CHALLENGE CORPORATION**  
**THRESHOLD INITIATIVE IN MALAWI**

Dated: **SEP 29 2005**

# Strategic Objective Grant Agreement

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## **Strategic Objective Grant Agreement**

**Between**

**The United States of America, acting through the United States Agency for  
International Development (“USAID”)**

**And**

**The Government of the Republic of Malawi ( “Grantee”)**

WHEREAS, the Grantee and USAID (“the Parties”) hereby express their continued commitment to the goal of improved fiscal management and control of corruption; and

WHEREAS, in order to focus and strengthen the efforts of the Parties in promoting anti-corruption and fiscal responsibility as a means to further consolidate democratic governance in Malawi;

THEREFORE, the Parties hereby agree as follows:

### **Article 1: Purpose**

The purpose of this Strategic Objective Grant Agreement (hereinafter referred to as the “Grant Agreement” or “Agreement”) is to set out the commitments and understandings of the Parties named above.

### **Article 2: Special Objective and Results**

#### **Section 2.1 Special Objective**

This Strategic Objective Grant Agreement supports a Special Objective entitled the “Millennium Challenge Corporation Threshold Initiative in Malawi” (the “Objective”). The development hypothesis that underlies this Objective is as follows:

The activities carried out under this Agreement will build upon the support provided by USAID to Malawi over the past years and the Government of Malawi’s (GOM) commitment to reform, already well underway, in particular improved fiscal management and fighting corruption. The Millennium Challenge Corporation’s (MCC) objectives are in conformity with the goals to which GOM has committed itself. As a result of Malawi’s good performance in three MCC eligibility criteria categories: Ruling Justly, Investing in People, and Economic Freedom, MCC selected Malawi as eligible to apply to receive FY 2005 Threshold Program assistance. However, as provided in the Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in FY 2005, Malawi scored below the median in four indicators: Corruption, Fiscal Management, Credit, and Girls’ Primary Education Completion Rates.

Malawi's Threshold Country Plan (TCP) is an integrated, multi-sectoral, cross-institutional attack on corruption, which as all indicators show is endemic and widespread, and is evidence of systemic governance weaknesses. In the TCP, the GOM has described a situation in which many institutions have inadequate capacity and are fragile, vulnerable to manipulation and corruption. A culture of transparency and accountability is not entrenched. The Agreement provides assistance to the GOM around three areas critical to the fight against corruption and for fiscal responsibility: Prevention, Oversight, and Enforcement/Deterrence. The activities supported through this assistance will also promote the involvement of Malawi's citizens in holding public officials accountable.

The activities under this Agreement will exploit the potential of cross-sectoral links through empowering key entities, such as the National Assembly, the Department of Public Prosecution and the National Audit Office; setting up systems and policy frameworks such as the Integrated Financial Management Information System (IFMIS), Anti-Money Laundering Legislation, and a Financial Intelligence Unit (FIU); and integrating civil society and the public in systems and activities to enhance oversight of and accountability of public institutions and officials.

The activities under this Agreement will meet the USAID Strategic Framework Goals of reducing corruption and strengthening the anti-corruption environment, strengthening institutions of democratic governance, and expanding the freedom of information.

## **Section 2.2 Results**

The activities carried out under this Agreement, over a period of three years, are designed to contribute to the achievement of improved fiscal management and control of corruption. During this time and in order to achieve the higher level results at the Special Objective level, three Results are sought:

- Systems for preventing corruption established and strengthened
- Oversight institutions effective and independent
- Systems of enforcement and deterrence in place and functioning effectively

These Results, and the indicators by which achievement of the Results will be measured, are further described in Annex 1, Amplified Description, to this Agreement. Within the limits of the definition of the Objective in Section 2.1, this Section 2.2 may be changed by written agreement of the authorized representative of the Parties without formal amendment of the Agreement.

## **Section 2.3 Annex 1 -- Amplified Description**

Annex 1, attached, amplifies the above Objective and Results. Within the limits of the above definitions of the Objective in Section 2.1 and the Results in Section 2.2,

Annex 1 may be changed by written agreement of the authorized representatives of the Parties without formal amendment of this Agreement.

### **Article 3. Contributions of the Parties**

#### **Section 3.1 USAID Contribution**

(a) The Grant. To help achieve the Objective set forth in this Agreement, USAID, pursuant to the Foreign Assistance Act of 1961, as amended, hereby grants to the Grantee under the terms of the Agreement an amount not to exceed Twenty Million Nine Hundred and Twenty Thousand United States ("U.S.") Dollars (\$20,920,000) ("the Grant").

(b) Total Estimated USAID Contribution. USAID's total estimated contribution to the achievement of the Objective shall not exceed U.S. \$20,920,000.

(c) If at any time USAID determines that its contribution under Section 3.1(a) exceeds the amount which reasonably can be committed for achieving the Objective or Results or activities during the current or next U.S. fiscal year, USAID may, upon written notice to the Grantee, withdraw the excess amount, thereby reducing the amount of the Grant as set forth in Section 3.1(a). Actions taken pursuant to this subsection will not revise USAID's total estimated contribution set forth in 3.1(b).

#### **Section 3.2 Grantee Contribution**

(a) The Grantee agrees to provide or cause to be provided all funds, in addition to those provided by USAID and any other donor identified in Annex 1, and all other resources required to complete, on or before the Completion Date, all activities necessary to achieve the Results.

### **Article 4: Completion Date**

(a) The Completion Date, which is September 30, 2008, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all the activities necessary to achieve the Objective and Results will be completed. All activities undertaken under this Agreement, however, are expected to be of a duration of 24 months, with the one exception of the Sovereign Credit Rating Service, which will be for 36 months.

(b) Except as USAID may otherwise agree to in writing, USAID will not issue or approve documentation which would authorize disbursement of the Grant for services performed or goods furnished after the Completion Date.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, are to be received by USAID no later than nine (9) months following the Completion Date, or such other period as USAID agrees to in writing before or after such period. After such period, USAID, at any time or times, may give notice in writing to the Grantee and reduce the amount of the Grant by

all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Implementation Letters, were not received before the expiration of such period.

## **Article 5: Conditions Precedent to Disbursement**

### **Section 5.1 First Disbursement**

Prior to the first disbursement under the Grant, or to the issuance by USAID of documentation pursuant to which disbursement will be made, the Grantee shall, except as the Parties may otherwise agree in writing, furnish to USAID in form and substance satisfactory to USAID:

“(a) An opinion of counsel acceptable to USAID that this Agreement has been duly authorized or ratified by, and executed on behalf of the Grantee, and that it constitutes a valid and legally binding obligation of the Grantee in accordance with all of its terms; and

“(b) A statement in the name of the person holding or acting in the office of the Grantee specified in Section 7.2, and of any additional representatives, together with a specimen signature of each person specified in such statement.”

### **Section 5.2 Notification**

USAID will promptly notify the Grantee when USAID has determined that the subsequent disbursement may be effected.

### **Section 5.3 Terminal Dates for Conditions Precedent**

The terminal date for meeting the conditions specified in Section 5.1 is 120 days from the date of this Agreement or such later date as USAID may agree to in writing before or after the above terminal date. If the conditions precedent in Section 5.1 have not been met by the above terminal date, USAID, at any time, may terminate this Agreement by written notice to the Grantee.

## **Article 6: Strategic Covenants**

### **Section 6.1 Activity Monitoring & Evaluation**

The Parties agree to establish a monitoring and evaluation activity as part of the Program. Except as the Parties otherwise agree in writing, the Program will include the following during the implementation of the Agreement:

(a) assessment of progress towards the attainment of the Special Objective;

(b) identification and evaluation of problem areas or constraints which may inhibit such attainment;

(c) assessment of how such information may be used to help overcome such problems; and

(d) assessment, to the degree feasible, of the overall development impact of the Special Objective.

### **Section 6.2 Salaries of Government Officials**

The Grantee agrees that no individuals paid salaries from funds provided under this Agreement will, at the same time, draw a Government of Malawi salary or receive government benefits.

## **Article 7: Miscellaneous**

### **Section 7.1 Implementation Letters**

The Parties will use Implementation Letters to confirm and record additional understandings and commitments related to this Agreement. Implementation Letters may not be used to amend the text of this Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the Amplified Descriptions set forth in Annex 1. Implementation Letters shall be binding on the Parties unless revoked, modified or superseded by subsequent Implementation Letters or Amendments to this Agreement.

### **Section 7.2 Communications**

Any notice, request, document, or other communication submitted by either Party to the other under this Agreement will be in writing or by telegram, telefax or cable, and will be deemed duly given or sent when delivered to such Party at the following addresses:

To USAID:

United States Agency for International Development  
Nico House  
P.O. Box 30455  
Lilongwe 3, Malawi

Telefax: 265 1 773 181

To the Grantee:

The Ministry of Finance  
Capital Hill  
P.O. Box 30049  
Capital City  
Lilongwe 3, Malawi

Telefax. 265 1 789 173

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

### Section 7.3 Representatives

For all purposes relevant to this Agreement, the Grantee will be represented by the individual holding or acting in the Office of Minister of Finance and USAID will be represented by the individual holding or acting in the Office of the Mission Director, USAID/Malawi, each of whom, by written notice, may designate additional representatives for all purposes other than signing formal amendments to the Agreement or exercising the power under Sections 2.2 or 2.3 to revise the Results or Annex 1. The names of the representatives of the Grantee, with specimen signatures, will be provided to USAID, which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

### Section 7.4 Standard Provisions Annex

A "Standard Provisions Annex" (Annex 2) is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, the United States of America and the Grantee, each acting through its duly authorized representatives, have caused this Agreement to be signed in their names and delivered as of the day and year first above written

FOR THE GOVERNMENT OF THE  
REPUBLIC OF MALAWI

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA

/ s /

/ s /

Honorable Gondall E. Gondwe  
Minister of Finance

Mary Tawellen  
Acting Mission Director  
United States Agency for International  
Development

Date: 27 September, 2005

Date: 29 Sept. 2005





*Government of Malawi*

Millennium Challenge Corporation Threshold Country Plan

Submitted to the

Government of the United States of America

10 June 2005

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## Abbreviations

ACB	Anti-Corruption Bureau
AML/CFT	Anti-Money Laundering/Combating Financing Terrorism
APRM	The African Peer Review Mechanism
COMESA	Common Market for Eastern and Southern Africa
CSO	Civil Society Organization
DFID	Department for International Development (Britain)
DoJ	US Department of Justice
DOPP	Department of Public Procurements
DPP	Department of Public Prosecutions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FIU	Financial Intelligence Unit
GOM	Government of Malawi
GWAN	Government-Wide Area Network
HIPC	Highly Indebted Poor Countries
IFMIS	Integrated Financial Management Information System
IMF	International Monetary Fund
IQC	Indefinite Quantity Contract
M&E	Monitoring and Evaluation
MBC	Malawi Broadcast Corporation
MCA	Millenium Challenge Account
MCC	Millenium Challenge Corporation
MEGS	Malawi Economic Growth Strategy
MEPD	Ministry of Economic Planning and Development
MIS	Management Information System
MoF	Ministry of Finance
MOU	Memorandum of Understanding
MP	Member of Parliament (or National Assembly member)
MPRS	Malawi Poverty Reduction Strategy
MRA	Malawi Revenue Service
MWK	Malawi Kwacha (currency)
NAMISA	National Media Institute of Southern Africa
National Assembly	Malawi's unicameral parliament
NEPAD	The New Partnership for Africa's Development
NGO	Non-Governmental Organization
OAU	Organization for African United
PRGF	Poverty Reduction Growth Facility
PSIP	Public Sector Investment Program
RBM	Reserve Bank of Malawi
RLA	Resident Legal Adviser
SADC	Southern Africa Development Community
SMP	Staff Monitored Program (IMF)
SPU	Specialized Procurement Unit
TA	Technical Assistance
TVM	Television Malawi
US	United States
USAID	United States Agency for International Development

**Government of Malawi**  
**Millenium Challenge Corporation Threshold Country Plan**  
**10 June 2005**

**Summary Statement by Government of Malawi of Threshold Country Plan Reform Commitments**

The Government of Malawi has decided to address the four indicator areas in which Malawi did not perform well in the Concept Paper submitted to the Millenium Threshold Program. These were Corruption, Fiscal Management, Credit Ratings, and Girl's Primary Education Completion. Malawi's Concept Paper described a broad, multi-sectoral, cross-institutional attack on corruption that integrated substantive work on improving fiscal management practices and outcomes. In the Concept Paper, Government of Malawi noted that if corruption is stemmed and finances are better managed, Malawi's credit ratings should improve as a result. In the Threshold Plan, the Government of Malawi requests assistance to purchase the Fitch Credit Rating Service for Sovereigns. The credit rating will act as an indicator of Malawi's success in (1) addressing the weaknesses in the system that allow the diversion of resources through corrupt practices and (2) tightening the control, transparency, and oversight of Malawi's finances. As stated in the Concept Paper, Government of Malawi is keenly aware of the deficiencies in the education system, with Girls' Primary Education Completion being a symptom of larger problems. The Government will continue allocating substantial resources and energy to improving education, particularly at the primary level. The Government also receives very generous levels of donor assistance, including from the United States, in this regard. For that reason, Malawi does not seek the assistance of Millenium Challenge Corporation (MCC) in response to that particular indicator.

The Government of Malawi has taken into account best practices in the design of the Malawi Threshold Country Plan (Country Plan). All the indicators point to the fact that corruption is widespread and endemic in Malawi and therefore is evidence of systemic governance weaknesses. Therefore, Malawi's strategy in the Country Plan focuses on the broad, underlying features of the governance environment. In particular, (1) the balance of power between the legislature, executive branch, oversight bodies named in the Constitution whose independence is critical such as the Law Commission, the Reserve Bank, and the Malawi Police, and (2) the important oversight role that must be played by civil society and media.

At the same time, the Government of Malawi has noted that systems, procedures, and mechanisms should impose restraint on individual discretion and assure that public officials will use power and authority appropriately. The Country Plan proposes specific ways in target institutions to improve systems and procedures and to install mechanisms of restraint. In particular, the Country Plan proposes an Integrated Financial Management Information System that will impose financial discipline and improve accountability, an improved system for GOM to monitor and evaluate projects and end fraud and misuse of funds there within, and development of systems and human capacities in the Ministry of Finance and the Malawi Revenue Authority.

Finally, an integrated corruption strategy must have several goals. To prosecute past wrong-doers is obviously not going to do much to halt crimes in progress nor is making the public aware of the problem of corruption going to have much impact if systems whereby government is answerable to citizens are weak. If mechanisms of enforcement and deterrence are neglected, even with the best laws in the world, a culture of impunity will arise, as it has in Malawi. Transparency, accountability, answerability, oversight, and deterrence must all be elements in an integrated,

strategic attack on corruption and Government of Malawi has tried to make sure that they are factored into the Country Plan as cross-cutting themes.

Therefore, Government of Malawi has designed a Country Plan with two over-arching, but closely related objectives for a 24-month period. The first objective is to build systems and shore up weak points where corruption can siphon off resources that should be spent on the reduction of poverty and economic growth of the Malawian people. The second objective is to improve Malawi's ability to manage and monitor its finances.

Government of Malawi has proposed 15 specific interventions over the two year period of the Threshold Program.

- Monitoring and Evaluation of GOM implemented projects as a Deterrent to Corruption;
- Building Legal Skills Capacities;
- Integrated Financial Management Information System;
- Civil Society Integration into an Anti Corruption Campaign;
- Professionalizing Public Procurement in Government of Malawi;
- Development and Passage of a Declaration of Assets Law;
- Strengthening Government of Malawi's Audit Capacities;
- Professionalized Media a Tool of Aggregation of Opinion, Analysis, and Dissemination of Information;
- Journalists and Media Professionals Better Prepared to Report on and Analyze Corruption and Exercise Oversight;
- Capacity Building for Improved/Prudent Fiscal Management;
- Building Malawi's Prosecutorial Abilities;
- Strengthening National Assembly Oversight to Curb Corruption and Enhance Fiscal Discipline in the Public Sector;
- Increasing the Effectiveness of Malawi Police Service to Address Corruption Related Crimes;
- Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT); and
- Credit Ratings as an Indicator of Malawi's Fiscal Management and Anti-Corruption Success

Many of these inventions are highly integrated. For example, Reserve Bank of Malawi takes the lead on issues surrounding money laundering and the technicalities of the associated legislation, supported by technical assistance from the United States Treasury, but University of Malawi, Chancellor College Faculty of Law, with support from an envisioned anti-corruption project umbrella, and the US Department of Justice will work with members of the National Assembly to make sure that they have a strong understanding of the proposed legislation and are able to deal with it in a professional manner. Chancellor College will also make sure that Malawian civil society organizations and journalists are aware of and understand the law and its potential impact in order to encourage citizen oversight. In a similar vein, the Law Commission will take the lead in drafting a Declaration of Assets bill, technically supported by US Department of Justice. The drafting of this bill will not only provide Malawi with a piece of badly needed legislation to check public officials, it will be a vehicle to improve the ability of the Law Commission to draft legislation, providing Malawi with a badly needed larger pool of legislative draftspeople. The role of Chancellor College Faculty of Law, civil society, and the media will be similar to that for the Anti-Money Laundering bill.

Some of the interventions play indicator roles that will provide information to decision-makers, allow the Country Program to adjust its course, and prove evidence of success. Amongst these are the credit ratings facility and the polling proposed as part of Civil Society Integration into an

Anti-Corruption Campaign. The rationale for the credit rating has been explained above. The polling activity, undertaken by an independent, professional polling entity, will focus on the impact of the broad campaign on public perception and gauge the development of knowledge, skills, and attitudes regarding corruption and government management of finances both amongst the general public and within certain target groups, such as the police.

Government of Malawi is proposing some very specific indicators against proposed reforms and a detailed summary is in Annex A of this document. A sample of reforms anticipated as a result of and within the timeframe of the proposed Country Plan are:

- An Integrated Financial Management Information System installed and in use in 6 Executive Branch departments and available in the National Assembly and the Auditor General.
- Independence of National Assembly strengthened by empowering its role in the budget process through amendment of the Parliamentary Service Act and development of capacities of the committee system
- National Assembly oversight of the budget and the Executive branch improved and strengthened by built capacity of staff and members
- Realistic, best-practice government procurement systems designed and in use in the Department of Public Procurements and prioritized Specialized Procurement Units
- Declarations of Assets act drafted, promulgated, and enforced
- Best practices Money Laundering act passed, promulgated, and enforced
- Banking supervision systems functioning effectively in accordance with the Money Laundering act
- Police and prosecutors are able to mount more effective anti-corruption cases
- Civil society and media play a demonstrably active role in disseminating quality information and analysis regarding corruption and government fiscal management and aggregate citizen opinion around the same.
- Freedom of Information Act passed, promulgated and used by a vigorous Media Council and professionalized journalists.

Government of Malawi requests support for a limited number of staff salaries in only two of the fifteen components that make up the Country Plan, in the National Assembly and the National Audit Office. In the case of the National Assembly, the Government of Malawi requests salary support to recruit four staff with skills related to budget analysis, finance, and economics to support key committee work. Government of Malawi pledges to assure that at the end of the 24 month Threshold Program, sufficient resources will be placed in the National Assembly line item of the budget to cover these positions. GOM furthermore, requests MCC support to recruit accountants and auditors for the National Audit Office. In this case, because the National Audit Office charges fees of other government agencies for its work, the positions will become self-sustaining. At present, however, because the positions are vacant, the National Audit Office must out-source the work to private audit firms, creating a cycle of resource scarcity that prohibits hiring the necessary staff.

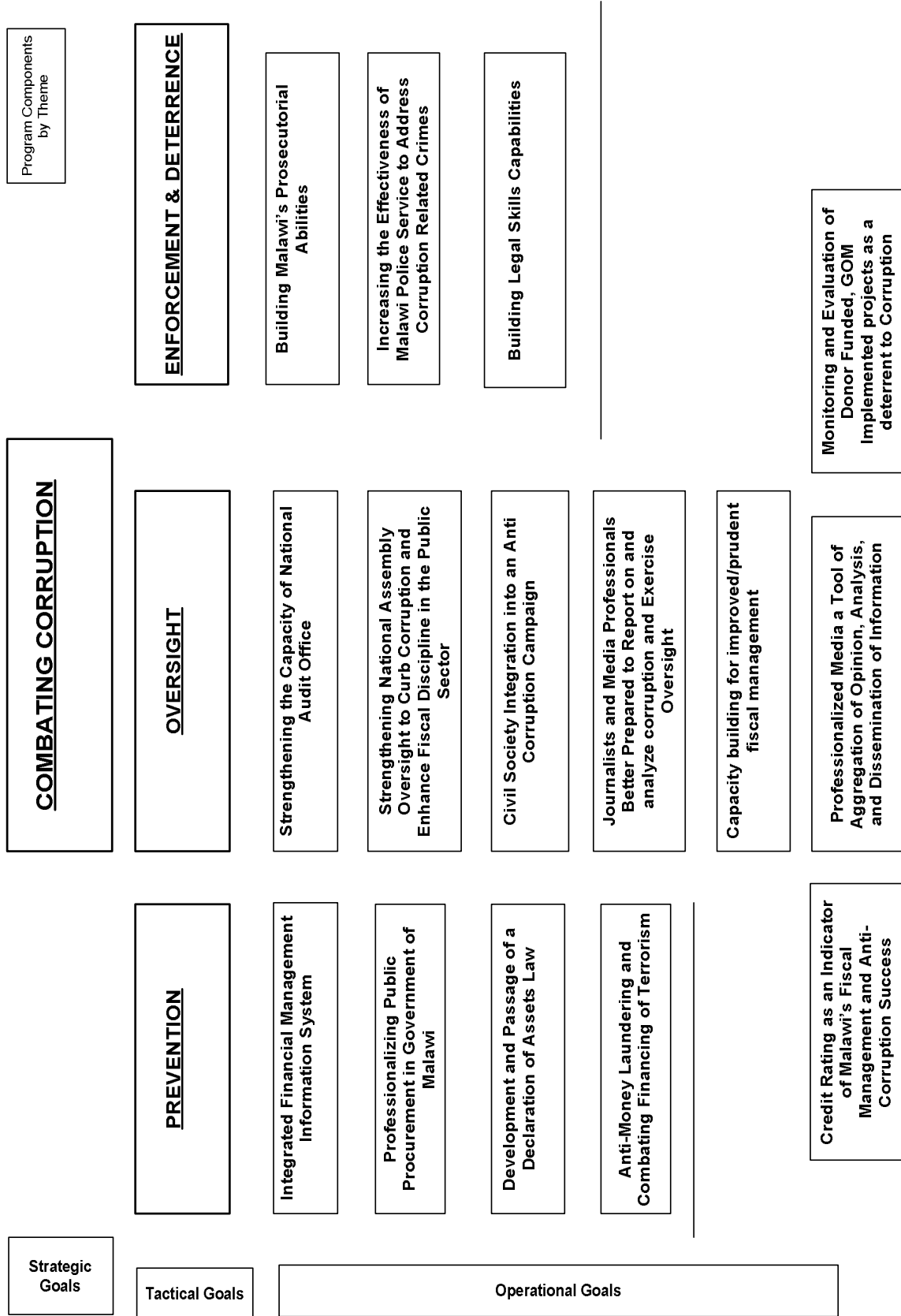
### ***Executive Summary Diagrams***

Three tables follow to provide an overview of the integrated Threshold Plan proposed by the Government of Malawi. In the proposed Plan, many actors and institutions will need to work collaboratively, cooperatively, and also individually.

The first diagram shows the Malawi Threshold Country Plan with the activity components divided out by major themes; Prevention, Oversight, and Enforcement. Three cross-cutting activities appear in the three boxes at the bottom of the diagram, credit ratings, media, and monitoring and evaluation.

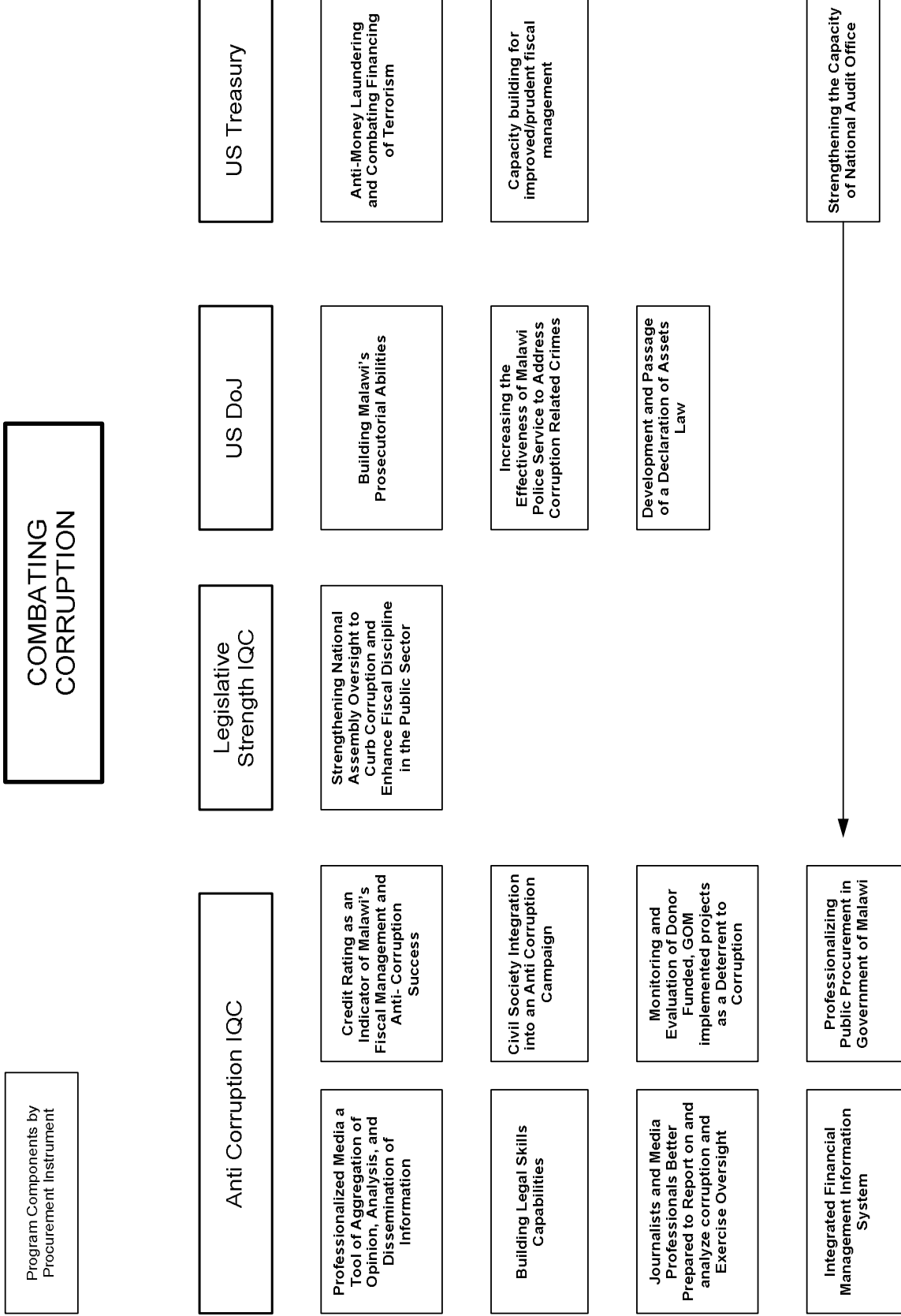
The second diagram shows the same activity components, but this time divided out by the home sector in which they will work; Executive Branch, Legislature, Legal, and Civil Society.

The third diagram is notional. It responds to and reflects the discussions about how to actually implement the plan between Government of Malawi and USAID.









## **PLAN OF ACTION FOR THE MALAWI COUNTRY THRESHOLD PLAN**

### **Prevention**

The Government of Malawi has designed a Threshold Country Plan around three elements critical to stopping corruption namely: Prevention; Oversight; and Enforcement/Deterrence. The three elements incorporate the essential themes of sound fiscal management as an indivisible part of the fight against corruption.

Prevention is the first element to be considered in the Plan. The constituent activities described below aim to tighten the systems and build up the firewalls, which help prevent crimes of corruption before they happen. This will among other things be complimented by the Declaration of Assets Law, as a measure to prevent public trustees from abusing positions of power and authority. Once promulgated, this will also act as a tool of oversight.

### **Integrated Financial Management Information System**

#### **A. Purpose/Objective**

The objective of this activity is to procure and fully deploy an Integrated Financial Management Information System for Government of Malawi in order to

- Control and aggregate spending, imposing financial discipline in government;
- Allocate funds based on strategic prioritizations;
- Make better use of budgeted resources once deployed;
- Improve accountability;
- Improve assessment of value for money (impact);
- Create linkages between policy, planning, budgeting, accounting and accountability components of the system; and
- Enable and enforce timely and accurate reporting by ministries to Treasury.

#### **B. Description**

The strategic framework for all Government of Malawi decision-making, budgeting, and prioritization is the Malawi Poverty Reduction Strategy (MPRS) and the Malawi Economic Growth Strategy (MEGS). In order to achieve the goal of poverty reduction through economic growth (also a Millennium Challenge Corporation principle), Malawi must make the most of its scarce resources. This requires tight control of the budget, the ability to analyze the deployment of budgetary resources in order to maximize efficiency, and information about impact. Simply stated: Are the funds allocated in specific budget line items reaching the end beneficiaries in schools, health clinics, or farms around Malawi? The obvious corollary to this is, if funding is not reaching its destination, where is the leakage? Who is responsible for the leakage? The proposed Integrated Financial Management Information System (IFMIS) is a centerpiece of the proposed Government of Malawi (GOM) integrated effort to curb corruption and improve fiscal responsibility/financial management. Indeed, an Integrated Financial Management and Information System is a conditionality of IMF and World Bank debt relief under HIPC.

#### **Statement of the Problem**

At present, The Office of the Accountant General, housed in the Ministry of Finance, tries to track the allocations and expenditures of the GOM budget through a manual system, complicated by a budget which is output based and a reporting system that is input based. While the Accountant General can see what was spent, after a long time lag, they however fail to see what

the funds accomplished. Furthermore, the current system permits arrears to develop. In 2003, The Economics Association of Malawi estimated that based on cash flow in the first three months of the fiscal year (July to July), the government was set to exceed the budget approved by National Assembly by 40 percent.<sup>1</sup> The problem of arrears, an estimated 10 billion MWK (\$103 million) in 2003, adds crushing burden on domestic debt, service of which consumes 30 percent of recurrent expenditures.<sup>2</sup> Malawi has consistently released reports, on actual spending two years after fiscal year end. In FY 2003/2004, GOM could not account at all for 38 percent of the estimated government spending.

The picture that emerges here is of a scenario where there is inadequate control over spending, inability to account for funds and to assure that expenditures are actually reaching the intended end-users and having impact.

#### **Government of Malawi accomplishments and commitments to date.**

The GOM is committed to a regime of fiscal responsibility and zero tolerance for corruption.

Specifically, as relates to IFMIS, the Accountant General has identified donor technical and resource support to lay the foundations for IFMIS, including:

- The recently completed review of the budget classification to bring it into line with the standard classification recommended by the International Monetary Fund and the integration of the classification into a unified, revised Chart of Accounts
- Identification of an appropriate platform for IFMIS
- Selection and agreement regarding the first government departments to install and use IFMIS
- Memorandum of Understanding agreed between Government of Tanzania and Government of Malawi following a technical visit to Tanzania to learn about the Tanzanian Integrated Financial Management Information System. The Memorandum of Understanding provides for technical assistance by Government of Tanzania to Government of Malawi to support migration to IFMIS.
- 20 individuals from the first government departments to migrate to IFMIS sent to a regional training site as part of the first step to create a pool of Malawian “super-users” who will guide and mentor others in their departments.
- Appropriate line item of the FY 2005/2006 budget to support the purchase the software package (approximately \$800,000)

In the activity proposed for MCC support, Government of Malawi seeks to implement an IMFIS solution to the problems outlined in the Problem Statement above. The Government of Malawi has selected a vendor, EPICOR, a US-based firm, on the basis of (a) their successful experience in Tanzania, where identical problems were addressed in a similar environment and (b) their ability to provide regionally based support.

Specifically, this activity, conducted over a 24 month period will:

<sup>1</sup> South African Institute of International Affairs. Malawi and the African Peer Review Mechanism: A Review of national Readiness and Recommendations for Participation. South Africa, August 2004. p. 13

<sup>2</sup> The Economist Intelligence Unit. Country Report: Malawi. London, March 2005. p. 3

- Start live implementation at Treasury, Accountant General Office, Ministry of Education, Ministry of Health, and Ministry of Agriculture, deploying on existing computer equipment as an interim infrastructure. These sites have been chosen for their relationship to financial responsibility and pro-poor expenditure priorities per MPRS.
- Provide the National Audit Office, Department of Public Procurement and the National Assembly, Budget and Finance Committee with a read-only access to the IFMIS system.
- Train the application Support Team and Technical Support Team at a regional training center (Dar As-Salaam)
- Train first group of 35 end users from the eight initial sites listed above at the regional training center.
- Establish two training labs for end user training at the Ministry of Finance using existing equipment.
- IFMIS roll out to the eight initial sites selected for first implementation (Treasury, Accountant General, Ministries of Education, Health, and Agriculture, National Assembly, Department of Public Procurements, and National Audit Office).
- Implement EPICOR-based Medium Term Expenditure Framework model with live operations.
- Provision of onsite support throughout the project duration
- Provide remote and onsite post implementation support for additional six months following roll-out.

**C. Key Measures of Success**

- IFMIS deployed and in use at the eight specified sites
- Arrears spending ceases in eight specified sites
- Reporting from selected ministries and departments to the Accountant General timely and accurate.
- Accountant General provides timely and accurate reporting to Ministry of Finance and to National Assembly on budget performance and impact

**C. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**D. Budget**

Please see the consolidated budget, Annex B.

**E. Implementation Plan**

This activity will be managed under the umbrella of the US contractor implemented anti-corruption activity. The US contractor will either handle funds for this activity as a pass-through to EPICOR or will subcontract EPICOR. Activities will actually be implemented by the Government of Malawi, technically assisted and supported by EPICOR's regional representative staff, monitored and guided by the MCC/USAID implementing partner. The Government of Malawi has selected a US based software system/provider with a regional representative and the contractor will be instructed to pick up the work already begun and carry it forward. The project is anticipated to require 18 months.

**Professionalizing Public Procurement in Government of Malawi**

**A. Purpose/Objective**

The objective of this activity is to build professionalism and skills in the Department of Public

Procurement and to close off one of the main avenues for diversion of funds in Government of Malawi. This objective will be achieved through:

- Full implementation of the Procurement Act of 2003
- Ensuring that the Directorate of Public Procurement (DOPP) and the Specialized Procurement Units (SPU) have adequate staff
- Staff skill development in procurement and supply chain management
- Reform the supply chain management system through training, a management information system, and a website
- Initiate work to assure sustainable training capacity for procurement professionals

## **B. Description**

Procurement of goods and services and supply management are vulnerable points, which urgently requires attention. The staff of the DOPP and Specialized Procurement Units must learn skills, systems, and ethics essential for procurement professionals. The Government procurement processes must become transparent and carefully controlled.

### **Statement of the Problem**

Procurement of goods and services by Malawi public institutions has been haphazard, non-transparent and very expensive, an area open to large-scale abuse. Following recommendations by the World Bank, the Directorate of Public Procurement (DOPP) was established to monitor and oversee procurements handled by each ministry.

Professional procurement is a new field in Malawi. As a recently establishment in 2003, the DOPP currently has very few of its positions filled. Some of the SPUs under the DOPP are occupied by officers with no training in procurement and supply management. It has been extremely difficult to fill the vacant posts because procurement issues were not given much attention in the past. The challenge now for government is to fill all vacant positions under DOPP with professionals. The strategy in the short term is to offer intensive training to current officers in procurement basics. Furthermore, with procurements decentralized to the Ministry level, but lacking an effective management information system to track and control, decentralization risks spreading a problem out more than solving it.

### **Government of Malawi Accomplishments and Commitments to date**

The Government of Malawi is committed to implement a procurement system that is transparent, fair and accountable. Several strides have been made since the GOM embarked on a Procurement and Supply Management Reform Programme in 1996.

- The enactment of a Public Procurement Act of July 2003 has been noted by many international observers as a step in the right direction
- Establishment of Directorate of Public Procurement to provide oversight in all public procurement and establishment of Specialized Procurement Units (SPUs) and Internal Procurement Committees to assist Controlling Officers in procurement issues
- A training policy and strategy has been developed with cost estimates over a four-year period

This activity involves two principal components. First, Training of DOPP and SPU staff in procurement skills, best practices, requirements of Malawi's regulatory framework (the

procurement Act), and procurement ethics. Second, procurement and deployment of an effective management information system to link the DOPP and key SPUs, tracking procurement processes from start to finish and top to bottom. Government of Malawi, in this regard, requests assistance from MCC to provide technical support to DOPP in the identification and selection of an appropriate MIS, as well as to decide which SPUs can and should be effectively linked to the MIS within the timeframe of the Threshold Program.

### **C. Key Measures of Success**

The following will be considered as key measures of success under this component of the Threshold Program:

- Procurement Act fully implemented
- GOM procurement staff trained and implementing best practice procurement procedures
- Procurement guidelines followed by the SPUs and Internal Procurement Committees (IPCs)
- Improved management of supplies i.e. reduced wastage or leakage of supplies in warehouses
- Deployment of MIS in DOPP and select SPUs
- Procurement audits of selected public procuring entities return positive findings

### **D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Country Program Annex A.

### **E. Proposed Budget**

Please see the consolidated budget, Annex B.

### **F. Implementation Plan**

This activity will be managed by a US contractor implementing an umbrella anti-corruption activity. Some training inputs will be provided by Chancellor College, Faculty of Law.

## **Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT)**

### **A Purpose/Objective**

The objective of this activity is to prevent money laundering and terrorist financing through effective legal and operational frameworks. In particular, this activity intends to achieve the following:

- Promote and pass Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT) legislation that conforms to international standards;
- Amend the AML/CFT legislation to incorporate new international standards;
- Establish an effective financial intelligence unit (FIU) as the nerve center of the anti-money laundering work;
- Build the capacity of bank supervisors to monitor and enforce compliance of the financial sector with AML/CFT laws and regulations;
- Develop a national AML/CFT strategy in line with international recommendations; and
- Take action upon Government of Malawi's commitments and obligations under international and regional conventions, UN resolutions, and recommendations of international supervisory bodies.

## **B Description**

The Malawi Poverty Reduction Strategy (MPRS) and the Malawi Economic Growth Strategy (MEGS) constitute the strategic framework for Government of Malawi (GOM) decision-making and budgeting. To reduce poverty through economic growth, Malawi must encourage the private sector and enforce prudent management of public resources. Addressing the problem of money laundering is a clear and important element in the fight on corruption, which distorts and discourages the private sector and illegitimately diverts public resources.

In this proposed activity, The Reserve Bank of Malawi (RBM), in cooperation with the United States Treasury, Department of Justice, Chancellor College Faculty of Law and the Malawi National Assembly plans to:

- Assure passage of the AML/CFT legislation through an informed National Assembly;
- Work with the media and civil society to assure general public understanding of the legislation and its importance;
- Create the capacity within RBM to develop and implement risk-based examination procedures for banking supervision;
- Amend the AML/CFT legislation to incorporate new international standards;
- Establish a Financial Intelligence Unit; and
- Develop a national AML/CFT Strategic Plan.

### **Statement of the Problem**

Malawi is party to international and continental/regional legal instruments which address AML/CFT issues, setting out specific obligations and actions for member states with respect to anti-money laundering and terrorist financing. To meet these obligations, GOM drafted a Money Laundering and Proceeds of Serious Crime Bill in 2002. This bill has not passed through the National Assembly for a variety of reasons, some political and some technical. The bill, re-gazetted in 2004, is currently with the Legal Affairs Committee, and the National Assembly has clearly signalled that it is willing to consider it. In the meantime, best legislative practices as pertains to AML/CFT standards have changed, meaning that the 2004 draft bill shall require subsequent amendment once passed.

Reserve Bank of Malawi, as a financial sector supervisory institution, is under considerable pressure within the Southern Africa Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA) to implement measures against money laundering and terrorist financing as proposed by the Basel Committee on Banking Supervision<sup>3</sup>. However, Malawi has not complied because the necessary legislation is not in place. Given the circumstances, Malawi can best be described as one of the weakest link in the global fight against money laundering.

RBM suffers the challenges common to other Malawian institutions in terms of a lack of human capacity. There are too few skilled individuals and a paucity of skills in certain specialties. These gaps present significant barriers to work.

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<sup>3</sup> Basle Committee on Banking Supervision is an international body that sets supervisory standards.



### **Government of Malawi's commitments and accomplishments to date**

Government of Malawi views the cessation of money laundering as a conduit of ill-gotten gains through corruption most seriously, as evidenced by:

- Membership in 1999 of the Eastern and South African Anti Money Laundering Group
- Establishment and international recognition of the Financial Action Task Force
- Preparation of the anti-money laundering bill that was gazetted in both 2002 and 2004
- Public awareness activities for policy makers and MPs on the bill
- Party to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the International Convention for the Suppression of the Financing of Terrorism, OAU Convention on the Prevention and Combating of Terrorism, UN Convention Against Trans-national Organized Crime, and UN Convention against Corruption

Government of Malawi is committed to

- The revision of and passage of the Anti-Money Laundering and Combating Financing of Terrorism legislation, to bring it into line with international guidelines
- The establishment of a Financial Intelligence Unit
- Enforce banking supervision standards, AML/CFT legislation and international commitments

Specific activities to be undertaken will include:

- Dissemination of information and advocacy around the AML/CFT legislation in coordination with the Legal Committee of the National Assembly and with support of international and local expertise. RBM intends to work closely with the National Assembly in this matter to assure that both institutions are on the same trajectory and learning curve. RBM will subsequently introduce an amendment to the legislation to bring it into line with current international guidelines. In light of the new political attitudes in Malawi and with solid effort to make sure that the National Assembly have enough information to be comfortable making decisions on a piece of legislation which is highly technical and complex, passage of the legislation should not face undue barriers. Chancellor College Faculty of Law working in close cooperation with RBM will help provide Members of the National Assembly with the information and analysis they need.
- Working through the media and civil society, Malawian citizens will be informed, educated, and sensitized to the importance and need for the AML/CFT legislation. This effort is an integral part of the work described in the media and civil society sections of the Malawi Threshold Country Plan to make sure that specific efforts to roll back corruption are well-understood, implemented, and that the campaign is not isolated to a few executive branch institutions.
- Risk-based examination procedures and techniques must be introduced and implemented to support meaningful promulgation of the AML/CFT legislation to enforce and monitor compliance in the financial sector. This is a key role for RBM and technical assistance to develop capacities, systems, and protocols is requested.
- The international recommendations by the Financial Action Task Force, International Conventions, and UN Special Recommendations on AML/CFT state that jurisdictions should have an agency that will be responsible for carrying out activities of financial intelligence unit. This function requires specialized expertise and equipment. Malawi is committed to the establishment of such a unit, but requests technical assistance to help

- GOM determine the most effective institutional home for the Unit and technical and material assistance to establish the Unit with appropriate systems and skilled staff.
- Malawi will prepare a national AML/CFT strategic plan, in line with Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG) Ministerial Council resolutions. All member countries must develop national AML/CFT strategies. This exercise requires wide consultations so that all (or most of) the stakeholders provide input in the development process to ensure ‘ownership’ of the document. The consultation process requires a champion, dedicated officers and also funding to bring together all stakeholders.

**C. Key Measures of Success**

- Members of the National Assembly will conduct informed debates and pass a best practices AML/CFT bill.<sup>4</sup>
- RBM will detect and report suspicious financial transactions in supervised financial institutions;
- Establishment and operation of an effective FIU in Malawi; and
- ESAAMLG compliant AML/CFT formulated, accepted, and implementation underway.

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation**

RBM anticipates that the US Treasury will provide the assistance requested as part of MCA funding.

**Development and Passage of a Declaration of Assets Law**

**A. Purpose/Objective**

The objective of this activity is to develop and pass legislation that actualizes provisions in the Constitution regarding declaration of assets by public officials. It furthermore supports planned work in the Law Commission to consultatively draft a political parties finance act and to permit the Law Commission, as part of its legitimate mandate to review about 40 outdated media related laws still on the books, and still used occasionally to the detriment of free press and transparency. As an integral part of the development and review of the legislation, Law Commission staff will have their legislative drafting skills improved, and a public information campaign will be conducted to make sure the reasons and objectives of the assets declaration legislation and other pieces of anti-corruption legislation are fully understood by citizens.

**B. Description**

The Malawi Constitution makes provision that the president, cabinet ministers, members of the National Assembly, and senior public officers shall declare their business interests soon after election, nomination, or appointment.<sup>5</sup> These Constitutional provisions are, understandably,

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<sup>4</sup> Chancellor College will work with Members of Parliament as part of this integrated Threshold Plan.

<sup>5</sup> Section 88A as read with Section 213

general in nature and legislation needs to be developed to actualize them. Declaration of assets is one obvious method of preventing corruption and curbing the abuse of public power for personal interests. A clear, transparent, enforceable system of asset declaration should also impart an important oversight tool to legislature and citizens.

### **Statement of the Problem**

As noted above, Malawi lacks legislation regarding the declaration of assets and liabilities by public figures. This is a clear loophole in trying to identify corruption because it means that no baseline of assets for public officials with discretionary powers over government assets is established when they assume office. Related to the problem of the piece of legislation itself, is the matter of a shortage of people in Malawi skilled in legislative drafting.

### **Government of Malawi accomplishments and commitments to date.**

The GOM is committed to a regime of fiscal responsibility and zero tolerance for corruption.

- Government of Malawi passed the Law Commission Act in 1998, establishing the Law Commission as an independent institution to review and make recommendations regarding repeal and amendment of the laws of Malawi to bring them into conformity with the Constitution and applicable international law. It is also mandated to propose reforms.
- There is support in the legislature and the Constitutional bodies for assets declaration legislation.

The GOM commits to:

- Development and passage of an asset declaration act at international best practice standard by July 2006.
- Development of and passage of a Political Parties Finance Act by July 2007.

The proposed Declaration of Assets legislation will seek to address the following issues:

### **Coverage of the Law**

- In light of decentralization, should local authority employees declare assets as do central government employees?
- Should specification of grades and positions of public officers required to declare assets and liabilities be delegated to the National Assembly as at present?

### **Filing Frequency and Methods**

- How often should public officers be required to file?

### **Declaration Content**

- Is the National Assembly the appropriate recipient of the declarations, especially for non-elected public officers? In other jurisdictions, the receiving authority is the office of the Auditor General.
- May the receiving authority query on inconsistent declarations or ask for clarifications?
- How should the declarations' content be verified?
- How long should the declaration record be maintained?

**Enforcement**

- What constitutes appropriate sanction for failing to declare or inaccurate/false declarations?
- Should officials be prosecuted for violating this law?

**Public access to declarations**

- Whether the public should be allowed to access the information and if allowed, what should the procedure be?

**Framework of the law**

- Whether the law should include other matters relating to Code of Ethics for public officers. For example, integrity, impartiality, fairness and responsibility.

Following an identical route, the Law Commission, with technical assistance, will develop a Political Parties Finance Act. Outdated laws regarding the press will be reviewed on a regular and routine basis over the two years of the Threshold Program.

In tandem with development of these pieces of key reform legislation, and using them as a vehicle, Government of Malawi will seek to have the skills and abilities of Law Commission legislative drafting staff built and enhanced.

Concomitantly, working through the Law Commission's Civic Education Unit and civil society organizations, key interlocutors, including the National Assembly, the judiciary, the Anti-Corruption Bureau, Chancellor College law school professors and the public will be targets of a public information campaign to make sure the assets declaration legislation and other anti-corruption legislation are broadly understood.

**C. Key Measures of Success**

- Assets declaration legislation of best practice standard is ratified by the National Assembly by July 2006
- Political party finance legislation is ratified by the National Assembly by 2007
- Law Commission staff more able to draft quality legislation and provide better support in this regard to other government agencies and departments
- Key stakeholders understand and endorse the asset declaration legislation as evidenced by passage and implementation of the legislation
- Public information regarding anti-corruption legislation is disseminated<sup>6</sup> and understood as evidenced by polling results.

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation Plan**

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<sup>6</sup> Dissemination of information and civic education also to be implemented by Civil Society and Building Legal Skills components of this integrated Threshold Plan.

Procurements for material assistance, including reference materials, and logistics of management of short-term participant trainees may, if appropriate be handled on behalf of Department of Justice by a US implementing contractor working on other aspects of the MCC Threshold Country Program. Civil society and Chancellor College, Faculty of Law will participate in dissemination of information and development of relevant knowledge, skills, and attitudes in select groups, as appropriate.

## **Oversight Functions**

The Government of Malawi recognizes that oversight is a weakness in its young democratic system. Through the Threshold Country Program, Malawi seeks to strengthen institutions whose oversight role is paramount and to open doors of transparency and information sharing to them.

As noted above in the Prevention section of this Threshold Country Plan, the division of activity components between Prevention, Oversight, and Enforcement/Deterrence cannot be absolute. Strengthening the Capacity of the Audit Office was included as a measure of Prevention, but it is also, clearly, a tool of oversight as well. Professionalization of the Media, included here as a tool of Oversight, is actually a cross-cutting theme with a role to play in Prevention and Deterrence as well.

## **Strengthening the Government of Malawi's Audit Capacities**

### **A Purpose/Objective**

The objective of this activity is to strengthen the capacity of the National Audit Office (NAO), to conduct audits of the public accounts of Malawi and accounts of public authorities per the Constitution and the Public Audit Act. Specifically the purpose of this activity is to develop:

- Transparency in government business;
- Accountability of public resources;
- Adherence to the budget;
- Monitoring and evaluating the impact of public resources;
- Reporting by the public sector in accordance with generally accepted accounting principles; and
- Auditor General meets the standards of the International Organization of Supreme Audit Institutions.

### **B. Description**

In order to achieve the goal of poverty reduction and economic growth, Malawi must make the most of its scarce resources. This requires tight control of the budget, analysis of the deployment of budgetary resources, impact monitoring, and reporting to the National Assembly on public accounts and accounts of public authorities. Public resources are wasted through inefficient procurement, fraud, theft and corruption and the Auditor General's Office does not have the capacity to conduct timely audit of public offices. Specifically, this project will:

- Provide training to NAO staff;
- Support recruitment of additional staff; and
- Provide an appropriate information/audit computer based management system.

## **Statement of the Problem**

The Office of the Auditor General is unable to conduct annual audits of all public institutions (this includes government ministries, 37 local assemblies and 57 parastatals). Coverage is less than 20 percent per annum. The Public Audit Act requires that audit reports for all public institutions should be submitted to the National Assembly within 6 months after the end of the government financial year, 30 June. However, at present, reports are submitted more than one year in arrears because:

- NAO is grossly understaffed. At present there are 210 vacancies that need to be filled
- Inability to retain qualified staff because civil service salaries are not competitive with private audit firms, parastatals, NGOs and the private sector. Staff retention rate is about 25% for graduate accountants and 50% for diplomate accountants.
- The audit process at present is manual and needs to be computerized based on Computer Assisted Audit Techniques.

#### **Government of Malawi's commitments and accomplishments to date**

- Passage of the 2003 Audit Act, a key piece of reform legislation
- Commitment by GOM to allow for the recruitment of 50 new staff members
- Work underway in the Public Accounts Committee of The National Assembly to develop new staff conditions of service to improve the competitive edge of the Constitutional Bodies and enable them to recruit and retain staff

Due to critical staff shortages and lack of adequately qualified personnel, the Government of Malawi is forced to outsource audit services to private audit firms and the fees that these firms charge are very high. If the capacity of NAO increases through training, recruitment, and material assistance, NAO can be self-sustaining within two years time because it charges other agencies for its services. Presently these charges go to the out-sourced audit firms.

This activity is one of only two components in the Threshold Country Plan in which Government of Malawi requests Millennium Challenge Corporation to actually support staff salaries for a limited period of time. Without an adequate number of qualified accountants and auditors, GOM simply cannot make progress within this component and until the Public Accounts Committee has completed its work on the staff conditions in Constitutional Bodies (like Auditor General and the National Assembly) to de-link salaries from the regular civil service scale, the Auditor General is not going to be able to recruit and retain even the minimally necessary staff. Government of Malawi believes that the MCC investment in supporting staff is sustainable because the enabling framework will be put in place and the Auditor General's Office, through its work, sustains itself through its charges to other government agencies.

#### **C Key Measures of Success**

- Audit coverage of key institutions improved annually;
- Rate of staff retention improved;
- Audit reports submitted to National Assembly within six months of the government fiscal year end;
- Reduced number of audits outsourced to private audit firms and reduction in audit fees paid to private firms; and

- Auditor General Office on line with read-only access to IFMIS.<sup>7</sup>

**D Performance Monitoring Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, in Annex A.

**E. Budget Estimates**

Please see the consolidated budget, Annex B.

**F. Implementation**

This activity will be implemented by a US contractor.

## **Monitoring and Evaluation of GOM implemented projects as a Deterrent to Corruption**

**A. Purpose/Objective**

The objective of this activity is to build the project monitoring and evaluation capacity for Government of Malawi in order to:

- Mitigate against financial mismanagement and fraud
- Make project implementation more efficient
- Plan better projects for greater impact, tracking inputs against results

**B. Description**

The Government of Malawi's Concept Paper to MCC described an integrated, multi-sectoral, cross-institutional confrontation with corruption by tightening financial management, systems, and controls. In an economic environment such as Malawi's, where donor funding plays such an important role, it is important as part of the Country Plan to address it.

Individual government ministries and departments are free to propose and formulate projects that are intended to translate government policies into tangible action. These projects, depending on their merits, are included into the Public Sector Investment Programme (PSIP). The PSIP's determining criteria include the compatibility of the project objectives with the aims of the Malawi Poverty Reduction Strategy and the Malawi Economic Growth Strategy, the institutional structure, and the amount of resources being sought. Monitoring and evaluation of the projects in the PSIP is important government tool to assure project efficiency and that inputs are actually leading to desired results. Monitoring and evaluation deter fraud and corruption.

The M&E Division has so far monitored projects in the energy, transport, education, health and agriculture sectors. There has been very little evaluation work. The findings in the energy and transport sectors generated so much interest that the National Assembly requested a special probe into the road development contracts and the excessive claims from contractors for time compensation. A rough estimate of controversial claims on the road development projects is put at K2.0 billion (\$184 million). Clearly there is a need and rationale for this department.

Capacity in the Government of Malawi to monitor and evaluate projects to make sure that they are achieving intended results within appropriate timeframes and budgets, that impediments are

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<sup>7</sup> IFMIS is a component of the Threshold Country Plan

identified early, and that mistakes are not repeated will be built through technical assistance to the M&E Division in MEPD. Assistance will include:

- Professional staff development through in-country training in best practices
- Technical assistance and mentoring for staff and management in the M&E division for a period of 24 months
- Brief attachments for training/experiences purposes to other government M&E departments in the region

#### **Statement of the Problem**

The Monitoring and Evaluation (M&E) Division in the Ministry of Economic Planning and Development (MEPD) is responsible for monitoring and evaluation of more than 400 projects in the PSIP. The M&E section with a staff of five began work in earnest in August 2004 and the workload and the government expectations are overwhelming. It is important to note that the staff are not deeply experienced in M&E, and therefore basic training, mentoring, and guidance over time is needed. A basic MS Access software application has just been designed to assist with computerized information storage. The technical tools for monitoring and evaluation are still rudimentary and need to be improved. Training and skill building in monitoring and evaluation techniques and reporting, as well as some inputs in detection of financial mismanagement and fraud are the primary thrust of this activity, support with material assistance directly related project activities and results.

#### **Government Accomplishments and Commitments**

Government has laid the foundations for improving project implementation accountability. These have included:

- Creation of a unit for monitoring and evaluating policies and development projects.
- Staffing the unit.
- Training (long-term and short-term) for M&E staff

The new commitments by government include

- Recruitment of additional staff, already underway
- Training
- Funding for field visits
- Recruitment of M&E officers in all district assemblies (local governments) to facilitate timely information gathering and oversight.

#### **C. Key Measures of success**

- M&E staff trained in best practices and conducting regular M&E;
- M&E staff skills in reporting and analysis improved;
- Monitoring and Evaluation tools in place; and
- Monitoring of projects regime strict enough to deter fraud and mismanagement.

#### **D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.



## **E. Proposed Budget**

Please see the consolidated budget, Annex B.

## **F. Implementation Plan**

Training and procurement for this activity will be managed by a US contractor implementing an umbrella anti-corruption activity, in cooperation with Ministry of Economic Planning and Development, an appropriate US Department, Chancellor College (Faculty of Law), all working on other components of this integrated Threshold Plan.

## **Capacity Building for Improved/Prudent Fiscal Management**

### **A. Purpose/ Objective**

The objective of this activity is to strengthen capacity for prudent fiscal management in the Ministry of Finance, Ministry of Economic Planning and Development, and the Malawi Revenue Authority. Malawi's aspiration is that, under the Millennium Challenge Corporation, this activity will:

- Ensure strict adherence to an agreed economic program by all stakeholders, including budget compliance and discipline;
- Enhance cooperation in fiscal and economic management with key stakeholders;
- Improve debt and aid management and coordination;
- Improve revenue projection and collection systems that ensure fair tax administration; and
- Improve budgetary process and management of domestic debt.

This will be achieved through:

- Placement of a tax advisor in MRA to improve tax administration;
- Professional staff development through short and long-term (at least 2 people in each department in the Ministry) training in fiscal, economic, and debt and aid management;
- Technical assistance in economic modeling, economic forecasting, and policy research and analysis;
- Technical assistance in development of a budget system that links output based budget to detailed budget;
- Technical assistance to information technology staff;
- Three attachments to budget departments in South Africa, Tanzania and/or Kenya;
- Three attachments to debt and aid departments in Uganda and Tanzania;
- Acquiring and utilizing modern information technology in all departments of the ministry;
- Technical assistance to streamline and rationalize standard operating procedures and systems; and
- Subscribing to major economic journals to access latest information in economic issues.

### **B. Description**

In line with Government of Malawi's overarching policy objective of poverty reduction and economic growth, the Ministry of Finance is constitutionally mandated to manage, control and direct matters relating to the financial affairs of the government. Consistent with this mandate, the Ministry's mission is "to mobilize and allocate public financial resources in a manner consistent with national priorities and enforce prudent use of the same, thereby ensuring macro-economic stability necessary for the promotion of sustainable economic growth and development

of Malawi” according to its Strategic Plan. Malawi Revenue Authority’s mandate addresses the Ministry’s mandate on the revenue side of fiscal management.

### **Statement of the Problem**

Executing this mandate has not been easy for the Ministry of Finance due to a host of factors, including political, social and economic changes, lack of capacity for financial discipline and management, declining resources on one hand and increasing prices of goods and services on the other, and increased demands on public resources. In addition, the Ministry has had insufficient equipment and low levels of technology utilization, resulting in poor internal and external communication, records management, and coordination on budget, debt and aid, economic and fiscal policy matters. As most technical professionals have a Bachelor’s degree, inadequate quantity and quality of human resources available to the Ministry and MRA have also adversely affected fiscal management. The Ministry of Finance has not had adequate capacity to effectively and efficiently provide leadership in financial and economic development issues such that fiscal slippages and mismanagement and rampant corruption have adversely affected delivery of public services. In the proposed activity for MCC support, the Ministry of Finance seeks to build institutional and human capacity to effectively execute its mandate, ensuring prudent fiscal management and curbing corruption.

### **Accomplishments to Date**

- Enactment of the Public Finance Management Act (PFMA), Public Procurement Act, and the Public Audit Act (in 2003)
- The fiscal program has been on track under the IMF staff-monitored program (SMP) since July 2004
- Tax review exercise conducted in 2004/05
- Recent leadership and management changes at MRA

### **C. Key Measures Of Success**

- Measurable increase in fiscal and economic management performance;
- Reduced domestic borrowing;
- Reduced government spending;
- Improved equipment and technology utilization for data management and analysis in all departments;
- Improved internal and external communication and coordination;
- Improved capacity through human, technical and management skills development;
- Increased number of trained personnel with broad expertise in all departments;
- Improved fiscal analysis, implementation
- Improved revenue projection and collection by the Ministry and MRA
- Improved budget presentation, monitoring and evaluation, and expenditure analysis;
- Improved debt and aid management, analysis, and forecasting; and
- Reduced cases of fiscal mismanagement and corruption.

### **D. Performance and Monitoring Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

## **E. Budget**

Please see the consolidated budget, Annex B.

## **F. Implementation Plan**

In this activity US Treasury will be the lead implementer, providing Ministry of Finance with appropriate resident technical advisor support as well as intermittent technical assistance to assure the best array of assistance calibrated to the different tasks set by Malawi Ministry of Finance. US Treasury will be supported, and work in cooperation with a US contracting implementing related anti-corruption activities under the Threshold Plan. The contractor will support US Treasury led activities by coordinating regional training and attachments and managing the procurement of materials directly allocable to the activities and results of US Treasury assistance.

## **Strengthening National Assembly Oversight to Curb Corruption and Enhance Fiscal Discipline in the Public Sector**

### **A. Purpose/Objective**

The overarching purpose of this activity is to strengthen the National Assembly committee system so that committees can effectively carry out their constitutional mandate of oversight, critical to curbing corruption and enhancing fiscal discipline in the public sector. The specific objectives are:

- Train staff with competencies in finance, accounting, and auditing to support National Assembly committees particularly in budget monitoring and tracking and consideration of the Auditor General's reports in a timely fashion;
- Develop a pool of competent staff to help committees effectively exercise their oversight functions;
- Build Members' of the National Assembly abilities to improve the institution's oversight work and National Assembly investigations related to corruption, abuse of power, and enforcing good governance in general;
- Connect The National Assembly to Government Wide Area Network (GWAN) so that MPs can access the Integrated Financial Management System (IFMIS) and relevant committees can track budget allocations and expenditures;<sup>8</sup>
- Support consultants for committees considering technical bills that have a significant bearing on anticorruption, financial discipline, and good governance; and
- Support the Legal Affairs committee to review and reform the rules and practices of the House relevant to the oversight role of The National Assembly.

### **B. Description**

Corruption pervades systems that allow excessive individual discretion, lack structures to effectively monitor the exercise of discretion, and where systems operate in isolation. In Malawi, although on solid Constitutional ground, the National Assembly is very weak when compared to the executive. No serious, integrated attack on corruption in Malawi is going to be effective without addressing the fundamental weakness of the system of checks and balances between the parts of government. The proposed activity, firmly rooted in the Good Governance pillar of the Malawi Poverty Reduction Strategy (MPRS), seeks to address that vulnerability and is therefore a centerpiece of the Malawi Threshold Plan.

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<sup>8</sup> IFMIS is one of the activities proposed in the Threshold Plan by Office of the Accountant General.

In order to strengthen the National Assembly to provide the check discretionary powers in the executive branch, three inter-related initiatives are necessary. (1) The National Assembly's independence must be enshrined by assuring that its funding cannot be tampered with or withheld by the executive. This can, in part, be addressed by amendment of the Parliamentary Service Act. Amendments to the current House Rules are also required. (2) The staff and representatives must develop a strong and confident grasp of democratic legislative practice and procedures. Staff and representatives need the information and expertise to be at their disposal to support well thought out decision-making and to critically analyze subjects, which are often highly technical. (3) Infrastructural support as related to key areas of democratic growth and reform is needed to create the framework of the National Assembly's work.

### **Statement of the Problem**

In the framework of separation of powers and checks and balance, the Constitution vests the National Assembly with powers for exercising oversight over the other branches of government, particularly the executive. The National Assembly discharges this mandate through its various committees, whose terms of reference, a code of conduct and practices, are engrained in the rules of the House. In the last six years, the National Assembly committees have gained traction performing oversight functions and reporting to the House.

Despite improvements, the practices and outcomes of the National Assembly oversight work represent a mixed track record with the outcomes, especially in enhancing the anti-corruption drive and fiscal discipline, dismal. Much of the failure can be ascribed to inadequacies in human capital and institutional incapacities that directly or indirectly impinge on committees and their oversight roles. Among the major problems are:

- Lack of a committee department and therefore no staff for committees. The Committees borrows staff from other departments with the National Assembly, creating inefficiencies across the board. At present, there are only two Committee Secretaries (Clerks) and thirteen committees. The effect is that some oversight activities are not done, some reports are not written or if written, the analysis is not thorough as efforts are thinly spread across committees and the staff cannot be specialized.
- As a result of the May 2004 elections and subsequent by-elections, 73 percent of the 142 MPs are new to the National Assembly. They, and the staff, simply do not have knowledge and experience to support meaningful oversight.
- MPs and staff need a strong foundation in financial procedures in government, ethics in public sector, and basics in public law.
- Some National Assembly procedures and practices are loaded with vestiges of Malawi's past, which emphasized the preeminence of the executive branch. The rules hinder oversight of the executive in matters of finances and need to be modified.

### **Government of Malawi accomplishments and commitments to date.**

The National Assembly and Government of Malawi, as well as the people of Malawi can point to a number of accomplishments related to the National Assembly.

- Malawi's National Assembly is democratically elected. As a result of the most recent election, 60 percent of members have at least a Bachelor's level degree.
- The National Assembly has instituted an in house training of staff on free Saturday mornings.
- One staff member is attending the Executive MBS programme at the Polytechnic, sponsored by Malawi Government
- Trying to address the staff shortage, Malawi Treasury has allocated five Committee Clerk positions. Two have been filled. Treasury commits as part of the MCC effort to release the necessary paperwork to allow The National Assembly to hire the three other budgeted committee clerks.
- Good working relationships and understanding have developed between the National Assembly committees and civil society organizations. This has helped with oversight, as well as policy advocacy.

In the proposed activity, the National Assembly seeks to recruit project staff as committee clerks and researchers with a view of creating a committee department that can, after the project ends, be taken up by Malawi government. As noted in Section I of the Malawi Country Plan, GOM is requesting assistance to actually provide specialized staff members trained in accounting, financial analysis, and economics to provide the specialized, technical support that key committees need. These staff will be in addition to those that GOM is going to recruit on its own account. The National Assembly wishes to train staff and MPs to improve legitimate oversight functions. Finally, the National Assembly seeks technical assistance to help in an overhaul of aspects of National Assembly procedures and practices especially with regard to National Assembly oversight on corruption and financial management to make the National Assembly more action oriented.

### **C. Key Measures of Success**

- At least 5 committee staff recruited by GOM and oriented in project developed orientation program for staff and MPs;
- Standing orders reviewed, amended, and adopted by the House;
- Constructive National Assembly debates on committee reports and resolutions;
- National Assembly connect to GWAN and IFMIS;
- Passage of amended Parliamentary Service act to strengthen the enabling framework of National Assembly independence;
- Informed debate, public hearings, and passage of the Money Laundering Act (technical assistance on this piece of legislation addressed in another Threshold Program component);<sup>9</sup>
- Informed debate, public hearings, and passage of the Declaration of Assets Act (technical assistance on this piece of legislation addressed in another Threshold Program component.);<sup>10</sup>
- Informed debate and passage of the Freedom of Information Act (technical assistance on this piece of legislation addressed in another Threshold Program component); and.<sup>11</sup>

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<sup>9</sup> Reserve Bank

<sup>10</sup> Law Commission

<sup>11</sup> Media Council

- Review and amendment of the Communications Law (technical assistance on this piece of legislation addressed in another Threshold Program Component).<sup>12</sup>

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation Plan**

A US contractor will implement this activity with the National Assembly. The initial scope of work for the contractor foresees careful, consultative needs assessment and targeting of project inputs in cooperation with the National Assembly. Together, the National Assembly and contractor will design the work plan. It is anticipated that US Treasury, US Department of Justice, and Chancellor College Faculty of Law will all contribute intermittent technical assistance in coordination with National Assembly and the US contractor.

**Journalists and Media Professionals Better Prepared to Report on and Analyze Corruption and Exercise Oversight**

**A. Purpose/Objective**

This activity will build journalists' skills for better, more factual and analytic reporting on corruption, economic crimes, and matters pertaining to the national budget to strengthen the oversight role of the media and increase information available to the public.

**B. Description**

The role of the media as an instrument of oversight cannot be over-emphasized. One can look at almost any country in the world and identify historic reforms that were ignited by a skilled journalist. Poor training and lack of experience make it difficult for most Malawian journalists to effectively analyze many news stories or, in fact, to regard them critically. The University of Malawi has just graduated its second journalism class after the introduction of the program five years ago. The Malawi Institute of Journalism has been providing hands-on journalism courses with academic content: a four-month certificate and one year diploma programs, with internship opportunities.

The activities proposed in this component of the Country Plan build upon the agreements, findings, and recommendations of the Strategy to Develop and Enhance the Media in Malawi, formulated collectively in August 2004 by a broad representation of Malawian media professionals, institutions, and organizations supported by USAID and DFID and technically assisted by the Center for Development Communication. Activities in this component are also closely linked to activities in another Country Plan component, 'Professionalized Media a Tool of Aggregation of Opinion, Analysis, and Dissemination of Information'.

**Statement of the Problem**

Lack of skills is probably the most significant factor contributing to the Malawi media's lackluster performance in the matter of oversight. Malawian journalists are not adequately

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<sup>12</sup> Media Council

trained and accreditation standards are non-existent. There is no opportunity to learn the specialized skills necessary to investigative journalism, particularly as it pertains to economic crimes, which often by their very nature, are complex and technical.

#### **Media accomplishments and commitments to date**

There are positive developments in Malawi in relation to the media and overall, the environment is promising. For example, the government recently fired a prominent cabinet member based on findings originally uncovered by a journalist.

- An access to information law has been drafted and is ready for review by parliament.
- The establishment of press offices with full time spokes people in ministries and other key institutions like the Malawi Police, the Anti Corruption Bureau and the Department of Public Prosecutions has been a very positive development for the media.
- Programs to train journalists, previously prohibited, have been established at the University of Malawi and Malawi Institute of Journalism.

This activity will build the skills of practicing journalists and journalism students through the provision of high-quality technical assistance and training. Basic skills, journalistic ethics, and more specialized skills will be addressed. As part of the activity, the capacities of the trainers of new journalists at University of Malawi and Malawi Institute of Journalism will be built in key relevant areas. It is anticipated that staff of other departments and institutions, for example the departments of economics or schools of accounting and law may, as appropriate, be included in the training as well so that they can participate in the development of an indigenous training capacity for Malawian journalists around the fields of interest in this Threshold Country Plan. While it is not necessary for all accounting instructors to understand the needs of journalists, nor all journalists to be accountants, the goal is to create some cross-fertilization between the fields so that journalists have somewhere to turn with questions and to seek information and assistance with analysis in highly technical fields.

This activity anticipates two major efforts that are closely linked. First, technical assistance will provide intermittent, short-term training of trainers build skills of teaching staff and professors of journalism at the University of Malawi and the Malawi Institute of Journalism in fields relevant to this threshold plan such as reporting and analysis on complex financial systems, the economy, the banking sector, or regulatory/legal frameworks. While in country, providers of training of trainer (TOT) technical assistance will also offer performance-based training workshops to media practioners and these workshops will be used, in part, as training laboratories for the TOT work.

Second, a continuing education curriculum and materials for practicing media professionals will be developed and delivered. This curriculum will be developed with regional and international expertise, but will taught and eventually handed over to local training institutions/trainers. The goal is to improve the abilities of journalists and the standard of reporting and analysis in the media within the 24 month period of the Threshold Country Plan and to create a sustainable source for continued professional development in the country.

#### **C. Key Measures of Success**

This activity will be conducted in a period of 24 months and will result in an absolute increase in the number of investigative reports related to corruption and government economic management, better quality and more accurate reporting on complex legal and economic issues, and a better-

informed citizenry and select target groups as evidenced by polling conducted in the civil society component of the Threshold Plan.

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**D. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation Plan**

Technical assistance and training within the framework of this activity will be arranged and implemented by a US contractor implementing an umbrella anti-corruption activity. Chancellor College is anticipated to provide some training inputs, per the Building Legal Skills Capacities component of this Threshold Plan, to assure that journalists are able to effectively and accurately (a) disseminate information to the public about key legislation, and (b) understand the legislation in order to exercise an appropriate oversight role.

**Professionalized Media a Tool of Aggregation of Opinion, Analysis, and Dissemination of Information**

**A. Purpose/Objective**

The objective of this activity is to build upon ongoing efforts to re-develop a Malawian media council, characterized by professionalism and legitimacy. The Media Council will:

- Advocate for and defend established freedoms of the press, including work around the Freedom of Information Act in concert with the National Assembly as well as involvement with ongoing Law Commission work to review approximately 40 outdated laws that restrict and impinge freedom of the press;
- Promote journalistic ethical and professional standards;
- Transparently address complaints about the conduct of the press in the sourcing and publication of news, opinion and advertising;
- Publicize complaints and decisions taken on the complaints; and
- Accredite journalists.

**B. Description**

A basic element of an integrated anti-corruption strategy, which is what Malawi is proposing in this Threshold Plan, is a free, clean, and independent media. This activity will “stand up” a Media Council of Malawi to provide an effective institution that performs the dual roles of advocating on behalf of media issues, such as advocacy and defense of freedom of the press, freedom of information, and freedom of speech and accrediting, and if necessary, discipline media practitioners as an important step towards increased professionalism, better standards, and greater accuracy in reporting.

An independent Media Council was a central recommendation of a widely inclusive August 2004 media stakeholders meeting that developed a strategy for developing and enhancing the media in



Malawi. The work described in this MCC Threshold Plan component builds upon that work and the consensus view.

### **Statement of the Problem**

At present the media sector in Malawi lacks credibility and clear professional standards or a body capable of enforcing them. Training of media professionals, addressed in another Threshold Plan component is, obviously, key, but so is an institutional framework. At present, there is no system for journalist accreditation, and concomitantly, there is no good system for discipline. Unfortunately, absence of ethical standards and no oversight on the media has led to checkbook journalism. The Malawi Government has done little to apply the Communications Act (1998) universally, allowing state owned media to enjoy a monopoly over resources and the oversight and regulation inherent to the Act. Furthermore, the Act urgently needs review and amendment.

#### **Media accomplishments and commitments to date**

The National Media Institute of Southern Africa (NAMISA) has been an active regional media watchdog, with a presence in Malawi, but it lacks a legal mandate to regulate journalism in Malawi. As an interim measure NAMISA set up the Media Complaints Committee and a Media Legal Aid Fund.

The Government of Malawi has stated a commitment to press freedom, but retains undue influence over public electronic media (Malawi Broadcasting Corporation and Television Malawi) and can occasionally impede the free functioning of the press. That notwithstanding, there have been several landmark developments in the media since 1994.

- Passage of the Communications Act into a law in November, 1998
- Progress on the Access to Information Bill which is being championed by NAMISA and the Malawi Government's publicized willingness to pass it into law
- Establishment of the Malawi Communications Regulatory Authority which as a government institution has a core duty of regulating broadcasting and allocating frequencies
- Establishment of journalism programs at the University of Malawi and Malawi Institute of Journalism
- Investigative media reports that have assisted the Anti Corruption Bureau pursue and conclude cases on public figures
- Establishment of the Media Legal Aid fund and the Media Complaints Committee by NAMISA in the absence of a Media Council
- Active role media has played in consolidating the country's young and fragile democracy

Malawi's decade old media sector has begun to coalesce and organize, evidenced by the formulation of a National Editor's Forum as a national part of a larger, regional grouping. This activity seeks to build on the ongoing work of NAMISA and the Editor's Forum to consultatively build a Media Council as a credible institution. This work will require a structured broad-based

consultative process and technical support for development of a constitution for the council and to agree its legal and enabling framework. Significant seed material assistance is foreseen.

**C. Measures of Success**

- Constitution for a media council negotiated and agreed;
- The council will be structured to exist independently from government funding; personnel decisions will be made by an independent board;
- Practicing journalists actively participate in the formation of the institutions;
- Media Council “stood up”;
- Malawian journalists accredited, protected and held to professional standards;
- Media Council leads advocacy and public information work, along with NAMISA around the implementation of the Communications and the Access to Information Act;
- Government agrees to modify Communications Act to establish an independent board of governors for public media; and
- Government passes the Access to Information Act.

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation**

This activity will be implemented in concert with existing media umbrella organizations, regional and national, and Malawi’s journalist community in general by a US contractor implementing an umbrella anti-corruption activity. The Media Council will receive technical assistance, as appropriate, from Chancellor College Faculty of Law.

**Civil Society Integration into an Anti-Corruption Campaign**

**A. Purpose and Objective**

The objective of this activity is to fully integrate civil society as an advocate, disseminator of information and analysis, and instrument of oversight into the national campaign against corruption by (a) civil society led initiatives about corruption and (b) laying the foundation for an appropriate regulatory framework for civil society organizations in a democratic society.

**B. Description**

Malawi is attacking the integrated problems of corruption and need for strong financial management by (1) empowering key actors, such as National Assembly and the Department of Public Prosecutions, (2) setting up systems and policy frameworks such as the Integrated Financial Management System, Anti-Money Laundering Legislation, and a Financial Intelligence Unit, and (3) by ascertaining that the broadest and most diverse population possible is aware of the problems and solutions. It is in this last endeavor that civil society, in particular, is envisioned playing a significant role. Malawi’s attack on corruption is a deliberate attempt to create a “supply side” of institutions and systems, but it also requires a “demand side” of citizens who make sure that corruption and fiscal responsibility remain key political agenda items.

In any democracy, civil society has an important role to play as an advocate, analyst, and monitor. Malawi is very fortunate to have a vibrant, diverse civil society and the Malawi Threshold Country Plan has a very definite role for these organizations.

### **Statement of the Problem**

Malawians are generally quite aware of corruption as a larger issue, and many are exposed to it in various forms in daily life transactions. However it is not clear that the Malawian public is adequately educated about how to respond to corruption. This matters because to bring corruption to a halt, everyone has to stop participating and has to start censuring bad practices. Considerable civic education will be required in the course of this campaign to make sure that citizens are familiar with key pieces of legislation that should be coming forward, including the anti-money laundering act and the declaration of assets act. Behavior change must take place so that it is understood and practiced that it is as wrong to offer a bribe as to accept one. Citizen's and interest groups need to know how to effectively respond to corrupt practices and how to begin to take ownership of their entitlements. Transparency and freedom of information are key tools against corruption and in favor of responsible financial management. If the end user doesn't know what they were supposed to get in the first place, how can they raise the alarm when it gets lost along the way?

A second problem comes from a critical look at civil society itself. Non-governmental organizations are not free from corruption and they need to hold themselves, and be held by the public, to the same standards of good governance and internal control to which government is held. In order to begin to address this problem an effective enabling framework and a umbrella regulatory body is also required.

### **Government of Malawi accomplishments and commitments to date**

Malawi has an admirable history of tolerance for the role of civil society and organizations operate quite freely and without undue government interference, even when they are playing a gadfly role. It is worth noting that faith-based organizations, in particular, have played a dramatic role in the growth and development of Malawi's multi-party democracy through advocacy and representation of the people's views.

Four distinct activities are envisioned as part of the effort described here.

1. Grants to Malawian civil society organizations (including, as appropriate, all kinds of civil society, non-governmental institution including private sector umbrella bodies/councils) to support their work in advocacy, dissemination of information and analysis, and/or oversight related to the over-arching campaign against corruption and for fiscal responsibility;
2. Development of a regulatory framework for non-governmental organizations;
3. Building the capacity of a non-governmental organization umbrella organization (including private sector) to set codes of ethics and standards, register, monitor, protect, and discipline Malawian non-governmental organizations in an appropriate manner that does not abrogate freedom of speech. This umbrella organization will be non-governmental. There are a number of umbrella/networking civil society organizations in Malawi, for example, the Council of Non-Governmental Organizations in Malawi and the Public Affairs Committee, which is an umbrella for the many active faith-based organizations. This activity will institutionally strengthen one or a number of these already extant umbrella's; and
4. Polling to track citizen knowledge, skills, and attitudes towards corruption, efforts by the Government of Malawi, and antidotes to corruption. Polling, dissemination and analysis of poll results is not only an extremely effective way to disseminate information and educate the

public, it also provides important feedback. The polling exercise envisioned shall constitute one indicator of the success or failure of Government of Malawi's and Malawian civil society's efforts in the MCC Threshold Country Plan. It will provide important feedback for calibration of the Threshold Program as it moves along.

**C. Key Measures of Success**

- Malawian civil society organizations lead a nationwide, action-oriented, civic education campaign about corruption and government fiscal responsibility
- Malawian civil society with participation of other sectors lays the groundwork to assure that it is accountable, transparent, and answerable.
- Polling demonstrates that citizens and select target groups improve positively in regards to knowledge, skills, and attitudes pertaining to corruption.

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation Plan**

This activity will be managed by a US contractor in coordination with civil society and National Assembly. The polling component will be procured from a local polling firm by the contractor and funds shall be placed in the contract for that pass-through purpose

**Building Malawi's Prosecutorial Abilities**

**A. Purpose/Objective**

The objective of this activity is to provide technical assistance, training, and material assistance to key institutions engaged in prosecuting economic crimes, and specifically, economic crimes related to corruption to improve the rate of successful prosecutions.

**B. Description**

At the center of the fight against corruption, fraud, and economic crimes are The Department of Public Prosecutions, the Anti-Corruption Bureau, and the Malawi Police. This activity will provide skilled, experienced US prosecutor(s) to provide on-the-job training, mentoring, and technical assistance to the prosecutors in the three institutions. Resident legal advisors will provide appropriate guidance and support during all phases of the prosecutorial process with a view to ensuring that Malawian prosecutors develop the knowledge and skills they need to deal with crimes of corruption which are very often, in their nature, complex and technical. This activity will also ensure that prosecutors have access to the basic tools required to work effectively and successfully.

**Statement of the Problem**

Government of Malawi has taken a well publicized zero tolerance for corruption stance. However, political and popular will are stymied by a shortage of prosecutors and, in particular, the complexity and technicality of prosecuting cases of grand corruption, fraud, and money laundering. Judges and prosecutors alike find the cases complex and difficult. Furthermore, the

lack of resources of all kinds that characterizes less developed countries like Malawi also impedes effective and efficient work of prosecutors and judges.

**Government of Malawi accomplishments and commitments to date.**

Government of Malawi has pledged itself to zero tolerance for corruption and in that regard has:

- Increased funding from the national budget to the Directorate of Public Prosecutions, the Anti-Corruption Bureau, and Malawi Police by 88.3 percent, 183 percent, and 91 percent, respectively in the 2004/2005 budget
- Provided the impetus which as encouraged these agencies to proceed with the arrest and prosecution of perpetrators of corruption
- Amended the Corrupt Practices Act

In the activity proposed for MCC support, Government of Malawi seeks to insure that (1) it has the technical capacity to prosecute crimes related to corruption and (2) a capacity is built within a service provider institution in Malawi to provide continuing education to legal professionals.

Specifically, this activity, conducted over a 24 month period will:

- Provide a resident legal advisor(s) for on-the-job training, mentoring, and technical assistance to the Department of Public Prosecutions, Anti-Corruption Bureau, and the Malawi Police prosecutors department.
- Provide material assistance to assure that prosecutors in the three target institutions have the minimum necessary tools at their disposal to perform their jobs, including, but not limited to, adequate information and reference materials.

**C. Key Measures of Success**

Three successful, high profile corruption cases prosecuted in the two year period.

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation Plan**

Department of Justice will conduct an assessment of the Malawi legal sector before assistance begins. The Department of Justice in coordination the Department of Public Prosecutions, the Anti-Corruption Bureau, and Malawi Police will implement this project. A USAID-procured contractor implementing adjacent activities within the MCC Malawi Threshold Program will manage procurements in cooperation with Department of Justice and Malawi counterparts.

## **Increasing the Effectiveness of Malawi Police Service to Address Corruption Related Crimes**

### **A. Purpose /Objective**

The Malawi Police Service effectively executing its role in anti-corruption is the objective of this activity.

- Build the technical skills of Malawi Police fiscal and fraud investigators;
- Conduct a feasibility and viability study of the need to establish a white-collar crimes unit within Malawi Police Service;
- Deploy a management information system for the Fiscal and Fraud Section of the Malawi Police Service to store, track, and manage relevant data; and
- Develop an internal anti-corruption initiative within the Malawi Police Service towards greater professionalism.

### **B. Description**

Malawi Police Service Fiscal and Fraud Investigations Section plays a clear and critical role in the fight against corruption with a staff of 19 detectives posted throughout the country. The Police Service also has a modest office of police prosecutors whose capacity needs are anticipated under a separate component of this Threshold Plan.<sup>13</sup> For the Police Service to play a dynamic part in the anti-corruption campaign, the staff of the Fiscal and Fraud Section need capacity building, including basic elements of police work and then more specialized information/skills for the investigation of complex, technically challenging crimes of corruption. For the sake of efficiency, a management information system to help protect, share, and archive information and data is needed. Finally, it is axiomatic that the Police Service should be, and viewed by the public to be, a transparent institution that is not itself a perpetrator of corruption.

### **Statement of the Problem**

Corruption investigations tend to be large, complex and expensive. Malawi Police Service operates with extremely limited resources and operations are inefficient. Furthermore, because the Fraud and Fiscal staff are poorly prepared, the quality of cases investigated tends to be poor, with low levels of convictions. In addition, there are frequent complaints by the public regarding the behavior of the police themselves.

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<sup>13</sup> Building Malawi's Prosecutorial Abilities

## **Government of Malawi Accomplishments and Commitments.**

Three areas of assistance are requested for the Malawi police, and Government of Malawi is very committed to the improvements. In these three areas, Malawi has:

1. Training
  - Recruited and trained officers, reducing the police/population ratio from 1:2000 to 1:500
  - Provided human rights and investigative skills training to police officers
  - Developed community/police partnerships
2. Management Information System
  - Established an Information Technology Branch with associated training which is slowly building police capacities. Some officers have been given training in the area and a few offices at National Police Headquarters are computerized.

### 1. Police Anti-Corruption Initiative

The Malawi Police Service has developed a code and standard of behavior for its officers that speaks directly to potential corruption by the police

Specifically, this activity to be conducted within the MCA project period will:

#### Training

- Train police officers in areas of fiscal and fraud investigations, forensics, money laundering, cyber-crimes, documentation and handwriting examinations, counterfeit notes identification, investigative interview skills etc.
- Recruit and train investigative staff with accounting and/or auditing skills. The request to MCC is to assist with the training.
- Set up modest fiscal and fraud offices in the four policing regions.
- Support the training with directly allocable material assistance.

#### Management Information System

- Procure and install a modest amount of computer hardware, software, storage, and communication technologies.
- Develop an information system /database relevant to the work demands of the Fiscal and Frauds Investigation Section
- Train staff in the use of the information system

#### Police Anti Corruption Initiative

- Develop and deliver an integrated ethics training curriculum to be delivered regularly to police at all management levels.
- Training of trainer for police officers to deliver the curriculum.

**C. Key Measures of Success.**

Training of investigators and anti-corruption initiative

- Officers display knowledge skills and attitudes that lead to better prepared cases for convictions and are aware of and adhere to tenets of the police integrity pact.

Management information system

- More efficient file handling for better prepared cases and more convictions

**D. Performance Monitoring and Measure**

Please see the Performance Monitoring and Measurement Plan for the Malawi Threshold Program, Annex A.

**E. Budget**

Please see the consolidated budget, Annex B.

**F. Implementation Plan**

The US Department of Justice and the US Police Service will provide technical assistance, training, and mentoring to the Malawi Police Service. Procurements for the police that are allocable to the work and outcomes of this activity will be managed by a US based contractor implementing an anti-corruption umbrella activity.

**Building Legal Skills Capacities**

**A. Purpose/Objective**

The objective of this activity is to provide a sustainable continuing and clinical legal education for the benefit of the Government of Malawi in order to:

- Create a critical pool of personnel in Government that can catalyze legally-compliant, prudent and accountable management of public resources;
- Develop capacity for the effective and efficient implementation of Malawi's legislation on corruption, public finance management, public procurement and public audit;
- Increase capacity in the advanced application of principles of administrative justice;
- Recover funds illegally diverted from public to private use;
- Improve the case handling and research capacities of the Judiciary, Ministry of Justice, the Anti-Corruption Bureau, Fiscal Police, Prosecuting Police and Auditor General; and
- Improve the capacity of Parliament to exercise oversight over the allocation and use of public resources.

**B. Description**

The Government has recently demonstrated commitment for zero tolerance on corruption. It has further expressed an intention to enhance prudent management of public resources. The overall aim is to improve human well-being, in keeping with international goals, benchmarks and standards. Crucial to these pursuits is accountability in the generation, preservation, multiplication, use and allocation of public resources. The Government has expressed commitment at the international level through its continued membership of NEPAD's Peer Review Mechanism. It is also committed to realize the Millennium Development Goals. The translation of commitments to action, however, depends on actual decisions and actions taken or



not taken by key public functionaries in the generation, management, and use of public resources as well as a command of the rules of administrative justice. As a legal system, Malawi needs to develop standards that can ensure fiduciary management of public resources. The legal system requires consistent application of clear rules on administrative justice. To perform, a critical mass of capacity within government is required.

### **Statement of the Problem**

Malawi has legislation on public finance management, public procurement, and public audit to compliment earlier amended legislation on corruption. The Constitution further embeds at least three novel notions: the doctrine of the public trust, administrative justice, and the right to development among many civil, political, economic, social and cultural rights. Knowledge of the principles underlying such provisions and implementation methods and skills are still in short supply and this contributes to government over expenditure and unnecessary losses noted by the Auditor General in recent audits.<sup>14</sup>

Among the population perceptions of corruption continue to grow

- The corruption perception index was 2.9, on a scale of 0 to 10
- In 2002, the country's polity score was 7 out of a total of 10, largely due to the institutions created by the Constitution
- For civil liberties, on a scale of 7 to 1, the country scored 3, as it did for political rights
- The score for press freedom was 52, on a scale of 0 to 100
- For voice and accountability, on a scale of -250 to 250, the country scored -0.14
- Political stability and lack of violence was then regarded as better than voice and accountability, with a score of 0.03
- The rating for law and order on a scale of 0 to 6 was 3.5
- On a scale of -2.50 to 2.50, the country's compliance with the rule of law was at 0.25
- The effectiveness of the Government was rated very low, at -0.77
- On a scale of -250 to 250, the prevalence of graft was determined as being at 0.10

Indicators on human development are unsatisfactory

- Ranked 83<sup>rd</sup> on the Human Development Index, 76.1 percent of the population lived below \$2 day between 1990 and 2002.<sup>15</sup> The population living below the national poverty line was 65.3 percent for the period 1990 and 2001
- The share on income or consumption for the poorest 10 percent was 1.9 percent in 1997, compared to 42.2 percent for the richest 20 percent
- The Gini Index was at 50.3. 33 percent of the total population consisted of undernourished people in 1999/2001
- Although infant mortality has slightly dropped from 189 in 1970 to 114 per 1,000 live births in 2002, general life expectancy at birth is estimated to drop from 41.0 years to 37.5 years, largely due to HIV/AIDS, which has an estimated prevalence of 14.2 percent among people age 15 to 49

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<sup>14</sup> . Auditor General, *Report of the Auditor General on the Accounts of the Government of the Republic of Malawi* (Lilongwe; Republic of Malawi)

<sup>15</sup> . Figure from UNDP, *Human Development Report 2003* (Oxford; Oxford University Press, 2003);

- 39.2 percent of the people aged 15 and above were still illiterate in 2002, with 36 percent of children not able to reach grade 5
- In terms of gender equality, the country was ranked 134 out of 144 countries in 2002, with the best ranked African country, Mauritius, at 55

Abused, mismanaged, neglected, and misallocated resources are rarely recovered. This is partly due to the heavy burden of proof in criminal matters, destruction of evidence by suspects and accomplices, and failure to use legal rules to trace such funds and unjust benefits.

In terms of administrative law, the principles of administrative justice embedded in Section 43 of the Constitution are yet to be fully incorporated in the work processes of government.

#### **Accomplishments of Chancellor College, Faculty of Law**

The Faculty of Law is the only body that trains professional legal personnel in Malawi. The quality of its training is well proven, with its students excelling in African, European and American universities at postgraduate levels. In its strategic plan, the Faculty of Law has included both continuing and clinical legal education, with an undergraduate programme regarded as among the best in Africa, in design. The Faculty has also embarked on the provision of postgraduate courses. Simultaneously, the Faculty is responding to the need to upgrade some of the country's paralegals into professionals through the delivery of a tailor-made diploma course law that incorporates the current work of students into university level learning.

The Faculty has a tremendous research and publication record and potential, with its staff involved in internationally collaborated research and chairing Chancellor College's Research and Publications Committee. Its consultancy record is nationally and internationally covetable. Currently, the Faculty has eighteen academic members specializing in a variety of areas, including legal skills, constitutionalism, public law, human rights, development programming, gender and the law, poverty and the law, democratic accountability, administrative law, trust notions, child rights, training of adult public officials, to mention few. Chancellor College staff has wide experience in training Members of Parliament, policy makers, civil society workers, community members, UN and other development staff, and lawyers nationally and internationally. The Faculty's Dean has for long coordinated the Parliamentary Training Programme, sponsored by UNDP.

In its delivery of services, the Faculty has created a Law and Development Unit, which specializes in research and responds to demands for legal and development services from clients and partners. In addition to the University Library, the biggest in Malawi, the Faculty has established a reference only law library called the Machika Legal Learning Resources Centre, with shelf and e-resources.

The capacity of the Faculty is still developing. Three academic members are on staff development programmes but will return within the period of this activity. Two are on sabbatical leave, both of which expire in 2005. Although one more will be on sabbatical leave in 2006 and two may be on staff development, new faculty recruitments will maintain a reasonable human resource base for university teaching and learning. However, additional human resources are necessary provide services in continuing legal education under this project.

#### **Proposed Strategies**

This activity will respond to these problems through three strategic thrusts:

- Provision of continuing legal education in Public Resource Management and the Law and Administrative Justice to cohorts of judges, magistrates, controlling officers, fiscal police officers, police prosecutors, media personnel, and staff in oversight agencies such the Auditor General's office, Anti-Corruption Bureau, Reserve Bank, and Parliament's Public Accounts Committee;
- Vocational placement of students in key government agencies to boost research and performance capacity of the ministries and to advance professionalism of the students; and
- Test cases as part of clinical legal education and public interest litigation through civil law recovery of unjust benefits accruing from public resources.

The specific activities will include:-

#### **Provision of Clinical Legal Education**

- Establishment of an office within the Ministry of Justice to coordinate the activities of the Faculty and offer logistical support
- Implement 10 learning and skills development programmes for, policy makers and controlling officers, middle level managers, members of the Public Accounts Committee, civil society, media professionals, law enforcers, and law adjudicators in various settings and using various forms depending on cohort
- Provide training to Members of Parliament, appropriate executive branch, and law enforcement personnel to support and inform deliberations upon and implementation of the Money Laundering/Combating Financing of Terrorism Bill, the Declaration of Assets Bill, the Freedom of Information Act, Political Party Financing Act, and the amendment of the Parliamentary Service Act
- Conduct an assessment of the performance of trained personnel (10 assessment exercises)

#### **Vocational Placement of Students**

- Develop vocational attachment reports guidelines for students
- Allocate students to Ministry of Justice, Judiciary Parliament, Police, the Anti-Corruption Bureau and other key departments or organizations and provide with supervision

#### **Test Cases**

- Sign agreement with the Attorney General
- Identify 15 cases, to establish principles for more prudent and administratively compliant decisions and actions to apply to other cases, conduct research to prepare for cases, working with students, file and conduct cases.

#### **C. Key Measures of Success**

- Increased convictions in corruption and related crimes or a decline incidents of corruption
- A critical proof of personnel in all departments directly dealing with public resource management and the implementation of the law
- Increased output of cases in the Judiciary, the Anti Corruption Bureau and other key agencies
- Reduced incidents of over-expenditure
- Legal precedents for standards for public functionaries
- Misappropriated public resources recovered

#### **D. Performance Monitoring Measure**

Please see Annex A

## **E. Budget**

Please see Annex B. It is important to note that Chancellor College is not located in Lilongwe, the capital. This project therefore will require modest material infrastructural inputs to allow Chancellor staff and faculty to develop the outreach capacity described above.

## **F. Implementation Plan**

This cross-cutting activity will be implemented by University of Malawi, Chancellor College Faculty of Law with assistance from a US contractor implementing an umbrella anti-corruption activity and in coordination with US Department of Justice. Funding to Chancellor College and procurements will be managed by the US contractor on behalf of and in coordination with Chancellor College.

## **A Cross-Cutting Indicator**

Government of Malawi has included a request to the Millenium Challenge Corporation to provide a three year subscription to Fitch Ratings for Sovereigns. The credit rating service will provide valuable and credible tracking of Malawi's performance in a number of political economic indicators. Government of Malawi believes that if it maximizes the opportunity offered by MCC, its credit ratings and the constituent rating elements in Fitch Ratings should improve. Although, GOM is cognizant that the target horizon for Threshold Program activities is 24 months, Fitch Ratings normal tracking period is for three years. Furthermore, Fitch Ratings is such a solid performance indicator that GOM believes that it will continue to provide valuable information to GOM and to donors such as the United States.

## **Credit Ratings as an Indicator of Malawi's Fiscal Management and Anti-Corruption Success**

### **A Purpose/Objective**

The objective of this activity is to collect data and track improvements in Malawi's credit rating through the services of an internationally recognized credit rating agency over the next 36 months. Malawi's proposal to the Millenium Challenge Corporation is that if trends of fiscal management and responsibility continue in a positive direction and if Malawi is successful in its efforts to curb corruption, credit ratings will show improvement. This activity is one indicator tool against the larger goals as it will provide—clear information to decision-makers about Malawi's economy and demonstrate the impact of Malawi's overall reform program with respect to short and long term ratings of both local and foreign currencies.

### **B. Description**

A sound investment climate and stable political system are critical to attracting foreign investment in any country. Sovereign credit ratings can signal to the international market readiness to participate in the global economy by opening books to public scrutiny, maintaining transparency, and adhering to liberalization policies and reform efforts. Credit ratings foster transparency in the collection and dissemination of information and help to promote realistic monetary and fiscal policies. All these elements - transparency, reform, and realistic monetary and fiscal policies - are central to Malawi's integrated strategy to stop corruption and encourage sound fiscal management.

Government of Malawi asserts that its new regime of tight fiscal controls, living within its means, and its attack on corruption and financial mismanagement ought to, if successful, reflect positively in Fitch Ratings Sovereigns Group. Improvements in this regard will directly link to greater investor confidence and better relations with creditor institutions, necessary factors for

attracting foreign resources to spur economic growth. Government of Malawi seeks an optimal subscription period of three years, as this is the usual time frame recommended by Fitch Ratings and since rating mechanisms reflect changes over time.

**Efforts made in this area to date**

The Government of Malawi, supported by the Department of State, contracted Fitch Ratings Agency, to conduct a sovereign credit rating for Malawi between 2002 and 2004. The July 2003 assessment by the firm revealed that the country was at much less risk of experiencing an external financial crisis because of the completion of the first review of the International Monetary Fund (IMF) 2000-2003 Poverty Reduction and Growth Facility (PRGF) in October 2003 and resumption of donor funding after two years of suspension<sup>16</sup>. Thus, the company placed Malawi on positive sovereign rating. However, Malawi fell out of track under the PRGF and the second review could not be completed due to spending overruns.

The new Malawian administration's commitment to good governance and promotion of sound economic policies include a commitment to and an understanding of the conditions necessary for direct foreign investment. The GOM entered an IMF staff-monitored program (SMP) in July 2004, and Fitch Ratings will act as an indicator of success of work accomplished by GOM with MCC resources, and also provide an important signal to the investment community. Thus, the activity serves as an important tool for Malawi's ability to assess and manage its economy and it is also an indicator.

**C Key Measures of Success**

- Credit ratings improve over time

**D. Performance Monitoring Measure**

Please see Annex A

**D. Budget**

Please see the consolidated budget, Annex B.

**E. Implementation Plan**

It is anticipated that USAID will procure an implementing agency to manage the MCC program in Malawi. The Fitch Ratings Sovereign subscription will be a line item and deliverable under that contract. Fitch Ratings will work directly with Reserve Bank Malawi as its principal GOM counterpart, but reports will be available to MCC.

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<sup>16</sup> International Credit Analysis, Republic of Malawi, Fitch Ratings ([www.fitchratings.com](http://www.fitchratings.com)), 9<sup>th</sup> August 2004

*Annex A: Indicators*

**Strategic Goals**

**COMBATING CORRUPTION**

1. Credit Rating
2. Corruption Perceptions Index
3. Fiscal deficit as a percentage of GDP
4. Number of reform legislations passed by the GOM
5. Percent Malawians who believe GOM has improved in a) fiscal management, b) control of corruption

Program Components with performance indicators

**Tactical Goals**

**PREVENTION**

1. Percent unqualified procurement audit reports
2. # of Malawian personnel trained

**OVERSIGHT**

1. % Malawians who actively participate in civic life through taking action in a) fiscal management, and b) control of corruption
2. % reports submitted by National Assembly committees and concluded through debate on the floor
3. Share of net domestic borrowing to GOM

**Operational Goals**

**Integrated Financial Management Information System**

1. Total GOM actual expenditures as percentage of total GOM approved budget
2. # of staff trained

**Strengthening the Capacity of National Audit Office**

1. Annual audit reports submitted to National Assembly within six (6) months after end of GOM fiscal year
2. # of staff trained
3. # of audits outsourced to private audit firms

**Professionalizing Public Procurement in Government of Malawi**

1. # of staff trained

**Building Malawi's Prosecutorial Abilities**

1. # of prosecutors trained in professional prosecution
2. # of officers trained in fiscal and fraud investigations and forensics
3. Average time taken (days) to process corruption cases

**Development and Passage of a Declaration of Assets Law**

1. Assets Declaration Law drafted
2. # of staff trained
2. # of times the Law commission engages in direct civic education matters relating to corruption

**Strengthening National Assembly Oversight to Curb Corruption and Enhance Fiscal Discipline in the Public Sector**

1. % occasions on which specified conditions are obtained during the passage of legislation: specified conditions are- a) 28 day's notice rule, b) amendments introduced by ordinary members and debated on the floor
2. Quality of Legislative Committees Index
3. # of National Assembly staff trained
4. % Malawians satisfied with National Assembly delivered services

**Increasing the Effectiveness of Malawi Police Service to Address Corruption Related Crimes**

1. Management Information System for Fiscal and Fraud unit operational/functional

**Anti-Money Laundering and Combating Financing of Terrorism**

1. # of staff trained
2. Financial Intelligence unit established

**Building Legal Skills Capabilities**

1. # of GOM staff trained
2. # of law students on vocational placement in key GOM agencies

**Professionalized Media a Tool of Aggregation of Opinion, Analysis, and Dissemination of Information**

1. Media Council reestablished

**Journalists and Media Professionals Better Prepared to Report on and analyze corruption and Exercise Oversight**

1. # of Journalists trained in thorough-researched investigative reporting of a) fiscal management, b) anti-corruption issues

**Capacity building for improved/prudent fiscal management**

1. Inflation
2. GDP growth
3. Foreign debt service as percentage of GDP
4. # of staff trained

Oversight

Oversight

Component	Performance Indicator	Baseline		Target FY <sup>17</sup> 2005/6	Target FY 2006/7
		Year	Value		
<b>Combating Corruption (MCC Strategic Goal)</b>	Credit Rating	2004/5	CCC+	B	B+
	Corruption Perception Index	2002	2.9	3.5	4.0
	Fiscal deficit as percentage of GDP	2004/5	4.3	0.9	0.8
	Number of reform legislations passed by Government of Malawi (GOM)	2004/5	0	0	7
	Percent Malawians who believe GOM improved in a) fiscal management, b) control of Corruption*				
<b>Prevention</b>	Percent unqualified procurement reports	2004/5	70	50	20
	Number of Malawian personnel trained	2004/5	None	29	32
<i>Integrated Financial Management Information System</i>	Total GOM actual expenditures as percentage of total GOM approved budget	2004/5	102	104	101
	Number of staff trained	2004/5	None	21	21
	Number of staff trained	2004/5	None	2	5
<i>Professionalized Public Procurement in GOM</i>	Assets Declaration Law drafted	2004/5	None	Bill drafted	Bill passed
	Number of staff trained	2004/5	None	3	3
	Number of times the Law Commission engages in direct civic education matters relating to Corruption	2004/5	None	8	8
<b>Anti-Money Laundering</b>	Number of staff trained	2004/5	None	3	3
	Financial Intelligence Unit established	2004/5	None	None	Established

<sup>17</sup> Fiscal Year for Government of Malawi – July 1 through June 30.



Component	Performance Indicator	Baseline		Target FY <sup>17</sup> 2005/6	Target FY 2006/7
		Year	Value		
<b>Oversight</b>	Percent Malawians who actively participate in civic life through taking action in a) fiscal management, b) anti- corruption related issues* Percentage reports submitted by parliamentary committees and concluded through debate on the floor.	2004/5	0	25	50
	Share of net domestic borrowing to GOM	2003/4	68.0	55.0	48.0
	Number of Malawian personnel trained	2004/5	None	53	55
		2004/5			
	No. of staff trained	2004/5	0	8	8
	Annual Audit report submitted to Parliament within 6 months after end of Government of Malawi financial year	2004/5	none	one	One
<i>Strengthening the Capacity of National Audit Office</i>	Number of audits outsourced to private audit firms	2004/5	25	20	15
	No. of Parliamentary staff trained	2004/5	1	5	7
	Quality of Legislative Committees Index	2003	62	75	80
	Percent occasions on which specified conditions are obtained during the passage of legislation: specified conditions - a) 28 day's notice rule, and b) amendments introduced by ordinary members and debated on the floor* Percent Malawians satisfied with National Assembly delivered services*				
<i>Civil Society Integration into an Anti-Corruption Campaign</i>	Number of civil society organizations testifying before Parliamentary committees on corruption issues	2004/5	13	26	39
	Number of advocacy campaigns conducted by networks of NGOs/CSOs/CBOs towards changing policies or ensuring services are provided*				

Component	Performance Indicator	Baseline		Target FY <sup>17</sup> 2005/6	Target FY 2006/7
		Year	Value		
	Percent Malawians satisfied with CSO delivered services.*				
<i>Journalists and Media professionals better prepared to report on and analyze corruption and exercise oversight</i>	Number of journalists trained in thorough-researched investigative reporting of a) fiscal management, and b) anti-corruption related issues	2004/5	a) 0 b) 0	a) 15 b) 15	a) 15 b) 15
	Media Council established	2004/5	None	None	established
<i>Professionalized Media a tool of Aggregation of opinion, Analysis, and Dissemination of information</i>		2004/5			
	Inflation	2004/5	14.9	8.0	7.8
<i>Capacity building for improved/prudent fiscal management</i>	GDP growth	2004/5	2.1	8.2	5.6
	Foreign debt service as percentage of GDP	2004/5	138.9	129.4	119.7
	Number of staff trained	2004/5	None	10	10
<b>Enforcement and Deterrence</b>	Percent investigated cases that are prosecuted*				
	Percent Malawians satisfied with services delivered by a) DPP, b) ACB, and c) Malawi Police Service*				
	Number of Malawian personnel trained	2004/5	None	60	59
<i>Building prosecutorial abilities</i>	Number of prosecutors trained in professional prosecution	2004/5	None	10	10
	Average total time taken (in days) to process corruption cases.	2004/5	+365days	120days	90days
<i>Increasing the effectiveness of Malawi Police Service to Address Corruption related crimes</i>	Management Information System for Fiscal and Fraud unit operational/functional	2004/5	None	MIS operational	MIS operational
	No. of officers trained in fiscal and fraud	2004/5	None	10	9

Component	Performance Indicator	Baseline		Target FY <sup>17</sup> 2005/6	Target FY 2006/7
		Year	Value		
	investigations and forensics.	2004/5			
<i>Building Legal Skills capabilities</i>	Number of staff trained	2004/5	None	50	50
	Number of law students on vocational placement in key GOM agencies	2004/5	6	30	30

\* Baseline data will be determined soon after the business plan has been approved. A contractor will conduct a survey to determine values for these indicators. In addition, the values will be used to estimate targets for the two years of implementation.

**Annex B: Budget**

NAME OF ACTIVITY	Technical Asst	Material Asst	Training and Capacity	Grants	Polling	Other	TOTAL
Integrated Financial Management Information System		1,300,000	1,200,000				2,500,000
Professionalizing Public Procurement in Government of Malawi	250,000	300,000	400,000				950,000
Anti-Money Laundering and Combating Financing of Terrorism (AML/CFT)	1,450,000	440,000	150,000				2,040,000
Development and Passage of a Declaration of Assets Law	620,000	200,000	60,000				880,000
Strengthening of Government of Malawi's Audit Capacities		1,000,000	200,000				1,200,000
Monitoring and Evaluation of Public Sector Projects as a Deterrent to Corruption		200,000	300,000				500,000
Capacity Building for Improved/Prudent Fiscal Management	2,070,000	550,000	250,000				2,870,000
Strengthening National Assembly Oversight to Curb Corruption and Enhance Fiscal Discipline in the Public Sector	1,200,000	1,000,000	700,000				2,900,000
Journalists and Media Professionals Better Prepared to Report on and Analyze Corruption and Exercise Oversight	250,000	50,000	200,000				500,000
Professionalized Media a Tool of Aggregation of Opinion, Analysis, and Dissemination of Information	100,000	250,000					350,000
Civil Society Integration into Anti-Corruption Campaign	30,000		50,000	400,000	600,000		1,080,000
Building Malawi's Prosecutorial Abilities	1,000,000	600,000					1,600,000
Increasing the Effectiveness of Malawi Police Service to Address Corruption Related Crimes	500,000	300,000					800,000
Building Legal Skills Capacities		100,000	450,000				550,000
Credit Ratings as an Indicator of Malawi's Fiscal Management and Anti-Corruption Success						200,000	200,000
<b>TOTALS</b>	<b>7,470,000</b>	<b>6,290,000</b>	<b>3,960,000</b>	<b>400,000</b>	<b>600,000</b>	<b>200,000</b>	<b>18,920,000</b>
Contractor/ Grantee Administrative Costs							2,000,000
<b>GRAND TOTAL</b>							<b>20,920,000</b>

ANNEX 1

ATTACHMENT 1

ILLUSTRATIVE FINANCIAL PLAN: USAID GRANT NUMBER 612.0010

<b>PROGRAM ELEMENT</b>	<b>PROGRAM BUDGET</b>
	\$
<b>IR 10.1 Systems for Preventing Corruption Established and Strengthened</b>	<b>6,570,000</b>
<b>IR 10.2 Oversight Institutions Effective and Efficient</b>	<b>8,900,000</b>
<b>IR 10.3 Systems of Enforcement and Deterrence in Place and Functioning Properly</b>	<b>3,450,000</b>
<b>IR 10.4 Program Support</b>	<b>2,000,000</b>
<b>TOTAL USAID CONTRIBUTION</b>	<b>20,920,000</b>

Note: Changes in the amounts budgeted for each Program Element may be made up to 15% without formal amendment to the Agreement. Changes exceeding 15% will be authorised through an Implementation Letter.

## **SPECIAL OBJECTIVE 10**

**MILLENNIUM CHALLENGE CORPORATION**  
**THRESHOLD INITIATIVE IN MALAWI**

### **ANNEX 2: STANDARD PROVISIONS**

# Annex 2 Standard Provisions

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## Standard Provisions

### Article A: Definitions and Implementation Letters.

**Section A.1. Definitions.** As used in this Annex, the "Agreement" refers to the Strategic Objective Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

**Section A.2. Implementation Letters.** To assist the Grantee in the implementation of the Agreement, USAID, from time to time, will issue Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Implementation Letters can also be issued to record revisions or exceptions which are permitted by the Agreement.

### Article B: General Covenants.

**Section B.1. Consultation.** The Parties will cooperate to assure that the Objective and Results of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on progress towards the Objective and Results, the performance of obligations under this Agreement, the performance of any consultants, contractors, or suppliers engaged under the Agreement, and other matters relating to the Agreement.

**Section B.2. Execution of Agreement.** The Grantee will:

- (a) Carry out the Agreement or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules, or other arrangements, and with any modifications therein, approved by USAID pursuant to this Agreement; and
- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of activities financed under the Agreement, and, as applicable for continuing activities, cause those activities to be operated and maintained in such manner as to assure the continuing and successful achievement of the Objective and Results of the Agreement.

**Section B.3. Utilization of Goods and Services.**

- (a) Any goods and services financed under this Agreement, unless otherwise agreed in writing by USAID, will be devoted to the Agreement until the completion or termination of the Agreement, and thereafter (as well as during any period of suspension of the Agreement) will be used to further the Objective of the Agreement and as USAID may direct in Implementation Letters.



(b) Goods or services financed under this Agreement, except as USAID may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in USAID Geographic Code 935 as in effect at the time of such use.

#### **Section B.4. Taxation.**

(a) General Exemption. The Agreement and the assistance thereunder are free from any taxes imposed under laws in effect in the territory of the Grantee.

(b) Except provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to (1) any activity, contract, grant or other implementing agreement financed by USAID under this Agreement; (2) any transaction or supplies, equipment, materials, property or other goods (hereinafter collectively "goods") under (1) above; (3) any contractor, grantee, or other organization carrying out activities financed by USAID under this Agreement; (4) any employee of such organizations; and (5) any individual contractor or grantee carrying out activities financed by USAID under this Agreement.

(c) Except as provided otherwise in this provision, the General Exemption in subsection (a) applies to, but is not limited to, the following taxes:

(1) Exemption 1. Customs duties, tariffs, import taxes, or other levies on the importation, use and re-exportation of goods or the personal belongings and effects (including personally owned automobiles) for the personal use of non-national individuals or their family members. Exemption 1 includes, but is not limited to, all charges based on the value of such imported goods, but does not include service charges directly related to services performed to transfer goods or cargo.

(2) Exemption 2. Taxes on the income, profits or property of all (i) non-national organizations of any type, (ii) non-national employees of national and non-national organizations, or (iii) non-national individual contractors and grantees. Exemption 2 includes income and social security taxes of all types and all taxes on the property, personal or real, owned by such non-national organizations or persons. The term "national" refers to organizations established under the laws of the Grantee and citizens of the Grantee, other than permanent resident aliens in the United States.

(3) Exemption 3. Taxes levied on the last transaction for the purchase of goods or services financed by USAID under this Agreement, including sales taxes, value-added taxes (VAT), or taxes on purchases or rentals of real or personal property. The term "last transaction" refers to the last transaction by which the goods or services were purchased for use in the activities financed by USAID under this Agreement.

(d) If a tax has been levied and paid contrary to the provisions of an exemption, USAID may, in its discretion, (1) require the Grantee to refund to USAID or to others as USAID may direct the amount of such tax with funds other than those provided under the Agreement, or (2) offset the amount of such tax from amounts to be disbursed under this or any other agreement between the Parties.

(e) In the event of a disagreement about the application of an exemption, the Parties agree to promptly meet and resolve such matters, guided by the principle that the assistance furnished by USAID is free from direct taxation, so that all of the assistance furnished by USAID will contribute directly to the economic development of the country of the Grantee.

### **Section B.5. Reports and Information, Agreement Books and Records, Audits, and Inspections.**

(a) Reports and Information. The Grantee shall furnish USAID accounting records and such other information and reports relating to the Agreement as USAID may reasonably request.

(b) Grantee Agreement Books and Records. The Grantee shall maintain accounting books, records, documents and other evidence relating to the Agreement, adequate to show, without limitation, all costs incurred by the Grantee under the Agreement, the receipt and use of goods and services acquired under the Agreement by the Grantee, agreed-upon cost sharing requirements, the nature and extent of solicitations of prospective suppliers of goods and services acquired by the Grantee, the basis of award of Grantee contracts and orders, and the overall progress of the Agreement toward completion ("Agreement books and records"). The Grantee shall maintain Agreement books and records in accordance with generally accepted accounting principles prevailing in the United States, or at the Grantee's option, with approval by USAID, other accounting principles, such as those (1) prescribed by the International Accounting Standards Committee (an affiliate of the International Federation of Accountants) or (2) prevailing in the country of the Grantee. Agreement books and records shall be maintained for at least three years after the date of last disbursement by USAID or for such longer period, if any, required to resolve any litigation, claims or audit findings.

(c) Grantee Audit. If \$300,000 or more of USAID funds are expended directly by the Grantee in its fiscal year under the Agreement, the Grantee shall have financial audits made of the expenditures in accordance with the following terms, except as the Parties may otherwise agree in writing:

(1) With USAID approval, the Grantee shall use its Supreme Audit Institution or select an independent auditor in accordance with the "Guidelines for Financial Audits Contracted by Foreign Recipients" issued by the USAID

Inspector General ("Guidelines"), and the audits shall be performed in accordance with the "Guidelines"; and

(2) The audit shall determine whether the receipt and expenditure of the funds provided under the Agreement are presented in accordance with generally accepted accounting principles agreed to in section (b) above and whether the Grantee has complied with the terms of the Agreement. Each audit shall be completed no later than nine months after the close of the Grantee's year under audit.

(d) Subrecipient Audits. The Grantee, except as the Parties may otherwise agree in writing, shall submit to USAID, in form and substance satisfactory to USAID, a plan for the audit of the expenditures of "covered" subrecipients, as defined below, that receive funds under this Agreement pursuant to a direct contract or agreement with the Grantee.

(1) A "covered" subrecipient is one who expends \$300,000 or more in its fiscal year in "USAID awards" (i.e., as recipients of USAID cost reimbursable contracts, grants or cooperative agreements and as sub-recipients under USAID special objective and other grant agreements with foreign governments).

(2) The plan shall describe the methodology to be used by the Grantee to satisfy its audit responsibilities for covered subrecipients. The Grantee may satisfy such audit responsibilities by relying on independent audits of the subrecipients; expanding the scope of the independent financial audit of the Grantee to encompass testing of subrecipients' accounts; or a combination of these procedures.

(3) The plan shall identify the funds made available to covered subrecipients that will be covered by audits conducted in accordance with other audit provisions that would satisfy the Grantee's audit responsibilities. (A nonprofit organization organized in the United States is required to arrange for its own audits. A for-profit contractor organized in the United States that has a direct contract with USAID is audited by the cognizant U.S. Government Agency. A private voluntary organization organized outside the United States with a direct grant from USAID is required to arrange for its own audits. A host-country contractor should be audited by the Grantee's auditing agency.)

(4) The Grantee shall ensure that covered subrecipients under direct contracts or agreements with the Grantee take appropriate and timely corrective actions; consider whether subrecipients' audits necessitate adjustment of its own records; and require each such subrecipient to permit independent auditors to have access to records and financial statements as necessary.

(e) **Audit Reports.** The Grantee shall furnish or cause to be furnished to USAID an audit report for each audit arranged for by the Grantee in accordance with this Section within 30 days after completion of the audit and no later than nine months after the end of the period under audit.

(f) **Other Covered Subrecipients.** For "covered" subrecipients who receive funds under the Agreement pursuant to direct contracts or agreements with USAID, USAID will include appropriate audit requirements in such contracts or agreements and will, on behalf of the Grantee, conduct the follow-up activities with regard to the audit reports furnished pursuant to such requirements.

(g) **Cost of Audits.** Subject to USAID approval in writing, costs of audits performed in accordance with the terms of this Section may be charged to the Agreement.

(h) **Audit by USAID.** USAID retains the right to perform the audits required under this Agreement on behalf of the Grantee by utilizing funds under the Agreement or other resources available to USAID for this purpose, conduct a financial review, or otherwise ensure accountability of organizations expending USAID funds regardless of the audit requirement.

(i) **Opportunity to Audit or Inspect.** The Grantee shall afford authorized representatives of USAID the opportunity at all reasonable times to audit or inspect activities financed under the Agreement, the utilization of goods and services financed by USAID, and books, records and other documents relating to the Agreement.

(j) **Subrecipient Books and Records.** The Grantee will incorporate paragraphs (a), (b), (d), (e), (g), (h) and (i) of this provision into all subagreements with non-U.S. organizations which meet the \$300,000 threshold of paragraph (c) of this provision. Subagreements with non-U.S. organizations, which do not meet the \$300,000 threshold, shall, at a minimum, incorporate paragraphs (h) and (i) of this provision. Subagreements with U.S. organizations shall state that the U.S. organization is subject to the audit requirements contained in OMB Circular A-133.

**Section B.6. Completeness of Information.** The Grantee confirms that:

(a) the facts and circumstances of which it has informed USAID, or caused USAID to be informed, in the course of reaching agreement with USAID on the Agreement, are accurate and complete, and include all facts and circumstances that might materially affect the Agreement and the discharge of responsibilities under this Agreement; and

(b) it will inform USAID in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Agreement or the discharge of responsibilities under this Agreement.

**Section B.7. Other Payments.** Grantee affirms that no payments have been or will be received by any official of the Grantee in connection with the procurement of goods or services financed under the Agreement, except fees, taxes, or similar payments legally established in the country of the Grantee.

**Section B.8. Information and Marking.** The Grantee will give appropriate publicity to the Agreement as a program to which the United States has contributed, identify Agreement activity sites, and mark goods financed by USAID, as described in Implementation Letters.

## **Article C: Procurement Provisions.**

### **Section C.1. Source and Origin.**

(a) Foreign Exchange Costs. Disbursements for Foreign Exchange Costs will be used exclusively to finance the costs of goods and services required for the Agreement having, with respect to goods, their source and origin and, with respect to the suppliers of goods and services, their nationality, in countries included in Geographic Code 935 as in effect at the time orders are placed or contracts entered into for such goods or services, except as USAID may otherwise agree in writing and as follows:

(1) Ocean transportation costs shall be financed under the Agreement only on vessels under flag registry of countries included in Code 935. Also see Section C.6 on use of U.S. flag vessels.

(2) The country of the Grantee is an eligible source for Foreign Exchange Cost for marine insurance, if otherwise eligible under Section C.7(a).

(3) Any motor vehicles financed under the Agreement will be of United States manufacture, except as USAID may otherwise agree in writing.

(b) Local Currency Costs. Disbursements for Local Currency Costs will be used exclusively to finance the costs of goods and services required for the Agreement which meet the requirements of USAID's local procurement policy which will be provided in an Implementation Letter.

(c) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(d) Provisions concerning restricted and ineligible goods and services may be provided in an Implementation Letter.

(e) Transportation by air of property or persons financed under this agreement will be on carriers holding United States certification, to the extent service by such carriers is available under the Fly America Act. This requirement may be further described by USAID in Implementation Letters.

**Section C.2. Eligibility Date.** No goods or services may be financed under the Agreement which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

**Section C.3. Plans, Specifications and Contracts.** In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Grantee will furnish to USAID upon preparation:

(1) any plans, specifications, procurement or construction schedules, contracts, or other documentation between the Grantee and third parties, relating to goods or services to be financed under the Agreement, including documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished to USAID on preparation; and

(2) such documentation will also be furnished to USAID, upon preparation, relating to any goods or services, which, though not financed under the Agreement, are deemed by USAID to be of major importance to the Agreement. Aspects of the Agreement involving matters under this subsection (a)(2) will be identified in Implementation Letters.

(b) Documents related to the prequalification of contractors, and to the solicitation of bids or proposals for goods and services financed under the Agreement will be approved by USAID in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Agreement for engineering and other professional services, for construction services, and for such other services, equipment, or materials as may be specified in Implementation Letters, will be approved by USAID in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by USAID prior to execution; and

(a) Consulting firms used by the Grantee for the Agreement but not financed under the Agreement, the scope of their services and such of their personnel assigned to activities financed under the Agreement as USAID may specify, and construction contractors used by the Grantee for the Agreement but not financed under the Agreement, shall be acceptable to USAID.

**Section C.4 Reasonable Price.** No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Agreement. Such items will be procured on a fair and, to the maximum extent practicable, competitive basis.

**Section C.5 Notification to Potential Suppliers.** To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Agreement, the Grantee will furnish USAID such information with regard thereto, and at such times, as USAID may request in Implementation Letters.

**Section C.6 Transportation.**

(a) In addition to the requirements in Section C.1(a), costs of ocean or air transportation and related delivery services may not be financed under the Grant, if the costs are for transportation under an ocean vessel or air charter which not received prior USAID approval.

(b) Unless USAID determines that privately owned United States-flag commercial ocean vessels are not available at fair and reasonable rates for such vessels, or otherwise agrees in writing:

(1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) finance by USAID which may be transported on ocean vessels will be transported on privately owned United States-flag commercial vessels.

(2) at least fifty percent (50%) of the gross freight revenue generated by all shipments finance by USAID and transported to the territory of the Grantee on dry cargo liners shall be paid to or for the benefit of privately owned United States-flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. Ports and any cargo transported from non-U.S. ports, computed separately.

**Section C.7. Insurance**

(a) Marine insurance on goods financed by USAID which are to be transported to the territory of the Grantee may be financed as a Foreign Exchange Cost under this Agreement provided:

(1) such insurance is placed at the most advantageous competitive rate;

(2) such insurance is placed in a country which is authorized under Section C.1(a); and

(3) claims thereunder are payable in U.S. dollars or any freely convertible currency unless USAID agrees otherwise in writing.

If the Grantee (or the government of the Grantee), by statute, decree, rule, regulation, or practice discriminate with respect to USAID-financed

procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Grantee financed by USAID hereunder shall be insured against marine risks and such insurance shall be placed in the United States with a company or companies authorized to do marine insurance business in the United States.

(b) Except as USAID may otherwise agree in writing, the Grantee will insure, or cause to be insured, goods financed under the Agreement imported for the Agreement against risks incident to their transit to the point of their use under the Agreement; such insurance will be issued on terms and conditions consistent with sound commercial practice and will insure the full value of the goods. Any indemnification received by the Grantee under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Grantee for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in USAID Geographic Code 935 as in effect at the time of replacement and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

**Section C.8. U.S. Government-Owned Excess Property.** The Grantee agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Grant, should be utilized. Funds under the Agreement may be used to finance the costs of obtaining such property.

#### **Article D: Disbursements.**

##### **Section D.1. Disbursement for Foreign Exchange Costs.**

(a) After satisfaction of conditions precedent, if any, the Grantee may obtain disbursements of funds under the Agreement for the Foreign Exchange Costs of goods or services required for the Agreement in accordance with its terms, by such of the following methods as may be mutually agreed upon:

(1) by submitting to USAID, with necessary supporting documentation as prescribed in Implementation Letters, (A) requests for reimbursement for such goods or services, or, (B) requests for USAID to procure commodities or services in Grantee's behalf for the Agreement; or,

(2) by requesting USAID to issue Letters of Commitment for specified amounts directly to one or more contractors or suppliers, committing USAID to pay such contractors or suppliers for such goods or services.

(b) Banking charges incurred by the Grantee in connection with Letters of Commitment will be financed under the Agreement unless the Grantee instructs USAID to the contrary. Such other charges as the Parties may agree to may also be financed under the Agreement.



## **Section D.2. Disbursement for Local Currency Costs.**

(a) After satisfaction of conditions precedent, if any, the Grantee may obtain disbursements of funds under the Agreement for Local Currency Costs required for the Agreement in accordance with terms of this Agreement, by submitting to USAID, with necessary supporting documentation as prescribed in Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursements may be purchased by USAID with U.S. Dollars. The U.S. Dollar equivalent of the local currency made available hereunder will be the amount of U.S. Dollars required by USAID to obtain the local currency.

**Section D.3. Other Forms of Disbursement.** Disbursements may also be made through such other means as the Parties may agree to in writing.

**Section D.4. Rate of Exchange.** If funds provided under the Agreement are introduced into the Cooperating Country by USAID or any public or private agency for purposes of carrying out obligations of USAID hereunder, the Grantee will make such arrangements as may be necessary so that such funds may be converted into local currency at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the country of the Grantee to any person for any purpose.

## **Article E: Termination; Remedies.**

### **Section E.1. Suspension and Termination.**

(a) Either Party may terminate this Agreement in its entirety by giving the other Party 30 days written notice. USAID also may terminate this Agreement in part by giving the Grantee 30 days written notice, and suspend this Agreement in whole or in part upon giving the Grantee written notice. In addition, USAID may terminate this Agreement in whole or in part, upon giving the Grantee written notice, if (i) the Grantee fails to comply with any provision of this Agreement, (ii) an event occurs that USAID determines makes it improbable that the Objective or Results of the Agreement or the assistance program will be attained or that the Grantee will be able to perform its obligations under this Agreement, or (iii) any disbursement or use of funds in the manner herein contemplated would be in violation of the legislation governing USAID, whether now or hereafter in effect.

(b) Except for payment which the Parties are committed to make pursuant to noncancellable commitments entered into with third parties prior to such suspension or termination, suspension or termination of this entire Agreement or part thereof will suspend (for the period of the suspension) or terminate, as applicable, any obligation of the Parties to provide financial or other resources to the Agreement, or to the suspended or terminated portion of the Agreement, as

applicable. Any portion of this Agreement which is not suspended or terminated shall remain in full force and effect.

(c) In addition, upon such full or partial suspension or termination, USAID may, at USAID's expense, direct that title to goods financed under the Agreement, or under the applicable portion of the Agreement, be transferred to USAID if the goods are in a deliverable state.

### **Section E.2. Refunds.**

(a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, USAID, notwithstanding the availability or exercise of any other remedies under this Agreement, may require the Grantee to refund the amount of such disbursement in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

(b) If the failure of Grantee to comply with any of its obligations under this Agreement has the result that goods or services financed or supported under the Agreement are not used effectively in accordance with this Agreement, USAID may require the Grantee to refund all or any part of the amount of the disbursements under this Agreement for or in connection with such goods or services in U.S. Dollars to USAID within sixty (60) days after receipt of a request therefor.

(c) The right under subsections (a) or (b) to require a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(d) (1) Any refunds under subsections (a) or (b), or (2) any refund to USAID from a contractor, supplier, bank or other third party with respect to goods or services financed under the Agreement, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the Agreement, to the extent justified, and (B) the remainder, if any, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on funds disbursed by USAID to the Grantee under this Agreement prior to the authorized use of such funds for the Agreement will be returned to USAID in U.S. Dollars by the Grantee, unless USAID otherwise agrees in writing.

**Section E.3. Nonwaiver of Remedies.** No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

**Section E.4. Assignment.** The Grantee agrees, upon request, to execute an assignment to USAID of any cause of action which may accrue to the Grantee in connection with or arising out of the contractual performance or breach of performance by a Party to a direct U.S. Dollar contract which USAID financed in whole or in part out of funds granted by USAID under this Agreement.

**Article F: Miscellaneous.**

**Section F.1. Job Loss, Export Processing Zones and Workers' Rights.**

(a) No funds or other support provided hereunder may be used in an activity reasonably likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

(b) No funds or other support provided hereunder may be used in an activity the purpose of which is the establishment or development in a foreign country of any export processing zone or designated area where the labor, environmental, tax, tariff, and safety laws of the country would not apply, without the prior written approval of USAID.

(c) No funds or other support provided hereunder may be used in an activity which contributes to the violation of internationally recognized rights of workers in the recipient country, including those in any designated zone or area in that country.

**Section F.2. Prohibition on Assistance to Drug Traffickers.**

(a) USAID reserves the right to terminate this Agreement or take other appropriate measures if the Grantee or a key individual of the Grantee is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(b) USAID reserves the right to terminate assistance to, or take or take other appropriate measures with respect to, any participant approved by USAID who is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(c) For any loan over \$1,000 made under this Agreement, the Grantee shall insert a clause in the loan agreement stating that the loan is subject to immediate cancellation, acceleration, recall or refund by the Grantee if the borrower or a key individual of a borrower is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.

(d) Upon notice by USAID of a determination under section (c) and at USAID's option, the Grantee agrees to immediately cancel, accelerate or recall the loan,

including refund in full of the outstanding balance. USAID reserves the right to have the loan refund returned to USAID.

(e) The Grantee agrees not to disburse, or sign documents committing the Grantee to disburse, funds to a subrecipient designated by USAID ("Designated Subrecipient") until advised by USAID that: (1) any United States Government review of the Designated Subrecipient and its key individuals has been completed; (2) any related certifications have been obtained; and (3) the assistance to the Designated Subrecipient has been approved.

(1) The Grantee shall insert the following clause, or its substance, in its agreement with the Designated Subrecipient:

(2) The Grantee reserves the right to terminate this Agreement or take other appropriate measures if the Subrecipient or a key individual of the Subrecipient is found to have been convicted of a narcotic offense or to have been engaged in drug trafficking as defined in 22 CFR Part 140.