

The Office of the Ombudsman (OoO) in Malawi An Appraisal

NORAD COLLECTED REVIEWS 5/2007

Bård A. Andreassen (UiO)
Thor Oftedal (NORAD)

Norad collected reviews

The report is presented in a series, compiled by Norad to disseminate and share analyses of development cooperation. The views and interpretations are those of the authors and do not necessarily represent those of the Norwegian Agency for Development Cooperation.

Norad

Norwegian Agency for Development Cooperation

P.O. Box 8034 Dep, NO- 0030 OSLO

Ruseløkkveien 26, Oslo, Norway

Phone: +47 22 24 20 30 Fax: +47 22 24 20 31

ISBN 978-82-7548-198-4

THE OFFICE OF THE OMBUDSMAN (OoO) IN MALAWI AN APPRAISAL

BY BÅRD A. ANDREASSEN (UIO) AND THOR OFTEDAL (NORAD)

OSLO, 21 MARCH 2007

STRUCTURE

EXECUTIVE SUMMARY AND RECOMMENDATIONS	2
1. BACKGROUND AND THE MANDATE	7
2. THE OMBUDSMAN'S OFFICE	9
3. DONOR SUPPORT TO THE OFFICE	12
4. INSTITUTIONAL ANALYSIS (FUNCTIONING AND PERFORMANCES)	14
5. FUTURE SUPPORT? ALTERNATIVE OPTIONS FOR POSSIBLE FUTURE NORWEGIAN SUPPORT	18
APPENDICES	
1. TERMS OF REFERENCE	21
2. PROVISIONAL LIST OF CASES HANDLED BY THE MALAWI OoO 2004-2006	23
3. STUDIES AND DOCUMENTS CONSULTED	24
4. LIST OF PEOPLE MET	25

MAIN RECOMMENDATIONS

A major issue addressed in this appraisal is whether Norwegian support to the OoO should be continued in a third phase or not. We have considered four possible responses:

- To end the Norwegian (and the Swedish equivalent support) with the termination of the current phase
- To terminate Norwegian support, but with a small time limited exit funding
- To enter into a third (and possibly) final phase with support to a specified set of activities
- To engage in a long-term engagement (initially for 2-3 years) of support to the broader justice and legal sector in Malawi

In conclusion, we recommend the third option suggested above, that is, that the Norwegian Embassy enters into a third phase of two years. The document guiding this phase should have clear goals and indicators including benchmarks that will be the focus in semi annual reporting and annual meetings. Funds should be released in 6 monthly instalments, based on financial statement and narrative reporting on progress towards agreed benchmarks for the past 6 months. All reports should be approved before new funds are being released. The period for the thirds phase is suggested to be 2008-2009. This would also give room for further dialogue between the Government, donors and partner institutions on the feasibility, desirability and modalities for a possible future basket fund for the governance and justice sector. As mentioned in the summary findings the OoO seems to have made some recent improvement in its internal administrative performance. This may be a result of the technical assistance (TA) provided by DFID through the Danish Center for Human Rights. Continued Norwegian support should be dependent on the continuation of this process after the TA leaves.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

GENERAL OBSERVATIONS:

- The conclusion of this short study is that the OoO is an important governance institution in Malawi, with a mandate which is defined in the 1994 Constitution and further specified in the Ombudsman Act of 1996. There are highly conflicting views on the performance of the Office of the Ombudsman. While some regard it as an important institution and in fact the major institution for citizens to make complaints against misuse of public office in Malawi, some of the documents informing this appraisal complain that the results are not “visible” and “hard to see”. This stands in contrast to the rather positive views given to us in meetings with representatives of other government agencies and NGOs. While these representatives emphasise the positive role the OoO plays in the Malawian community, donors tend to focus on weaknesses in the internal administration, insufficient reporting and communication of results, and inadequate financial control. Admittedly the OoO is still - in its 10th year of operation - in an “institution-building” phase. Office routines, reporting procedures, financial handling and control, strategic planning and monitoring do at present not meet desirable standards. There are conflicting views amongst the people interviewed as to the question if there is a sincere will in the OoO to improve this.
- From our reading of the Office’s own comments to the various criticisms that have been levelled in a number of reports and appraisals, and most lately the preliminary audit report prepared by the Price Waterhouse Coopers, the Ombudsman is aware of these shortcomings¹. Evaluations of internal administrative capacity and operations, most of them rather critical and sometimes using strong and provocative language, have put the OoO in a defence position. We agree that some of the allegations launched in these reports are not solidly documented and at times even unsubstantiated.

¹ The following issues have been stressed repeatedly in consultants’ reports, or in annual meetings and other for between the OoO and the Norwegian Embassy:

- Plans for strengthening administrative capacity, in particular financial control and cost-efficient utilisation of available funds.
- A clear linkage of budgets and activities/planned outputs;
- The inclusion of a total (grand) budget of the Office in financial and progress reports;
- Improved and transparent procedures for recruitment, including job descriptions.

- The office claims to be in the process of taking institutional steps to improve strategic planning and correct poor practices and inadequate procedures of financial administration and control. Based on previous experience some doubt can be raised regarding the longer term commitment to some of these changes. Particularly those who will address priorities and limit activities such as travels and meetings with allowances.
- The OoO must be seen in its Malawian context and many of the problems facing the office is common to most governmental institutions in Malawi. Despite the OoO receiving higher salaries than most government institution, the salary level is still low and motivates to seek additional source of income within or outside the office. This threatens efficiency and affects the strategic prioritization in the office in a negative way. When there is a shortage of funds meeting, seminar and travel cost seems to be prioritized and operational running cost for the office (stationary, stamps etc) is suffering.
- There are clearly differences in the perception of how the institutions should be run. Proven indications on this are the failure to finalise a strategic plan for the period 2005-2009, the rather unrealistic scope of this strategic plan (too extensive), and the apparent failure of applying the “logframe approach” as a planning and implementation tool. The draft strategic plan is unfocussed and too detailed/comprehensive and hence not a very helpful tool for giving a good direction for the management of the Office. Contrary to this the agreement with DFID (Cf. *Programme Memorandum* of October 2002) includes a rather focused plan and programme “header sheet”. It seems like a focused strategic plan, in line with the DFID document, may be more appropriate than the present Programme Support document, and in particular the unfinished Strategic Plan 2004-2009.

Summary of positive findings:

- The OoO is known to keep a high public profile. The Ombudsman himself is highly respected, and has received public awards for his work;
- The OoO opens about 500-600 cases every year. In addition they reduced the backlog of cases by about 400 last year (2006).
- The Office has introduced initiatives that aim at improving the administrative procedures and performances. Over the last year three internal fora have been

established to approve activities, and ensure that activities carried out are within the scope of the budget. These are the

- The Budget Committee
- The Financial Allocation Committee
- The Executive Committee comprising of the Ombudsman and the three most senior members of his staff.

On the negative side, the following observations need to be addressed carefully:

The most significant challenge of the Office is to become more effective in utilising available resources and making institutional priorities among the various tasks of the organisation, and to become more cost-efficient in the spending of funds. A returning theme has been the use of funds for travelling, including payment of allowances. These issues need to be settled. In particular it seems imperative that standards of allowances, and plans and procedures for travel and out-of-office work are agreed upon as far as this is part of the funding activities under a partnership agreement. Another issue is improper filing systems that have lead to, for instance, missing payment vouchers in financial reports.

The strategic plan is incomplete and does not function as a useful strategic document. It is essential to develop realistic strategic and management plans on a yearly basis and establish mechanisms for regularly reviewing progress made on each identified activity in the plan. The annual plans must reflect prioritisation among planned achievements and expected outcomes.

A significant weakness seems to be a lack of governmental will to fund the Office sufficiently. This has an increased reliance and dependence of donor funding. The Mid-term review estimated that 80—85% of the Office funding comes from donor support, and alleged that the Office does not have a strategy to gain financial sustainability. At present donor support is likely to be a negative incentive for the development of a “sustainability strategy” based on government taking financial responsibility. Continued donor support can only be justified if it is consistent and responsive to a realistically designed exit strategy, supported by the government. This can only be obtained by dialogue between the OoO, relevant Ministries, and the Parliament.

We found that there was a clear need for improvements of financial management, control and reporting, and for increased respect regarding deadlines of reports to donors according to contractual commitments.

1. BACKGROUND, THE MANDATE AND IMPLEMENTATION OF THE REVIEW

The Malawian Office of the Ombudsman (OoO) has received funding from Norway since year 2000. The funding has been given in two phases of which the latter formally is coming to an end in May 2007 (though if funds are still available under the agreement, they may be used in early 2008 as well.) The support remaining for 2006-7 is NOK 2,1 mill. The Norwegian Embassy administers an equally large allocation from the Swedish International Development Cooperation Agency (SIDA).

The purpose of this review is to assess the progress and obstacles in the previous phases, and to identify “best practices” and “lessons learnt” to support a decision on the way forward. More specifically the review is asked to assess

- The appropriateness of the programme design;
- the overall achievement with regards to the constitutionally determined role and responsibilities of the OoO;
- the overall achievements with regard to the agreed Programme Support Document (PSD);
- Make recommendations with respect a new phase of support and model of co-operation.

The review will briefly see the support OoO in light of the possibility of supporting a Forum of Constitutional Bodies of Malawi, and ask whether support for this Forum and a related donor coordination may be a way forward for supporting the justice and legal sector in Malawi that also include the OoO.

The review is based on a number of previous studies, assessments and relevant documents on structure and functions of the OoO and experiences of donors with supporting the Office financially from year 2000 to the present. The most important documents used are

- Programme Support Document (for the period 2002-2007)

- DFiD (UK) Programmatic Support to the Office of the Ombudsman
- Appropriation document on Norwegian Support (approval date 20 February, 2003)
- The draft Mid Term Review authored by Salphera Consulting (dated 24 June 2005)
- Draft audit report of January 2007

We have also consulted the Strategic Plan (2004 – 2009) of the Office, reports from Annual Meetings between the Ombudsman and NORAD and minutes from internal meetings in the Office.

These documents gave us a wealth of recent information, and provided data that represent the “baseline” for the assessment. To check and complement this information, however, the consultants visited Malawi for four working days from 22–26 January 2007, and carried out a series of interviews with the Ombudsman’s Office, the Norwegian Embassy, and some other institutions well placed to offer insights and views on the work and achievements of the Office. The interviews were not based on a structured format, but carried out according to our assumptions about what the various institutions were able to tell us, and the possibility for controlling information obtained from other informers and sources.

The team spent five working days in Lilongwe. Almost one full day was used to interview different staff at the Ombudsman’s office. As the Ombudsman was out of Office this particular week, we only managed to meet with him over a working dinner, which, at any rate was useful and important. We were well received in the Ombudsman’s Office, and in the other institutions we visited.

In agreement with the Embassy, less attention than originally planned was used to studying possible positive and negative factors of supporting a prospective “Forum for Constitutional Bodies”, as a potential coordinating instrument for support to several justice sector institutions.

In order to make an institutional assessment of the Ombudsman office, we need some indicators of institutional performance. In section 4, we use a framework of institutional assessment consisting of the following six indicators:

- the scope of the institutions mandate. We assume that a wide mandate gives broad influence and hence institutional strength;
- legal foundation, assuming that an institution enshrined in law, and preferable in a Constitution, is more robust to resist interference and pressure by political authorities;
- level of independence from political interference, including economic security of office, the appointment procedure of the Ombudsman (this should not be handled by government authorities);
- performance in terms of case handling, legal advice, dissemination of information and other outcome;
- accessibility to the public, assessing how easily the public may access the institution (for different social categories and geographical regions);
- public reputation and public knowledge about the institution.

The present assessment does not allow a full institutional analysis of the Malawian Ombudsman on these indicators, but we find it useful to make some general observations on each of the indicators in section 4.

2. THE OMBUDSMAN’S OFFICE

The Office of the Ombudsman is a constitutional body, established by Sections 120-128 of the 1994 Constitution of Malawi. It became “operational” in 1996, and may investigate “cases where it is alleged that any person has suffered injustice, and it does not appear that there is any remedy reasonably available by way of proceeding in the court or by way of appeal from a court or where there is no other practicable remedy” (Section 123 (1)). Section 123 (2), however, states that the powers of the office “shall not oust the jurisdiction of the courts and the decisions and exercise of powers by the Ombudsman shall be reviewable by the High Court on the application of any person with sufficient interest in a case the Ombudsman has determined”. Section 125 ensures that the Office shall “be provided with the necessary resources to discharge the functions of the Office”.

The Ombudsman’s office is mandated to provide remedies free of charge for people who claims that they have been subject to injustice. The wide scope of the Office’s mandate to

handle “any and all cases of injustice” that arise in public office, the office to some extent operates as a cheap substitute for the courts. A recent study of the office suggests that the OoO faces a number of challenges that limits its potential: In spite of the broad scope of the mandate, the ombudsman’s work is limited to the public sector while it has a potential for handling cases also outside the public sector and civil service. Another limitation is the fact that the office only has offices in the three major towns in Malawi (Lilongwe, Blantyre and Mzuzu), although the Ombudsman occasionally visits rural areas to handle complaints. Hence, the study suggests that the OoO should explore opportunities to collaborate with organisations that have permanent presence in rural communities, to “gather complaints” and submit them to the Ombudsman.

The current Ombudsman came into office in 1999 and is serving his second term which expires in 2009. He has a positive public image and a reputation for being independent of political influence. He has been awarded the “Malawian of the Year” price twice over the last years, and hence represents the office in a profiled manner that helps public awareness of the office’s existence and functions. According to the Mid-term review (Draft Report June 24, 2005), “the activities and determination of the office of the Ombudsman are extremely well covered by the press” (p. 32). cursory conversations with Malawian laymen during our stay in Lilongwe gave an impression that the Office was publicly well known. More importantly, other informers, for instance in the Malawian Human Rights Commission, holds the OoO in high regard, and claims that the Ombudsman is the main office for people to address with their grievances about misuse of public office. It is “reaching to the poor”, or as a representative of and non-governmental organisation maintained, the OoO “is known to the people in the districts”. It is well known through radio and newspapers, and has helped “to sensitize people”. The Office obviously has a positive public perception.

In other words, the OoO seems to play an important role in “the nascent Malawian democracy” as assumed by a DFID memo from October 2002. Certainly this role depends on how many and how effectively it handles complaint cases from the public with its available resources. Further, it depends on the nature of these cases, and the impact the resolution of the cases has on the performance and reform of governance institutions that are being scrutinised and affected by complaints, case handling and decisions. On the other hand, some assessments allege that the OoO was more effective, or played a more central role some years ago than at the present. This is normally explained by the OoO not being able to resolve the critical

administrative demands that need to be dealt with for an institution which has been growing rapidly in terms of demands from the public, and by internal institutional growth made possible largely because of access to donor funding. Another recurrent theme is that the challenges facing the OoO needs determined management action in order to make the Office work more effective and efficient.

The DFID memo assumes that the Office handles “approximately 3000 cases per year”. Our information indicates a lower number (at least for the last three years), that is, 378 cases in 2004, 604 in 2005 and 582 in 2006 (cf Appendix X). These cases are “opened cases” some of which have been settled and others not yet decided. The largest category of cases are “unfair practices/treatment” of citizens by employees in public office (214 in 2004, 325 in 2005 and 246 in 2006). Another important category is “unpaid dues” (salary arrears, unpaid gratuity, unpaid death gratuity, unpaid allowances and unpaid pensions), counting for 102, 165 and 119 in 2004, 2005 and 2006 respectively. Other categories with a comparatively high number of cases are “unfair dismissal, land dispute, demands for compensation (without further specification) and death gratuity.

In an assessment of “the current situation” of the OoO, an externally funded consultant quotes as major strengths of the office that there is a continued positive public perception of the Office and the Ombudsman himself, and that the office is institutionally well established with a relatively good national coverage. The mandate of the Office is relatively clear and the Office has managed to prevail independent from political interference. It has well-established links with respondent institutions at middle management level via “contact persons” and well-developed procedures for referring cases and concerns to sister organisations.

The Office has been able to reduce a considerable backlog of cases, but in September 2006, the backlog was still at the considerably high level of 3.600 cases. Exact figures about the annual reduction of the backlog are difficult to establish, and a high backlog represent a serious problems for the complainants. Reduction of backlog by careful scrutiny and handling of each case should be a high priority, and should be given high priority. What seems clear is that the Office is far from able to meet its own ambition of finalising 80% of received cases within 3 months. It is positive that the OoO is at present using a case handling program and is including all solved, pending and new cases in the database. This is a major work with thousands of files, at present only available in hard copy, to be entered. Getting this into the

system will improve information and break-down regarding nature of cases, outcome of the cases and give better information on time used and backlog.

Importantly, the OoO is seen as performing an important “semi”-court role, settling cases of conflict and complain, and with the power to licence compensation for victims of governance mal-practices or rights violations. Seemingly, it offers an alternative for people who cannot afford to go through expensive court processes. The list of cases presented in Appendix 2 could have been even more specific as to the major category “unfair practices (treatment)” to reveal what issues and complaints that are typical in Malawi. This could give the Office important information and help construct a strategy to address these issues in dialogue with the government, and to suggest introducing new legislation and control mechanisms in the most affected areas of public office management. The information provided in Appendix 2, however is telling, and indicate the variety of issues that the Office is addressing.

Does this caseload imply case handling effectiveness? Are important issues un- or underrepresented? What can reasonably be expected from the Office in terms of number of cases? The issue is complex and influenced by a number of factors, including availability of financial resources, human resources and skills of the staff, professionalism, political environment etc. It is however, important and legitimate for partners of governance institutions (donors) to have a clear-cut concern about effectiveness in goal achievement and cost-efficiency. Due to time constraints we have not been able to go in-depth into this issue. However, comparing these figures on “case load” with comparable figure from Norway (the main partner country of the Malawian Ombudsman) put the Office output in a comparative perspective. In 2005, the Norwegian Ombudsman for the Public Sector (“Sivilombudsmannen”; the office comparable to the OoO) received 1.956 complaints. 2.028 cases were settled in 2005 which was 7 fewer than in 2004. The “practical aspects” of 1.158 cases were dealt with, and in these cases critique was issued in 170 cases (cf. Annual report 2005 “Årsmelding 2005”, p. 12), see internet link <http://www.sivilombudsmannen.no/>). The Norwegian Ombudsman has a staff of 44 of which 20 are full time legal staff and 5 additional staff with training in law in part time positions.

The Malawian OoO has a total staff of just fewer than 70, but of these only 2 staff have a full legal education. One of the two with a degree in law is the Ombudsman himself. However, as this cursory comparison with Norway suggests (without going into details about the data, and

the very different contexts of the two countries), the demand for case handling by the OoO is relatively high, and its institutional preparedness to handle the case load in terms of the available qualified staff with appropriate training in law equally low. To correct this imbalance appears to be an important institutional challenge.

The OoO is organised in six “units”: The investigation unit, the documentation unit, the legal advisory unit, the civic education unit, the coordination, monitoring and evaluation unit and the finance and administration unit.

One issue pointed out to the team was the need to strengthen the focus on women. In African countries in general, there is a “high threshold” for women to approach a public office for complaining, and women rarely attend sensitization campaigns or workshops. As an important institution for complains against misuse of public office and human rights, and as an institution which can be approached free of charge, the Office, it was suggested, should have a unit to deal with women’s particular conditions and needs. The Ombudsman could only remember one case the office had handled based on discrimination against women. The civil society representative knew several cases in which women had been discriminated, for example by being bypassed by less qualified men in appointment for public office. The NGOs would assist women and refer them to the OoO if it was known that the office had capacity to assist in cases of this nature.

3. DONOR SUPPORT TO THE OFFICE

The Norwegian Embassy and SIDA have supported the OoO financially since November 2000. In a strategic plan for 2000-2004, a number of weaknesses in the Office’s performance were identified, including inadequate human, technical and financial resources, inadequate in-house procedures for dealing with delays and responses to institutions, limited public awareness of the Office and too few outreach programmes. Weak administrative and organizational procedures were also emphasised.

On this background the Norwegian Embassy signed an agreement of cooperation with the OoO in November 2000; it agreed on a Memorandum of Understanding with the Malawian Government in April 2001, and continuation of this support was approved in an agreement

signed in November 2002. After the termination of the support in 2003, a larger program with pooled resources, with one lead donor was being planned, and supposed to include DFID the Norwegian Embassy and UNDP. However, the UNDP pulled out of the process and decide to provide some funding outside the pooled funding mechanism. In March 2003, the Norwegian Embassy and DFID signed a five year cooperation agreement; and in a separate agreement, Sweden agreed to channel funds equalling the contribution of Norway delegating the administration of these funds to the Norwegian Embassy.

The overall objective of the agreement was to improve the capacity of the OoO to carry out its mandate, and in particular strengthen its effectiveness in caseload management, improve the access to and use of information technology, job-related training, civic education and research, and improve the Office's strategic approach to its operations and ensure effective administration and management.

According to the accord of 2002 (covering the 2002-2008 period), Norway and Sweden agreed to offer NOK 5 120 000 (MWK approx. 120 000 000) for the whole six-year period. This made the combined Norwegian and Swedish support 20 million kwacha per year on average. The Government of the Malawi provided approximately 47 million kwacha per year for salaries and stationary, and an operational budget of 14 million kwacha in 2006. The Norwegian/ Swedish contribution was allocated to the operational budget. This allocation, in other words, made up the major part of the operational budget.

The Office became fairly dependent on external funding for its operations and activity level. The agreement of 2002, however, expected that at the end of the programme period the Office would be a "highly professional self-sustaining institution" with appropriate administrative practices, an effective complaint handling process, and efficient referral to appropriate services for the complaints for which it is not able to provide redress.

The Mid-term-review of August 2005 revealed that the Office was not moving towards becoming a financially self-sustained institution. On the contrary, governmental funding was decreasing, and the donor funding of the office made up "80-85% of the funding for the Office". It was recommended that the office should develop a sustainability plan that aimed at "the gradual increase in the share of funding that comes from the Government and phased out support from donors". This recommendation has, to our knowledge, not been followed up,

although we were informed by the ombudsman that he has made an appointment with the Minister of Finance to discuss the matter in March 2007.

4. INSTITUTIONAL ANALYSIS (FUNCTIONS AND PERFORMANCES)

We have already touched upon several strengths and weaknesses in the functions and performances of the Ombudsman's Office. In this section we first refer to the findings of the Mid-term Review (of August 2005) and compare them with the information we collected in Lilongwe. Then we contrast these findings with the recent draft audit report. We conclude the section with a short return to the governance institutional indicators referred to in section 1 in order to highlight the achievements of the Office in view of some institutionally established norms for the assessment of governmental institutions. The discussion in this section identifies important premises for our concluding discussion in section 5.

The Mid-term Review (MtR) concluded as to the Office's organisational performance that the OoO is publicly very well known, and has made a positive impact on public administration and reduction in malpractices. However, compared with the plans of the Programme Support Document (the main reference document for donor support) the MtR observes that the "review indicates less than expected levels of achievements" (p. 9). It was suggested to our team that the programme Support Document may have been too optimistic, and hence unrealistic about what the office possibly could achieve in a five years period. On the other hand, the observation of the MtR may also indicate that the Office has not been effective enough in management, prioritisation and implementation of activities. There is in the MtR a sharp contrast between a very positive assessment of the Office substantive performance, and its administration and management.

As to the "programme design" the MtR focused on the incomplete strategic plan of the Office. It notes difficulties that may arise from late or delayed submission of monthly allocations of the budget, and recommended that the office should downscale its engagement in civic education, which should be carried out by other institutions in partnership with the OoO.

The MtR further concluded that there significant weaknesses in financial management of the Office and recommended substantial changes in reforms of management structure in order to

enhance the capacity of the Office to meet financial standards. As to programme implementation the MtR noted that in spite of “conducive environments for the implementation of the programme” the programme has not been implemented effectively, noting the backlog of cases as an illustration.

The bulk of the MtR examined the internal office environment. Without repeating all the observations and recommendations of the Review, the trust of the analysis is that the office needs staff training, better utilisation of information technology and maintenance of computers, better archival procedures and systems for complaints and access, the introduction of a comprehensive budgeting system reflecting all sources and amounts of income, better auditing systems and better and timely reporting.

As pointed out above, many of these observations remain a challenge for the management of the Office. The financial management issues are recurrent themes in the recent Draft (preliminary) Audit report (for the year ending 30 June 2006), e.g. control weaknesses of missing bank reconciliations for bank accounts, unresolved issues in the use and level of allowances; missing vouchers in the accounting files, untimely income and expenditure reports.

However, as noted by the Ombudsman in the comments to the draft audit, steps have been taken over the last months to come to grips with many of these serious weaknesses in management practices. One may ask why this has taken so long time, but the actual progress has been confirmed by other information made available to the team. These steps may indicate that positive institutional changes and improvements are taking place, and that the management’s attempts to address weaknesses and challenges identified by consultancy reports and by internal institutional learning. It is important that future strategic plans and programme or project document include benchmarks to measure continued progress to address these weaknesses.

What are the most recent developments in the Office? We note the following achievements and trends:

- The establishment of a financial allocations committee (FAC) may contribute to better financial control and discipline;

- The establishment and work of an Executive Committee which now seems to hold regular meetings;
- Continuous reduction of backlog and a reduction in number of pending cases;
- The existence and functioning of an external “Appointments and disciplinary board” since 2005, deciding inter alia on promotions, helps to make such decisions more transparent;
- Significant improvements in reporting and budgets over the past few months;
- Steps to secure increased governmental funding by holding meetings with the Minister of Finance (planned to be held in March this year).

In an institutional assessment of the ombudsman and the achievements of the Office these trends are important, but they are still only small steps that have not yet been institutionalised. Whether they will bring lasting institutional improvements remains to be seen, though they reflect in our view an apparent willingness of the Office to make institutional (management and organisational) reforms that are critical for donors to pursue further partnership.

The main challenges that the team noted were;

- To reduce the backlog of cases
- To improve reporting and the data/statistics needed for reporting and verification of output and effectiveness;
- To secure that the staff with qualifications for institutional strengthening is available, including IT competent staff;
- To increase the legal competence of the Office;
- To improving management and leadership procedures and structures;

Applying the institutional assessments criteria referred to above, we may sum up by suggesting that the Office scores high on the scope of the mandate (it gives a broad influence and institutional strength in terms of visibility in the public); it also scores high on its legal foundation by being enshrined in the Constitution and appropriate legislation. With reference to the third criteria – level of independence from political interference – the Office scores high on its ability to resist political interference, but low as concerns economic security of the

Office mainly because the Government does not seem to have been willing to comply with the Constitutional demand of securing “the necessary resources to discharge the functions” of the Office (Constitution of Malawi, section 125 (a)). The Office scores relatively high on performance in terms of case handling and dissemination of information about its work. However, the large backlog of cases and the still insufficient statistical reporting of cases decreases its score on this indicator. The office has a relatively high on accessibility to the public, although we have noted the lack of gender focus for enabling women better access to the Head Office in Lilongwe, and its two local offices. On the fifth and last criteria – public reputation and public knowledge about the institution – the Office scores relatively high according to our informants and available documentation

The overall score on these institutional criteria/indicators is relatively high and positive. However, indicators give little attention to the institutional fabric of the Office, how it is being managed and the efficiently in use of resources, as well as reporting and communication with partners, that is, its partnership capabilities. It is particularly at this dimension – the institutional effectiveness, efficiency and functioning - that most weaknesses seem to exist. Financial management, reporting and documentation are critical variables that require further institutional reforms, and these reforms require different ways of doing things rather than added funding for management and institutional operations.

Despite the relatively brief visit to Malawi we believe we have been able to complement the information from previous reports and reviews, with a good number of interviews, recent reports, memos, and minutes from meetings at Ombudsman’s office as well as in meetings between the Office and the lead donor, the Norwegian Embassy.

Our overall conclusion is that the OoO is an important governance institution in Malawi in terms of enhancing a public awareness about the misuse of public office. It relies to a large extent on the reputation and public outreach of the current Ombudsman. On the other hand the Office still grapples with significant institutional weaknesses, which need to be resolved. External aid will not alone resolve these weaknesses. They can only be resolved by the Office itself and seems to concern as much as anything else the culture, procedures and rules of institutional management. The key challenges that remain to be resolved are enhancing financial control and introduce transparent rules for management and strategic use of

resources. Finally a financial commitment from the Malawi Government is essential to achieve long term financial sustainability.

5. FUTURE SUPPORT? ALTERNATIVE OPTIONS FOR POSSIBLE FUTURE NORWEGIAN SUPPORT

Should the Norwegian Embassy continue supporting the OoO financially? If the Embassy decides positively, what should be the modalities of support and the institutional and administrative requirements?

We assume that a termination of Norwegian (and Swedish) support may seriously and negatively affect the Office. This external support counts for the major part of funds for activities and outreach. When addressing this issue, respondents were uniformly stressing that pulling out donor funding at present would “seriously damage” the functioning and performances of the Office. More time and effort is apparently needed in order to get needed increases in governmental funding, or alternatively scale down the size and activities of the Office if this source of additional funding is taken away.

Irrespective of these assumptions, there are four options open to the Norwegian Embassy:

1. To end the Norwegian (and the Swedish equivalent support) with the termination of the current phase (effectively ending by the end of 2007 or early in 2008 if funds in the current allocation are still unutilised).
2. To terminate Norwegian support, but with a small exit funding for approximately one year (2008) that would help the Office to adapt to the new funding situation.
3. To support a third phase with a specified set of strategic activities, with indicators and important benchmarks defined with time bound progress. If this is decided to be a third and final phase, the benchmarks should be chosen to measure progress towards a strategy for terminating the aid relationship.
4. The final option is to continue with a long-term engagement (initially for 2-3 years) of support to the justice and legal sector in Malawi. This would be in the form a sector support

programme, possibly as basket funding where various donors contribute, but with one agency administering the basket (for instance the UNDP, or another institutional structure). If this option is chosen, it needs to be combined with a significant contribution by the Malawian government to avoid making the sector dependent on external funding for an unspecified period of time. If this option is chosen it should be considered to be combined with option 2.

In conclusion, we recommend the third option suggested above, that is, that the Norwegian Embassy enters into a third and final phase of two years, and where support granted to specific activities that the Ombudsman suggests and determines in dialogue with the Embassy. Funds should be released in instalments, based on a clear timetable of activities, reporting before new funds are being released. The third phase should be limited to two years (2008-2009). This would also give room for further dialogue between the Government, donors and partner institutions on the feasibility, desirability and modalities for a possible future basket fund for the governance and justice sector.

As noted in this assessment, a number of proposals for institutional reform of the OoO have been suggested, and over the last months the Office has started a reform process of implementing some of the recommendations suggested. An important document to this effect is the final paper by the External Consultant (“Challenges and Way Forward. Malawi Office of the ombudsman”, dated 05.02.2007), which contains a number of proposals that are largely concurrent to the findings of the present assessment. These recommendations and suggestions should be transformed into a manageable institutional reform document with a realistic time table, as part of a renewed partnership between the office and the Norwegian Embassy. In a third phase of support, the following issues should be given priority for Norwegian support to the Office:

- To reduce the backlog of cases. If need be, existing staff of the Office, currently engaged in other duties, might be assigned to this task for a shorter and intensive period of prioritised, intense backlog handling. Alternatively qualified external staff may be hired on a short term basis for reducing and concluding the backlog list of cases. A demanding but realistic goal would be to half the number of backlog cases by the end of 2008;
- To produce and improve a system of case reporting statistics that reflect the case load, processing and conclusion of cases on a continuous basis. A suggested goal should be to secure that all cases for the last years (2004-2006) are statistically available and a

system for continuous updating in place by the mid-2008. The next goal would be to have a complete set of data for all cases dealt with by the office, and a working system for continuous updating by mid-2009;

- To recruit staff with key qualifications needed for institutional strengthening, and which is currently lacking in the office, e.g. in IT, financial administration and investigations);
- A training program for legal competence in the office. In order not to lose staff important to the running of the Office, part-time studies should be considered (if practically feasible), where staff gets part-time leave but keep their salaries in periods of education. This would entail a plan of capacity building and enhancement of staff qualification;
- To continue improving management and leadership procedures and structures by reviewing and clarifying the responsibilities and tasks of leadership positions, and subsequently assess whether this is needed for other positions as well. A recurring issue of contention – the recurrent theme of funds allocated to travel, including the level of allowances – must be settled and made specific (as other expenses) in a transparent general budget. The drawing of an institutional organogramme may be a helpful tool in clarifying responsibilities and “chains of responsibilities and command”;
- Funds for the third phase should be granted in two instalments with the second instalment pending satisfactory financial and output reporting on spending in the first.

These recommendations should be transformed into a plan for institutional reform and development with realistic goals of achievements and timeframes. We believe that the number of goals and institutional reforms should be narrowed down to a manageable number.

APPENDIX 1

Terms of reference (ToR) Review of the Office of the Ombudsman (OoO), Malawi

1. Background for review.

Norway initiated its support for the OoO through a contract signed late 2000. Other donors involved are DFID, Sida and UNDP. The Norwegian support has after the completion of the first phase in 2002 continued through a short bridging fund and support for phase 2 under an agreement signed in 2003. As phase 2 nears the end Norway will undertake a review to analyse the experiences from phase 2 and consider support for phase 3.

This review will assess the progress and obstacles in the previous phases, as well as identifying the best practices and their lessons learnt to plan for a tentative third phase.

The study will be built on former studies. It will have its main focus on the OoO, but refer to other institutions where it is relevant to understand the OoO in a wider context.

2. Purpose of the review.

The purposes of the review are to make a qualitative assessment of:

- a) Appropriateness of programme design.
- b) The overall achievements with regards to the role and responsibilities given the OoO in the constitution and as per agreed Programme Support Document (PSD);
- c) Recommendations with respect to a new phase of support and model of co-operation.
- d) Analyse the OoO in light of the Forum of Constitutional Bodies of Malawi (FCB) and give recommendations on how the synergy can be strengthened.

3. Scope of work.

The consultants should assess and give recommendations on progress and achievements, as well as obstacles with respect to:

- a) The performance and accomplishments of the OoO in relation to the stated aims and goals.

The consultant shall under this main part of the study in particular address;

- the structure and institutional framework of the OoO and its relevance as a promoter for good administrative justice and practise and Human Rights in Malawi;
- the use of resources made available through the Norwegian funding;
- OoO as a channel for continued Norwegian support. This assessment should be forward looking, and constructive suggestions for improvement should be made.

b) In light of the ongoing work to improve donor coordination the possibility of establishing a joint programme for the FCB agencies should be analysed with focus on:

- pros and cons of a joint programme
- views of the various stakeholders (receiving institutions and other donors)

4. Implementation.

The consultants shall:

- Study the relevant documents describing the programme.
- Interview persons involved in supporting, implementing and benefiting from the programme as well as bi and multilateral donors involved.

The review will be carried out in January 2007 including 2 days of desk studies, 7 days mission to Malawi (including international travel), and 3 days of report writing (including a short debrief in NORAD).

The team will be composed of:

Bård Anders Andreassen, Norwegian Centre for Human Rights, University of Oslo.
Thor Oftedal, Norad Samøk.

5. Reporting.

An outline of the report and main findings and recommendations shall be presented to the Embassy before departure from Malawi.

A report in English shall be presented to the Embassy via *NORAD* no later than 3 weeks after completed mission. The Embassy will share the draft report with the respective stakeholders for comments with a deadline of 2 weeks. Thereafter the report shall be completed within 2 weeks. The report shall have an Executive Summary with major findings and recommendations. The report shall not exceed 20 pages, including the Executive Summary.

APPENDIX 2

Provisional list of cases handled by the Malawi Office of the ombudsman, 2004-2006

YEAR	2004	2005	2006
NUMBER OF CASES	378	604	582
NATURE OF COMPLAINT			
Unfair practices (Treatment)	214	325	246
Unpaid dues(Salary arrears, unpaid gratuity, unpaid death gratuity, unpaid allowances, unpaid pension	102	165	119
Unfair dismissal	21	29	54
Interdiction	5	15	14
Termination	15	20	29
Delay	9	14	7
Land dispute	6	5	19
Compensation	2	22	31
Child Abduction	1	-	
Premature(Unfair) retirement	3	-	2
deceased estate	-	9	15
Terminal benefits	-	-	15
Unfair suspension	-	-	9
Violation of Human rights	-	-	1
Police Brutality	-	-	4
Death gratuity	-	-	17

Source: Malawi Ombudsman Office

APPENDIX 3

Studies and documents consulted

- Appropriation Document. MWI – 2620 Constitutional Bodies. Support of the ombudsman Office, Norwegian Embassy, Lilongwe, 2003.
- Banda, H. and K. Smiddy. Institutional Review of the Office of the ombudsman. Lilongwe, Salephera Consulting. 2005.
- DFID. Programmatic Support to the Office of the Omudsman. Programme Memorandum. October 2002.
- Hansen, J. E.. Challenges and Way Forward: Malawi office of the Ombudsman. 05/02/2007.
- Hansen. J. E. Activity/progress reports September 2006 - January 2007 (four reports).
- Office of the Ombudsman in Malawi. Strategic Plan 2004-2009.
- Office of the Ombudsman. Response to the Audit Findings, August 2005.
- PricewaterCoopers. Preliminary report on the NORAD, SIDAand DFID assistance to the Office of the ombudsman for the year ending 30 June 2006.
- Programme Support Document. The Office of the Ombudsman 2002-2007.
- Report of various annual meetings between the Ombudsman's office and the Norwegian Embassy (22 October 2004; 3 November 2005)
- Report of the Joint Appraisal Mission on the Office of the Ombudsman in Malawi, December 2002.
- Republic of Malawi. Constitution. 1994.
- Salphera Consulting. Draft Mid-term-Review of the Programme of Support to the office of the Ombudsman. (June 2005)

APPENDIX 4

PEOPLE INTERVIEWED

Hon. E.D.A. Chibwana, Ombudsman
Ms. Cathryn English, Senior Governance Advisor, UNDP
Ms. Martha Cilbade, Principal Documentation Offices, OoO.
Mr. Jes Hansen, External Technical Adviser, OoO.
Mr. Kajawo, Principal Accounts Officer, OoO.
Mr. F.Y Kalawe, Executive Secretary General, OoO.
Mr. C.J. Katumutumula, Investigating officer, Blantyre office of the OoO
Mr. Matt Maguire, DFID.
Mr. Muzumara, Chief Legal Officer, OoO
Ms. Sofia Ngenda, Gender Officer, Public Affairs Committee
Mr. D.J. Pafupi, Acting Regional Officer, Blantyre office of the OoO.
Ms. Dorothy Nyasulu, Chairperson, Malawi Human Rights Commission
Mr. Leif B. Sauvik, Royal Norwegian Embassy
Ms. Vibeke Trålim, Royal Norwegian Embassy

