

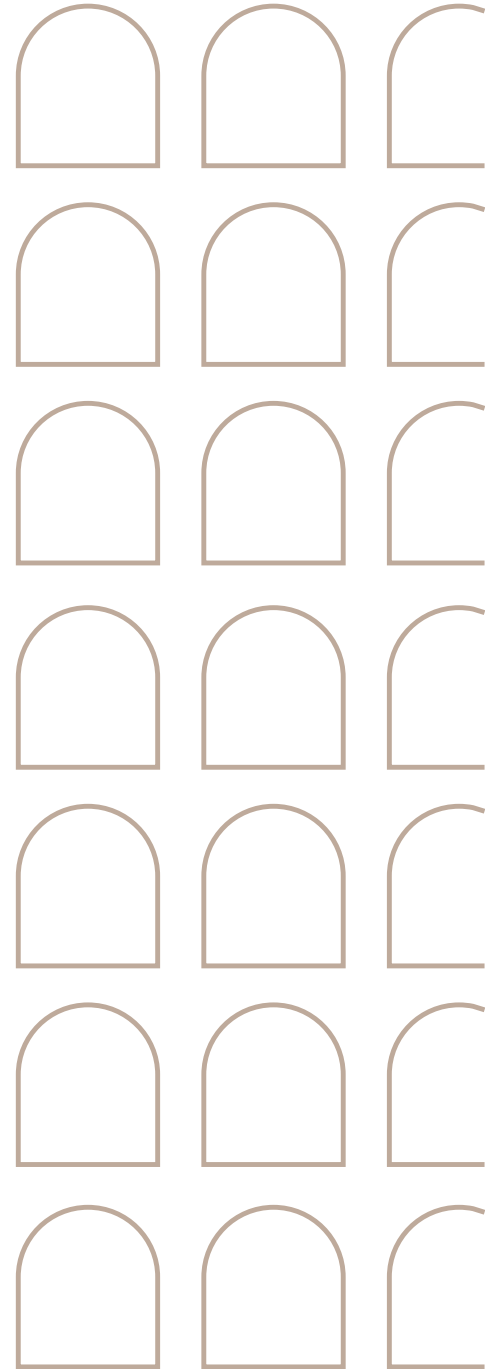
STG Policy Papers

POLICY BRIEF

ENHANCING GOVERNANCE IN THE DEMOCRATIC SECURITY SECTOR AND REFORMS IN MALAWI

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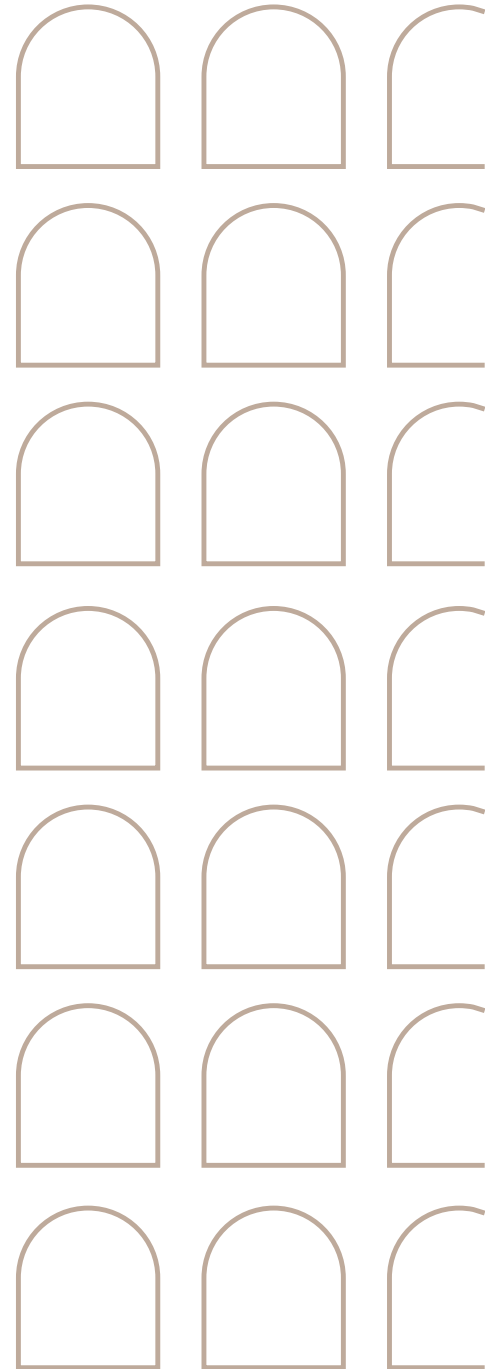
EXECUTIVE SUMMARY

Despite substantial global advances in democratic security governance and reforms in the past few decades, Malawi continues to lag significantly behind in achieving genuine democratic security governance and comprehensive reforms. This shortfall is attributable to a weak institutional framework and an absence of civilian control and oversight, which undermines accountability and transparency. Pervasive corruption and political interference pose significant threats to the independence and effectiveness of the security sector. Notably, recurrent misuse by politicians of the state security apparatus, including the intelligence service, the Malawi Police Service and paramilitary units, remains a critical concern. These entities are frequently deployed to intimidate civil society and suppress political opposition, thus eroding the foundational principles of democratic security sector reform and governance (SSRG). This policy paper examines the current state of security sector governance in Malawi, delves into its core principles, analyses the major challenges facing democratic security reform and governance, and proposes strategic policy recommendations to nurture democratic ideals, bolster the provision of security, and propel the nation towards comprehensive development, prosperity, and stability.

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1. INTRODUCTION

The security sector plays a pivotal role in safeguarding the well-being of any nation. It encompasses a diverse array of institutions and personnel tasked with security provision and oversight. In Malawi, the historical trajectory of these institutions, dating from colonial times to the present, reflects a complex legacy shaped by authoritarian rule and evolving governance paradigms. Despite strides towards multiparty democracy since 1994 and the 1994 Constitution, Malawi continues to face formidable challenges in security sector reform and governance, including a weak institutional framework, political interference, corruption, and insufficient civilian oversight. To address these challenges, a comprehensive approach is required that emphasises transparency, accountability, legitimacy and adherence to the rule of law. Strengthening institutional capacity, enhancing civilian oversight, and investing in resources and training are essential steps to foster a security sector that upholds democratic principles and ensures public safety.

1.1 The key security sector institutions in Malawi

The security sector encompasses all the structures, institutions, and personnel entrusted with responsibility for security provision, management and oversight at both the national and local levels.¹ This includes, first, security providers such as the armed forces, the police, border guards, the intelligence service, penal and correctional institutions, and commercial (private security companies) and non-state security actors. Second, it involves security

management and oversight bodies such as government ministries, the parliament, specialised statutory oversight institutions, components of the justice sector and civil society actors with a vested interest in maintaining high standards of public security provision.² These include women's organisations, the media, and other stakeholders. The effectiveness of SSRG hinges on a robust legal framework coupled with government security policies and strategies that unambiguously assign responsibilities for security provision, management and oversight.

Figure 1: Key components of the security sector in Malawi



1.2 Historical dynamics of security institutions in Malawi

The security institutions in Malawi, including the Nyasaland army, police, and intelligence, have a long history dating back to the colonial period (between 1891 and 1898).³ These institutions were initially established to serve the interests of the colonial rulers rather than the legitimate security needs of society. However, during

¹ Security Sector Governance and Reform, DCAF Backgrounder, Geneva Centre for the Democratic Control of Armed Forces, May 2009.

² Ibid.

³ Brigadier General Dr. Misheck Colyns Chirwa (2015) Transformation of the Security Sector in Malawi (1994-2014).

the post-independence period and one-party rule from 1964 to 1994, these institutions were influenced by the patrimonial political system, with the establishment of the Malawi Police Force and the Malawi Defence Force.

The erosion of democratic control in post-colonial Malawi is primarily due to the legacy of colonialism, which prioritised the interests of the ruling class over those of the general populace. Under Dr. H.K. Banda's one-party rule, entities like the Malawi Police Force and the Malawi Defence Force continued to operate as tools of state oppression, increasing their power and suppressing dissent with impunity. These entities operated outside the bounds of accountability and legal oversight, reinforcing authoritarianism and subverting democratic governance.

Herbst (2014) contends that post-colonial states often grapple with reconciling traditional authority with modern democratic principles, which is often manifested in the persistence of colonial-era structures that shape governance dynamics long after independence.⁴ Conversely, Diamond (2008) asserts that in the post-colonial era, Africa's political landscape has been marked by a continual struggle between the rule of law and personalised rule, epitomised by the 'big man' phenomenon.⁵ This phenomenon was evident in Malawi, a trend influenced by a complex interplay of historical legacies, institutional fragility, and socio-cultural norms. These factors have collectively hindered the development of strong governance institutions in Malawi.

The transition to multiparty democracy in Malawi in 1994 marked a pivotal moment in the country's history, promising a departure from authoritarian rule towards inclusive governance. The 1994 Constitution (the Constitution) provided a legal framework for security sector reform and governance (SSRG) and enshrined the principles of democracy, rule of law, and respect for human rights. However, despite the transition from authoritarian rule to a more inclusive form of governance, progress in security sector reform and governance in Malawi has been sluggish.

2. CURRENT CHALLENGES FACING THE GOVERNANCE AND REFORM OF MALAWI'S SECURITY SECTOR

2.1 A weak institutional framework

Malawi's security sector faces formidable challenges stemming from a frail institutional and legal framework. Numerous security agencies grapple with resource deficiencies, including underfunded police departments, inadequate training facilities, and outdated equipment. Furthermore, a weak and ambiguous legal framework hinders the ability of the security sector to adapt to evolving security challenges. An absence of clear guidelines and oversight mechanisms contributes to an excessive use of force, arbitrary arrests and torture perpetrated by law enforcement. In presidential governance systems such as Malawi, the president serves as both the head of state and the head of government. This system needs to be characterised by a clear separation of powers between the executive, the legislative, and the judicial branches of government.⁶ However, in Malawi, the president's authority is

4 Jeffrey Herbst, (2014) 'States and Power in Africa: Comparative Lessons in Authority and Control.' Princeton University Press.

5 Larry Diamond (2008) 'The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World.' Times Books.

6 Boniface Dulani, Blessings Chinsinga & Michael Wahman (2019) Politics and Government in Malawi, Council for the Development of Social Science Research in Africa.

enshrined in the Constitution, including the power to appoint and dismiss heads of security institutions such as the police and the military. This concentration of power in the presidency undermines the effective democratic control over security institutions foreseen in the constitution of Malawi.⁷

2.2 Political interference

The detrimental politicisation of security institutions in Malawi has led to a decline in their independence, professionalism, and accountability. The political elite single-handedly controls these institutions, thus compromising their effectiveness and performance.⁸ Some security officials are more loyal to their patrons than to their institutions, resulting in partisan behaviour. For instance, some officers in the Malawi police, immigration and intelligence services have been promoted because of their political allegiances rather than their abilities. Accusations of favouritism and nepotism are rampant, and politicians have used the intelligence services, the Malawi Police Service and paramilitary units to intimidate civil society and neutralise opposition political parties. This compromises the independence and performance of institutions, as they prioritise political loyalty over the protection of citizens. This intrusion of politics in security institutions has significantly impaired their ability to enforce the law and maintain order impartially. The compromised independence of these institutions has resulted in a selective application of justice, with loyalty to political figures often taking precedence over the pursuit of justice. This erosion of impartiality not only undermines public trust but also

weakens the overall efficacy of institutions in fostering a just and secure society.

2.3 Entrenched corruption

Malawi has long struggled with significant challenges associated with corruption, a problem that has permeated even its security institutions. A stark illustration of this is Malawi's 34 out of 100 score on the 2023 Corruption Perceptions Index, as reported by Transparency International. Over the years from 1998 to 2023, Malawi's corruption index averaged 32.42 points.⁹ The elevated corruption index has been primarily attributed to pervasive corruption and a culture of impunity in the security sector institutions. In a report released by Afrobarometer on 14 April 2022, the Malawi Police Service topped the list with a score of 42% as the most corrupt organisation in Malawi,¹⁰ with numerous police officers frequently engaging in corrupt activities such as bribery and extortion and operating with a sense of impunity. A prevailing atmosphere of impunity perpetuates these corrupt practices, leading to a breakdown in public trust and jeopardising the overall effectiveness of law enforcement. Public perception reflects a concern that security forces prioritise personal gain over public safety, which further deepens the erosion of trust. Consequently, this distrust impedes the collaborative relationship between the public and security institutions, hindering their ability to work together to ensure public safety.

2.4 A lack of civilian control and oversight

An inadequacy of civilian control and oversight mechanisms poses a significant obstacle to accountability and transparency

7 The 1994 Malawi Constitution.

8 Brigadier General Dr. Misheck Colyns Chirwa (2015) Transformation of the Security Sector in Malawi (1994-2014).

9 Transparency International, <https://www.transparency.org/en/cpi/2023>

10 Afrobarometer 2022 report.

in the security sector. An absence of robust civilian control and oversight of a country's security apparatus can result in severe consequences, fostering public mistrust in security institutions. According to Afrobarometer, over 80% of survey respondents in Malawi expressed little or no trust in their country's security agencies (the police, immigration, intelligence, etc.), emphasising the urgency to address this issue.¹¹ Civilian control and oversight of the roles of parliament, the media and civil society organisations should monitor the governance, transparency, accountability and effectiveness of a nation's security sector. Oversight entities should play a crucial role in tracking behaviour, highlighting deviations from national and international laws and best practices, and offering recommendations to enhance the performance of security sector institutions. However, in Malawi, the evident lack of effective civilian oversight mechanisms has contributed to instances of abuse by the security forces.¹² Allegations of rape and sexual assault against the Malawi Police Service after it raided Msundwe village in Lilongwe in 2019 highlighted the absence of a robust oversight system, making it challenging for citizens to hold security institutions accountable and fostering a culture of impunity.¹³ As a result, security forces operate with minimal scrutiny, potentially leading to human rights violations that strain the relationship between the state and its citizens.

2.5 Limited resources (skills, expertise, and infrastructure)

The security sector in Malawi is currently facing a significant shortage of vital resources, including essential skills, expertise and infrastructure, primarily due to financial challenges. This scarcity hampers its ability to address the welfare and security needs of citizens effectively. For instance, in the 2022/2023 National Budget, only MWK 203.9 billion, a mere 7.18% of the total budget of MWK 2.84 trillion,¹⁴ was allocated to the security sector, of which the Immigration Department received 3.13%, the Malawi Police Service 35.90%, the Malawi Prisons Service 7.38% and the Malawi Defence Force 53.58%. These allocations are significantly lower than other sectors, severely limiting the security sector's capacity to respond to emerging threats and effectively maintain public safety. This shows that Malawi has difficulties in allocating sufficient resources to its security sector, resulting in security institutions that are ill-equipped and under-trained.¹⁵ The absence of the necessary institutional capacity represents a significant obstacle to implementing governance and security sector reforms, which allows insecurity to persist. Ensuring proper funding is paramount to sustaining a professional and capable security force, which is crucial in fostering overall stability and national development.

3. PRINCIPLES OF GOVERNANCE AND REFORM OF THE DEMOCRATIC SECURITY SECTOR

3.1 Transparency and accountability

Transparency and accountability are focal points and fundamental principles in

11 Afrobarometer 2022 report <https://www.afrobarometer.org/wp-content/uploads/2022/12/AD581-Malawians-cite-lack-of-professionalism-among-police-failings-Afrobarometer-9dec22.pdf>

12 Prof. Dan Kuwali, (2023) Oversight and Accountability to Improve Security Sector Governance in Africa, Africa Security Brief No.42.

13 Malawi 2019 Human Rights Report.

14 <https://www.finance.gov.mw/index.php/our-documents/budget-statements>

15 Prof. Dan Kuwali, (2023) Oversight and Accountability to Improve Security Sector Governance in Africa.

promoting good governance and security sector reform.¹⁶ Transparency in the security sector involves making information readily available to the public, such as on budgets, policies, and operations. A pivotal legislative instrument that advances transparency, accountability and good governance is the Access to Information Act of 2016, which empowers citizens to access information held by public entities. Both successes and shortcomings in transparency have been observed. Civil society organisations have actively monitored security activities, leading to initiatives like the Malawi National Police Service website, offering access to data on police operations and community engagement. However, security budgets are rarely disclosed, which hinders public understanding of fund allocation. Even though confidentiality is necessary for sensitive matters of state security, difficulties have arisen when the need for confidentiality is used to evade scrutiny by appropriate management authorities.¹⁷ Balancing confidentiality about sensitive matters with accountability is crucial. Accountability means security organisations should be answerable to mandated institutions and enforce mechanisms for breaches.¹⁸ For instance, in 2019, Malawi's Anti-Corruption Bureau investigated corruption allegations in the Malawi Defence Force, resulting in arrests of high-ranking officers.¹⁹ This was a case of accountability mechanisms at work, with security personnel being held liable for misconduct.

3.2 Legitimacy

Democratic security sector governance is based on the principle that legitimacy to govern derives from elected civilian leaders in accordance with the Constitution, who then have the authority to set priorities for the security sector. Security officers, in turn, derive their authority from their subordination to this legitimate civilian leadership in accordance with the Constitution.²⁰ In the aftermath of the democratic transition, ensuring civilian oversight over security institutions remains imperative. This is exemplified by the role of parliamentary committees and independent oversight bodies in scrutinising security operations and expenditures. Upholding human rights standards is paramount for legitimacy. There have been recent efforts to address extrajudicial killings and police brutality that occurred during the 2019 general election campaign at Nsundwe in Lilongwe, as was highlighted in the Malawi 2019 Human Rights Report.²¹ This underscores the ongoing struggle to align security practices with democratic security sector governance and reform.

3.3 Civilian control and oversight

Effective security sector governance requires a system of checks and balances. The legislature, civil society organisations, and an independent judiciary provide the necessary oversight to hold authorities accountable to citizens in terms of public safety, defence, and security.²² Providing civil society with the capacity to exercise

16 Laura R. Cleary 2006, *Managing Defence in a Democracy*, 1st Edition, Routledge.

17 Prof. Dan Kuwali, (2023) *Oversight and Accountability to Improve Security Sector Governance in Africa*.

18 Nicole Ball and Kayode Fayemi, eds., 'Security Sector Governance in Africa: A Handbook,' Centre for Democracy and Development, 2004.

19 <https://www.nyasatimes.com/acb-probes-deputy-mdf-commander/>

20 Peter D. Feaver, 'The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control,' *Armed Forces and Society* 23, no. 2 (1996), 149-178.

21 Malawi 2019 Human Rights Report.

22 Peter D. Feaver, 'The Civil-Military Problematique: Huntington, Janowitz, and the Question of Civilian Control,' *Armed Forces and Society* 23, no. 2 (1996), 149-178.

political control and constitutional oversight of the security sector and to engage in political debate on security policies is vital. This involves ensuring that civilian authorities have the authority and mechanisms in place to govern and oversee the activities of the military, police, intelligence services and other security agencies while also respecting human rights and the rule of law. In the case of Malawi, there are efforts to strengthen civilian control and oversight of the security sector. However, challenges still persist, such as political interference, insufficient resources and capacity in civilian oversight bodies, and a lack of transparency and accountability in the security sector itself. However, one of the instruments which provide civilian control and oversight is the 2018 National Security Policy (NSP), which aims to provide a framework for the governance and management of the security sector in Malawi. The NSP emphasises the importance of civilian oversight and accountability in ensuring the effectiveness and legitimacy of the security sector.

3.4 Adherence to the rule of law

Adherence to the rule of law in the security sector is crucial to ensure accountability, transparency, and respect for human rights. It entails all persons and institutions, including the state, being subject to laws that are publicly known, impartially enforced and consistent with international and national human rights norms and standards.²³ The rule of law is a core element in democratic security sector governance, which is founded on the principle that no one is above the law. In the context of Malawi, the rule of law is strengthened by the Constitution of Malawi, which provides a framework for the protection of human

rights and the rule of law, including provisions that require security forces to operate within the bounds of law and respect fundamental rights and freedoms. In addition, laws such as the Malawi Police Act and the Malawi Defence Force Act define the powers and responsibilities of the police and military, respectively and establish mechanisms for accountability and oversight. However, the practical application of these legal frameworks has faced challenges. One example is the use of excessive force by security forces during public protests and demonstrations. Despite legal provisions prohibiting the use of excessive force, there have been instances where security forces have been accused of using disproportionate force against protesters, resulting in injuries and fatalities. Such incidents undermine public trust in the security sector and raise concerns about the government's commitment to upholding the rule of law.

4. CONCLUSION

This policy paper has emphasised the crucial role of democratic security sector governance and reform in maintaining stability, protecting human rights, and enforcing the rule of law. It has shown that Malawi's path to achieving genuine democratic security governance and comprehensive reform faces significant hurdles, including a weak institutional framework, political interference, corruption, and insufficient civilian control have impeded progress and urgent action is needed to bolster institutional capacity, improve transparency and accountability, and uphold the rule of law. This policy brief has proposed strategic policy interventions, including strengthening institutional and legal frameworks, promoting civilian

23 Prof. Dan Kuwali, (2023) Oversight and Accountability to Improve Security Sector Governance in Africa.

oversight, and enhancing capacity building and professionalism, the details of which are listed below. These interventions must be designed to ensure the effectiveness of security sector institutions, ultimately advancing national security and stability.

5. KEY POLICY RECOMMENDATIONS

5.1 Strengthening institutional and legal frameworks

One pivotal policy recommendation to foster effective security sector governance and reform in Malawi should be based on a sound and adequate legal and security policy framework. The framework will detail the main national interests, core values, sectoral priorities, legal basis and roles of key actors in the security sector policymaking and implementation process. It is essential to review existing constitutional instruments and relevant security sector laws to ensure that institutional gaps and challenges are addressed and that the primary responsibilities of each element in the security sector are well-defined. The policies and laws thus developed will clearly define and mandate democratic control over the security sector and the chain of command for policy implementation.

5.2 Enhancing professionalism and capacity building

There should be investment in comprehensive training programmes for security sector personnel that emphasise human rights, the rule of law, and democratic principles. Merit-based recruitment and promotion systems should be developed to ensure professionalism and competence in the security sector and establish performance evaluation mechanisms to hold security sector personnel accountable for their actions. Professionalism in the security sector should

also be guided by the principles of subordination to democratic civilian authority, allegiance to the Constitution, a commitment to political neutrality, and an ethical institutional culture.

5.3 Promoting civilian control and oversight

The role of parliamentary committees in overseeing the security sector should be strengthened by providing them with the necessary resources and training. Independent oversight institutions, such as ombudspersons and human rights commissions, should perform their constitutional roles to ensure security organisations uphold constitutionalism and the rule of law. The government should establish independent funding and staffing lines to ensure these bodies have adequate resources. Civil society organisations should actively monitor and assess security sector activities, with outreach and training for citizens to raise awareness of the separation between military and political authorities in democratic security sector governance. An independent commission should oversee security sector reforms and ensure civilian participation in decision-making processes. It should include legal experts, human rights advocates, and representatives of marginalised communities.

5.4 Providing sufficient budget and improving resource allocation and management

Adequate budget allocations for the security sector should be ensured while prioritising transparency and accountability in financial management. This involves establishing independent audit mechanisms, robust internal and external oversight of defence and security organisations, and ensuring funds are effectively directed towards national security objectives. Such measures are

essential to combat corruption and prevent misallocation of resources in the security sector.

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