



CENTRE FOR POLICY
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MALAWI'S HEALTH SYSTEM REFORM: CONSTITUTIONALISM, ACCOUNTABILITY AND SUSTAINABLE SOLUTIONS

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The Centre for Policy and Reform in Health and Law (CPR) notes the issuance of the Presidential Executive Order of 16 February 2026 by his Excellency, President Peter Arthur Mutharika following investigative media reports exposing grave and systematic corruption in Malawi's public health facilities across the country. The Order targets corruption and public-private conflict of interest. Firstly, it places punitive measures against the solicitation of payments in public hospitals. Secondly, it specifies that any public health employee owning, holding or operating private clinics must divest the shares within 30 days from the date of the executive order. The consequences for failure to comply with this executive order range from dismissal to other legal sanctions.

The revelations of corruption, unexplained drug shortages, absenteeism, and the redirection of patients to private facilities represent human rights violations such as the right to equality, health, life and dignity, particularly vulnerable segments of the population that depend entirely on public health facilities.

CPR welcomes decisive action against corruption. However, reform must be lawful, proportionate, and structurally responsive to the root causes of dysfunction in Malawi's public health system. CPR supports reform that is constitutional, evidence based and system wide.

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1. The Urgent Need for Reform Is Undisputed

Malawi's public health system is under severe strain. Chronic underfunding, low remuneration for nurses and medical practitioners, inadequate incentives, medicine shortages, overcrowding, and weak accountability systems have created conditions in which corruption can flourish. Where patients are forced to make illegal payments or are diverted to private facilities for services that should be available publicly; the constitutional right to health, life, dignity and equality is compromised.

On the other hand, Malawi faces a critical shortage of specialist consultants and medical practitioners. Many nurses and medical practitioners employed in public hospitals supplement low salaries through locums and private practice. Abrupt divestment without consultation, and reasonable transitional safeguards risk driving specialists out of the public health system entirely, accelerating migration of health professionals and further weakening the already fragile health system.

Malawi stands at a crossroads with a deeply broken health system that cannot sustain itself and real concerns must be addressed through structural, informed policy and law review to ensure sustainable change. Reform in Malawi's public health system is not optional; it is urgent with anti-corruption reform that must not inadvertently reduce access to healthcare.


2. The Executive Order Raises Legal and Governance Questions

An executive order is a directive issued by the President in the exercise of executive authority. It is a tool of administration used to implement policy, coordinate state functions, and give operational direction to public institutions. However, an executive order cannot replace legislation, override legislation, or amend statutory rights or obligations.

Malawi's Constitution establishes a clear separation of powers. Parliament enacts laws, the Executive implements laws and initiates policies, and the Judiciary interprets laws. The Constitution also makes the hierarchy of laws clear with the Constitution as the supreme law, seconded by Acts of Parliament, thereafter followed by common law, international law and customary law.

Malawi's Constitution does not specifically grant the President the power to make executive orders. However, it grants the President power to exercise all other powers reasonably necessary and incidental to the functions of his office in accordance with the Constitution that reasonably include executive orders.

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However, it is clear that an Executive Presidential order cannot override or amend an Act of Parliament, in this case being the Medical Practitioners and Dentist Act promulgated in 1984, that permits medical practitioners and dentists to own, operate or hold shares in private clinics or pharmacies whilst still working in public health facilities. The executive order cannot restrict what the Medical Practitioners and Dentist Act has permitted as lawful.

This does not mean that reform is impossible. It means that reform must follow the lawful path through legislative amendment rather than executive instruction. Good governance demands legal certainty and procedural propriety.

3. Constitutional Implications

The Executive order directly engages several rights both those of medical practitioners and the general public, including: the right to equality, the right to property, the right to economic activity and the right to development.

Any limitation of these rights must satisfy the following constitutional safeguards: it must be prescribed by law, reasonable, necessary, recognized by international human rights standards, necessary in an open and democratic society, of general application and it must not negate the essential content of the right or freedom in question.

Blanket prohibitions without legislative amendment, or legal clarity risk failing these constitutional thresholds.

4. Corruption in Public Health Facilities Must Be Addressed Precisely

The investigative report revealed specific misconduct that are already unlawful under existing criminal and disciplinary frameworks. Therefore, enforcement, auditing, and institutional strengthening are critical.

However, ownership or operating of private clinics is not equivalent to corruption. It represents a complex dynamic of conflict of interest that is currently not addressed in policies or the law. Therefore, conflict of interest must be clearly defined, regulated, and transparently managed.



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CPR recommends the following safeguards to guide reform:

- (i) **Legislative review:** Conflict of interest rules should be introduced through Parliament following consultation with medical councils, professional bodies, and civil society.
- (ii) **Clear Conflict of Interest Regulations:** Clearly define what constitutes operating a facility, the level of shareholding that is prohibited, disclosure requirements and strong independent oversight mechanisms.
- (iii) **Strengthen Public Health Sector Incentives:** Address competitive remuneration for specialists, implement performance based systems, have in place transparent promotion structures and safe reporting channels for whistleblowers.
- (iv) **Strengthen medical supply chain reform**
- (v) **Transitional arrangements** to ensure that if divestment requires it has reasonable timelines, and has fair labour protections.

Short term administrative directives cannot substitute long term structural governance reform.


6. Conclusion

CPR affirms that the fight against corruption in health care is a human rights imperative with the Constitution being the foundation of reform and not an obstacle. Sustainable health policy and legal reform must address structural causes and not only symptoms of a system at breaking point.

Malawians have the human right to and deserve a public system that is free from corruption, discrimination, and exploitation. They also deserve governance that respects the Constitution and promotes sustainable development.

CPR calls for constructive consultation between Government, Parliament, medical professionals and civil society to ensure that legal and policy reform protects human rights, upholds the rule of law, retains skilled professionals in the public health sector and restores public trust.

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