

# LAW ENFORCEMENT AND HIGH-LEVEL CORRUPTION IN MALAWI: LEARNING FROM CASHGATE

GLOBAL INTEGRITY ANTI-CORRUPTION EVIDENCE PROJECT:  
Fighting High-Level Corruption in Africa:  
Learning from Effective Law Enforcement

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# EXECUTIVE SUMMARY

This report presents the findings of a study on the dynamics of law enforcement in high-level corruption cases in Malawi. It is one of two country case studies of the project 'Fighting high-level corruption in Africa: Learning from effective law enforcement', which is part of the FCDO-funded Global Integrity Anti-Corruption Evidence Programme (GI-ACE) (2019-21). The research project is the first systematic study of law enforcement efforts targeting high-level (grand) corruption in Africa, presenting case studies of Nigeria and Malawi. It aims at identifying both enabling and constraining factors for effective law enforcement. The focus on the specifics of enforcement practice is new and provides evidence that has been missing in anti-corruption research.

According to the conventional view, law enforcement in Africa is inherently problematic due to the scale of the problem, the lack of resources and external influences on anti-corruption efforts. However, in Malawi, there have been law enforcement efforts targeting a massive high-level corruption scandal in 2013, known as Cashgate. These efforts are the focus of this report.

## ANALYTICAL FRAMEWORK

The analytical and comparative framework differentiates five principal factors shaping law enforcement activities in Malawi:

- The legal framework;
- The institutional architecture, focusing on inter-agency relations and intra-agency dynamics;
- External influences exercised by politicians, officials, superiors and other national actors;
- Foreign involvement by donor agencies and the transnational dimension;
- The characteristics of the individuals who are prosecuted and punished.

## KEY TAKEAWAYS

### LEGAL FRAMEWORK

- In Malawi, there have been instances of effective law enforcement in grand corruption cases that resulted in convictions in several high-profile cases.
- The legal framework is characterised by a patchwork of statutes resulting in discrepancies, overlap, gaps and lack of clarity.
- Whistle-blower protection has been facing significant challenges due to bureaucratic culture, lack of incentives and feelings of insecurity by would-be whistle-blowers.
- Trials experience significant delays, due to adjournments, lack of resources and other disruptions.

### INSTITUTIONAL ARCHITECTURE

- The effectiveness of the Integrated Financial Management Information System (IFMIS) continues to be affected by considerable weaknesses in system security and auditing.
- Law enforcement is hampered by lack of resources and sufficiently trained staff.
- The interface between investigators and prosecutors is characterised by a lack of consistent cooperation and coordination.

- Investigators and prosecutors work in a largely hostile, or at least indifferent, environment.
- There is only limited cooperation between the various law enforcement agencies. The independence of the Anti-Corruption Bureau (ACB) has contributed to this situation.

## EXTERNAL INFLUENCES

- Politicians and other members of the elite occasionally seek to influence the law enforcement agencies despite their organisational independence.
- The analysis of law enforcement efforts against high-level corruption has to take into account the role of the various development partners both in relation to general development policies and to the support of law enforcement specifically.

## DEFENDANTS' CHARACTERISTICS

- Malawi's political and bureaucratic classes are closely knit and the networks of kith and kin are easily adapted to be exploited in high-level corruption scandals.

## THEMES

This analysis focuses on: (1) The legal framework and prosecution strategies, (2) the institutional architecture, (3) external influences and (4) defendants' characteristics.

### 1. THE LEGAL FRAMEWORK

Malawi's legal framework is characterised by legislative overlaps, because new legislation has not repealed old Penal Code provisions. The layering of new laws, such as the 1995 Corrupt Practices Act and the 2006 Money Laundering Act, on top of older provisions with some dating back to the colonial period, has not been matched by efforts to address inconsistencies, gaps and ambiguities. This has had direct effects on the prosecutions and trials targeting the perpetrators of the Cashgate offences. The Penal Code provisions are not well-suited to prosecute 'modern' crimes of theft of intangible assets, computer-based fraud and associated offences. The clumsy money laundering law was also new territory for law enforcement officials and untested in court.

The existing legislation aimed at protecting whistle-blowers (CPA 1996 Sec. 51A) is not deemed sufficient by government officials, who rarely come forward as whistle-blowers. This is due to mainly three factors. First, whistle-blowers may face threats and attacks. Connected to this is, secondly, the perception of political influence preventing action and compromising the protection of whistle-blowers. Thirdly, within the hierarchy of the civil service, whistle-blowing is strongly condemned, as it violates the bureaucratic mores and culture. Another, related problem is the lack of systematic witness protection.

The criminal trials against the Cashgate offenders have been hindered by frequent and lengthy delays. Multiple adjournments are one of main reasons for slow progress. Of sixty Cashgate-related cases in 2014, only thirteen had been concluded by 2019. About forty cases have not yet made it to the trial stage. The backlog of cases and recurrent delays are by no means unique to the Cashgate prosecutions. They affect all aspects of the justice system in Malawi.

### 2. PROSECUTION STRATEGIES

The law enforcement response to Cashgate was by way of two strategies: the Quick Impact Response, with trials against one to four defendants; and the larger, consolidated trials against a group of conspirators. The focus of the first was on 'contractors' (business people whose non-existent contracts to supply goods or services to government

offices were the basis for fraudulent payments from the government's bank account). It was aimed at scoring quick convictions as a signal to Malawi's development partners and the population, in the run-up to the 2014 elections. The second strategy was developed by the Director of Public Prosecutions (DPP) in 2014 and during 2015 and focused on consolidating cases, the largest being a trial with nineteen accused, to reveal the scale of the conspiracy and educate the public about the level of corruption in government. Both strategies have strengths and weaknesses. The Quick Impact Response was indeed relatively quick but it failed to hold to account most of the principal perpetrators. The consolidated trial is aimed at the main conspirators but it has turned out to be a protracted affair.

### Asset Recovery

As elsewhere, asset recovery has become a topical concern in Malawi but it is still very much in its infancy. The efforts to recover the stolen assets and inflict financial punishments have had a degree of success, even though the recovered assets fall well short of the sums that have been misappropriated. Generally, the recovery of stolen assets has proved to be time-consuming and difficult. This is by no means exclusive to Malawi: in most jurisdictions, the pre-eminence of property rights hampers simple or prompt recovery of the proceeds of crime.

## 3. THE INSTITUTIONAL ARCHITECTURE

### a. Government

Financial management has been hampered by lack of compliance and flaws in the operation of the financial management information system and auditing. IFMIS has failed to prevent the theft of public funds due to weaknesses in system security, oversight and maintenance.

### b. Intra-agency dynamics

Law enforcement efforts in Malawi have been significantly affected by a lack of resources. The lead agencies are understaffed and the universal inadequacy of funding affects the efficacy of operations of all law enforcement agencies and accountability institutions.

With the Cashgate investigations and prosecutions in 2014 and 2015, the law enforcement agencies entered uncharted waters. Investigators and prosecutors were not familiar with money laundering offences, which were untested in court. There was, in the early phases, a lack of technical forensic capabilities and familiarity with forensic audit techniques, which was addressed in 2014 with support from Malawi's international development partners, especially from the United Kingdom.

The rapport between investigators and prosecutors constitutes a crucial interface in many criminal proceedings. This is especially the case with regard to relatively complex or white-collar criminal offences, such as corruption and money laundering. In Malawi, law enforcement agencies continue to operate mainly according to the traditional Common Law model, in which one team of investigators (Police or ACB) conducts the evidence gathering and upon conclusion of the investigation hands over the file (docket) to the prosecutor. This has proved problematic in complex money laundering cases, especially when the investigators have only limited familiarity with this type of offence and assembling evidence to prove it.

Law enforcement officials investigating or prosecuting in high-level corruption cases may face threats, intimidation or worse. The most extreme case was the murder in July 2015 of the Director of Corporate Services of the ACB, which has not been solved. It is not clear whether this murder was actually linked to any investigations but it certainly demonstrated the vulnerability of law enforcement officials.

### c. Inter-agency relationships

In Malawi, the principal law enforcement agencies tend to operate separately, with limited strategic coordination and

only little tactical cooperation in investigations. Instead, the relationships between the various agencies are typified by rivalry and competition. This is particularly striking with regard to the ACB's statutory independence. Originally deemed one of its greatest strengths, it can cause problems, as our research shows.

The ACB, distinct in make-up and culture, has tended to conduct investigations discretely, resulting in overlap, even rivalry and little coordination, where the police and DPP's office are also involved. This has sometimes negatively affected the evidence gathered and, in turn, the strength of the cases brought to court. In settings where resources are extremely limited, the lack of coordinated investigations is bound to undermine the efficiency of law enforcement efforts. It has also contributed to conflict and a lack of trust between the ACB and the constitutionally established Malawi Police Service (MPS) and DPP.

## **4. EXTERNAL INFLUENCES**

### **a. Political influence**

Malawi's political and bureaucratic elite is a small and tightly-knit community where personal relationships tend to override bureaucratic hierarchies and procedures. In many ways, the official hierarchy is only one aspect of governance in Malawi, as elsewhere in Africa, where formal and informal modes of governance have closely intertwined since independence. Informal governance is mainly organised along patron-client relationships, usually based on kinship and friendship. The intertwined modes of formal and informal governance, with the President at the apex of a multitude of semi-autonomous patron-client relationships, have affected the operations of the ACB, as well as the other law enforcement agencies, as it is customary for political actors to seek to influence law enforcement.

### **b. Donor influence**

External influence by donors has proven to be a double-edged sword. On the one hand, the pressure exercised by the international development partners has spurred the government into action and has been a strong driver of its law enforcement efforts. The technical and financial support provided by Malawi's development partners, in particular the UK and the European Union (EU), has considerably fortified the law enforcement agencies.

On the other hand, the influence exercised by foreign donor agencies can also be an inhibiting factor. The financial and technical support for specific government departments or agencies can undermine the cohesion of the government apparatus. In addition, policies designed and promoted by donor agencies, rather than by the government, lack government ownership. The creation of enclaves by donors can also undermine the coordination with and involvement of other parts of the government.

## **5. DEFENDANTS' CHARACTERISTICS**

So far, most convictions have been achieved against individuals whose businesses were used as conduits for the money laundering activities, allegedly orchestrated by senior civil servants, with help from government IT-experts and junior government accountants. Most of these contractors had personal associations with or were related to the civil servants who were allegedly involved in Cashgate. In some cases, the companies used for the money laundering operation were owned by the civil servants themselves. So far, two senior civil servants (Senzani and Karonga) have been handed significant custodial sentences. The trial against the former Budget Director, the former Accountant General and seventeen others is, therefore, key to the law enforcement agencies' efforts to hold to account government officials.



# RECOMMENDATIONS

## LEGAL FRAMEWORK

### Review of legislation

To ensure uniformity and clarity, there should be a comprehensive review of the Penal Code, Corrupt Practices Act, Public Finance Management Act, Financial Crimes Act, Public Procurement and Disposal of Public Assets Act and Malawi Public Service Regulations. This should be initiated by the Ministry of Justice drawing on input from stakeholders including the Malawi Police Service, the Anti-Corruption Bureau, the Director of Public Prosecutions, the Ombudsman, the Human Rights Commission and the Malawi Law Commission, under the aegis of the Parliamentary Legal Affairs Committee, to ensure that any amendments constitute actual improvements to the statutes. This could reasonably be done within one to two years.

### Witness protection, safeguards for whistle-blowers and managing cooperating defendants

It is recommended that a commission examine the case for a suite of legislative measures for the provision of safe space for and protection of whistle-blowers; the ethical handling of those assisting the authorities, namely informants and accused or convicted persons (offering intelligence and/or evidence); and the care and security of witnesses in criminal cases. Law enforcement agencies and all ministries, departments and agencies should have in place standing orders and guidance, to promote compliance with legal provisions. This could reasonably be done within one to two years.

### Reducing delays

It is highly recommended to conduct a review of the Criminal Procedures and Evidence Code with the aim to reduce delays and exceedingly long trials. Rules of court, for the management and expedition of trials in corruption and financial crime cases, are necessary for improving public confidence in the criminal justice system. The review should be initiated by the Ministry of Justice drawing on input from stakeholders including MPS, ACB, DPP, Ombudsman, Human Rights Commission and Malawi Law Commission in close collaboration with the Parliamentary Legal Affairs Committee to ensure that any amendments constitute actual improvements and strike the balance between human rights concerns and effective rule of law. Further, the length of time between first arrest and actual commencement of the trial should be reduced by concluding investigations prior to arrest.

A commission should urgently examine the allocation of cases between the Magistrate's Courts and the Criminal Division of the High Court, identify measures to reduce congestion of court lists and recommend rules of court for the expedition of complex and/or high-profile cases of financial/economic crime, including corruption. A trained judicial cadre, presiding in eligible cases, will acquire the necessary experience. Swift and sure justice will build public confidence in the courts, deter criminal activity and support prompt recovery of the proceeds of crime. This could reasonably be initiated within one year and implemented within one to three years.

### Prosecution strategy

Prosecution strategy development should begin before executive action, so discussions might include all or some of DPP, ACB, MPS, FIA and institutions with comparable powers and duties, e.g. RBM, MRA, DNPW and even Immigration, Forestry and the Ministry of Health Drug Theft Investigation Unit. Guided by experienced prosecutors, investigation strategies should be tailored to complement holistic casework strategies. Both should include financial investigations and profiling, leading to asset tracing and recovery, also involving civil litigators (AG's office) where necessary. Design of intra- and inter-agency agreements and MoUs could be achieved within half a year.

### Asset recovery

Expropriation of illicit wealth should be integrated into all forms of disciplinary and court proceedings against

malefactors in both public and private sectors. To be consistent and effective, this practice should be founded on policy. A new National Economic Crime Strategy (which championed at ministerial level would encompass the 2019-2024 National Anti-Corruption Strategy, the National Risk Assessment and AML/CFT Strategy and a new Asset Recovery Strategy) would establish a structure for policy-making and a whole system response, including a multi-agency asset-tracing and recovery scheme. This could be addressed and implemented within a year.

## **INSTITUTIONAL ARCHITECTURE**

### **Resources**

It is acknowledged that the demands on Malawi's limited budget are considerable and that it is a challenge to ensure an equitable distribution between all government functions. It is important, however, that law enforcement agencies have sufficient funding to support high-level corruption investigations and prosecutions. The government should ensure that the budget for law enforcement efforts is protected and as high as possible. Recent decisions to ensure the funding of the ACB are a step in the right direction. The Court Service should be adequately resourced to ensure timely proceedings. This could reasonably be initiated within one year and implemented between two and three years.

### **Inter-agency and intra-agency cooperation**

It is highly recommended that the DPP, ACB, FIA and Malawi Police Service, with the support of their Ministries, follow the guidance on the establishment of integrated teams for investigations and prosecutions of high-level financial crimes and corruption, as provided by the UN Convention against Corruption and 2012/15 FATF Recommendation 30 and FATF's October 2013 Best Practice Paper. Following an integrated model, one multi-disciplinary team handles investigation and prosecution of the predicate crimes generating profits for laundering. These teams could include FFU and ACB investigators, at least one DPP prosecutor and representatives of FIA, MRA and border police, to assist in the tracing of assets. These teams should have access to adequate forensic tools, modern IT-resources and a case management system. This could be designed and implemented in the short-term.

## **EXTERNAL INFLUENCES**

### **Political influence**

To ensure the independence of law enforcement agencies tackling high-level corruption it is important to establish and adhere to transparent appointment procedures based exclusively on applicants' merit, performance and potential; robust vetting procedures; rules for nominations and appointments and; even more importantly, enforcement of regulations regarding dismissals and suspensions from service. It is key to the independence of officials that their employment is not subject to ad hoc executive decisions. The Legal Affairs and the Public Appointments Committees could play a constructive role in this project building on current work in the context of the new Malawi Public Service Management Policy. This could be designed and implemented in the short-term.

### **The role of international development partners**

It should be recognized that well-intentioned interventions by foreign development partners can undermine the cohesion of the government apparatus and may fuel inter-agency rivalries. There is also the issue of ownership, which can be seen to be a problem due to external support. This is of particular importance in a domain as central to national sovereignty as law enforcement. International development partners should further strengthen their current efforts to coordinate their input with each other and the government of Malawi. This could be designed and implemented in the short-term.

### **Free press, media and civil society**

Free news media as well as civil society are essential to the successful campaign against high-level corruption. Law enforcement agencies and international development partners should support and engage with these pillars of open public debate.

# PART I: INTRODUCTION

This report presents the findings of a study on the dynamics of law enforcement in high-level corruption cases in Malawi. It is one of three country case studies of the project 'Fighting high-level corruption in Africa: Learning from effective law enforcement', which is part of the FCDO-funded Global Integrity Anti-Corruption Evidence Programme (2019-20). The research project is the first systematic study of law enforcement efforts targeting high-level (grand) corruption in Africa. It aims at identifying both enabling and constraining factors for effective law enforcement. The focus on the specifics of enforcement practice is new and promises to generate evidence that has been missing in anti-corruption research. The project compares investigations, prosecutions and asset recovery in Nigeria and Malawi, where high-level corruption is rife but has been targeted by the authorities.

Law enforcement -- ranging from investigations, prosecution and punishment of corrupt officials to asset recovery -- plays a principal role in combating high-level corruption but it is often also seen as inherently problematic due to the scale of systemic corruption, the lack of resources and external influences. However, in Malawi, as elsewhere on the continent, there have been law enforcement efforts against high-level corruption that deserve more attention and serious consideration by scholars and policymakers.

Since the mid-1990s, both petty and high-level (grand) corruption have become widespread in Malawi. This has to be seen in the context of the introduction of multi-party democracy in 1994, which ushered in a new, more liberal era after more than thirty years of one-party rule under the autocratic Hastings Kamuzu Banda, who suppressed any form of dissent. The need for funds to pay for political campaigns and the weakening discipline of government employees who exploited the newly available economic opportunities, have fuelled the increase in corrupt practices among the political and bureaucratic classes (Anders 2010: 124-125). This report focuses on the law enforcement response to the Cashgate scandal, the large-scale theft of public funds in 2013, which has triggered unprecedented law enforcement efforts.

## 1. RESEARCH QUESTION

This report on Malawi, as part of the larger research project, examines law enforcement practice in high-level corruption cases to address the question:

- What are the enabling and inhibiting factors shaping the effectiveness of law enforcement responses to high-level corruption?

The definition of what constitutes effective law enforcement takes into account what informed actors (political leaders, law enforcement officials at different levels and different agencies) deem to be 'effective'. Specifically, the study examines frictions between the principal actors, their different perspectives and trade-offs between various objectives and strategies. The starting point for the research and the analysis is determined by vernacular ideas and conceptualizations of what constitutes effective law enforcement rather than an abstract universalized external standard.



The analytical and comparative framework differentiates five major factors shaping law enforcement activities in Malawi:

- The legal framework, including criminal law and procedural law, to identify effective and flawed legislation and the ways it is employed by legal players.
- The institutional architecture, focusing on inter-agency relationships and intra-agency dynamics, including the mandates, organisation and resources that are key to law enforcement.
- External influence, of politicians, officials, superiors and others, aimed at either strengthening or obstructing law enforcement, in the context of the country's political economy/political settlement.
- Foreign involvement by donor agencies and the transnational dimension.
- The characteristics of the individuals who are prosecuted, punished and have had their assets seized. Who are they and where do they come from? Are they only small fish or are they the main perpetrators?

## 2. METHODOLOGY

Our research adopted an anthropological, qualitative approach due to the salience of the social, cultural and political setting and high-level corruption's sensitive nature. The researcher employed a mix of social-scientific and legal methods. He mainly conducted semi-structured interviews with key individuals in government, donor agencies, civil society organizations and law enforcement agencies. The researcher conducted twenty-four interviews in May and August 2019 with a range of officials from the Directorate of Public Prosecutions (DPP), the Anti-Corruption Bureau (ACB), the Fiscal and Fraud Unit (FFU) of the Malawi Police Service (MPS), the Financial Intelligence Authority (FIA), the Judiciary, the Malawi Law Society and representatives of donor agencies including DfID (since September 2020 FCDO). In addition, he and the team's legal expert Nick Staite, conducted desk research and analysed the legal framework. Taking account of the sensitivity of this study, and to protect the anonymity of the participants, this report does not contain any specific information on the identity of the interviewees.

Drawing on social anthropology, this project interrogates notions of 'effectiveness' or 'success', exploring vernacular perceptions and definitions shaped by Malawi's specific socio-cultural setting and political context, to tease out discrepancies with the globalized discourse of transparency, promoted by the transnational anti-corruption movement. This study takes seriously the experiences and perceptions of Malawi's law enforcement officials who navigate a highly contested field, characterised by limited resources, widespread corruption, a range of disruptive external influences and pressure from foreign development agencies.

## PART II: CONTEXT

Malawi's anti-corruption landscape took shape after the country adopted multi-party democracy and economic liberalisation during the mid-1990s. One key aspect of the context for Cashgate is the Integrated Financial and Management Information System (IFMIS), which was introduced in 2005 as part of the reform of Public Finance Management, implemented to qualify for the Highly Indebted Poor Country Initiative debt cancellation.

# 1. MALAWI'S ANTI-CORRUPTION LANDSCAPE

In Malawi, as elsewhere on the African continent, anti-corruption law enforcement combines elements dating back to the late colonial period and the first years of independence with agencies set up in the late 1990s, reflecting the rise of the global “good governance” discourse.

All corruption cases begin in the Magistrate Court. Some cases are moved to the High Court if the DPP issues a Certificate of Suitability for Summary Procedure Trial in the High Court, upon request from the prosecutor. Both the police and the Anti-Corruption Bureau have the authority to investigate corruption-related offences. The Director of Public Prosecutions (DPP) and the Anti-Corruption Bureau (ACB) have the mandate to prosecute offences but the latter requires the consent of the former (section 42 CPA).

At the international level, Malawi is a member of INTERPOL, which supports the police in tackling organized crime. The Malawi Police Service (MPS) maintains the INTERPOL National Central Bureau in Lilongwe at the Criminal Investigations Department (CID), to cooperate with police forces in other countries. The MPS Inspector General is a member of the Southern African Regional Police Chiefs Co-Operation Organisation. Further, Malawi is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) established in 1999 in Arusha. The ESAAMLG's main focus is the implementation of FATF standards and recommendations. The United Nations Office on Drugs and Crime (UNODC) provides occasional training and assists with measuring Malawi's compliance with UNCAC. UNODC maintains the Asset Recovery Inter-Agency Network Southern Africa.

A number of donor agencies are important with regard to law enforcement. DFID provided financial support for two forensic audits and the German development agency GIZ funded a top-level analysis of the public finances records for 2009-14, conducted by Price Waterhouse Cooper, on behalf of the National Audit Office. The EU and Ireland funded, for twelve months, the fees of a private practitioner to prosecute in the Cashgate Quick Impact Response and DFID has been funding technical advice to the ACB and the DPP since 2015. This has to be seen in the context of donor involvement in anti-corruption law enforcement since the 1990s. DFID contributed funding to the ACB from 1998 to 2010 and the Norwegian government from 2001 to 2011. The Irish government also provided support to the ACB for several years.

## RELEVANT AGENCIES

The principal law enforcement agencies are the ACB, the FFU (MPS) and the FIA. Other relevant agencies include the MRA, the Office of the Director of Public Officers' Declarations and the Reserve Bank of Malawi (RBM). The Directorate of Public Prosecutions and the ACB, with the DPP's consent, are the principal prosecuting agencies in high-level corruption cases.

### Director of Public Prosecutions

Section 99 of the 1994 Constitution stipulates that the DPP has the power to institute and undertake criminal proceedings against any person before any court in respect of any offence. According to Section 99(2b), the DPP can take over or continue criminal proceedings, which have been instituted or undertaken by any other person or authority. The DPP also has the authority to discontinue any criminal proceedings (Section 99(2c). Section 100 of the Constitution authorises the DPP to delegate the power to prosecute to other persons. This section and sections 79-80 of the Criminal Procedure & Evidence Code provide the legal basis for the designation of ACB legal officers as public prosecutors. Section 101(2) of the Constitution places the DPP's authority under the 'general or special direction' of the Attorney General.

## Anti-Corruption Bureau

The ACB is the agency created to investigate corruption and corruption-related money laundering or any other offence arising from a corruption investigation. The ACB has directorates dealing with corruption prevention, public education, investigations and prosecutions to fulfill its mandate. The Bureau is headed by a Director General who is supported by a Deputy Director General. Currently, the ACB has thirty-nine investigators and thirteen prosecutors. The ACB prosecutes offences under Part IV of the CPA but it needs the consent of the DPP, which may not be unreasonably withheld and is subject to safeguards (CPA section 42). The ACB prosecutions may be subject to the DPP's directions (section 10(1)(f) CPA).

The ACB receives its cases from individuals and organisations (often anonymous whistle-blowers), complaints from the media and referrals from government offices, the FIA and the police. The ACB is supposed to investigate corrupt practice or CPA offences. The ACB's prosecutors are qualified lawyers or paralegals and may advise investigators pre-charge, conduct post-charge proceedings and assist investigators to identify and locate criminal assets (recovery is not generally performed by the ACB prosecutors). To address understaffing the Director General of the ACB can outsource to lawyers in private practice to prosecute cases after receiving designation to prosecute from the DPP.

## Fiscal and Fraud Unit, Malawi Police Service

The FFU, within the CID, is responsible for the investigation of money laundering, financial crime offences including all fraud matters, violations relating to exchange control, theft by public officials, counterfeit of products, wildlife crime and trafficking of contraband and people. The unit has more than eighty staff who are stationed at a Head Office in Lilongwe and two regional offices. Some FFU officers are deployed at border posts to assist in enforcing the exchange control requirements. Recently, the FFU has acquired a stronger profile after having been eclipsed by the ACB for many years. In 2018, the FFU expanded significantly and hired more than thirty new staff.

The FFU initiates its investigations from complaints lodged by members of the community or other divisions of the MPS or any other law enforcement agency, intelligence reports, tips and informers, media and anonymous reports. The cases are then screened and those that indicate a financial benefit are then prioritised. Cases investigated by the FFU are prosecuted by MPS and some by the DPP's Office depending on how complex and serious the case is. The Cashgate cases have all been presented to the DPP.

## Financial Intelligence Authority

The FIA analyses suspicious transactions and it provides financial intelligence and other relevant information to law enforcement agencies to identify potential cases of money laundering, terrorist financing and associated predicate offences. In 2017, the FCA repealed the 2006 MLA and established the FIA, with wider investigative and asset recovery mandates than its predecessor FIU, in addition to the central agency core functions. The FIA is a member of the Egmont Group of Financial Intelligence Units.

## Malawi Revenue Authority

The MRA's Taxes Investigations Division has the responsibility to investigate tax crimes and can prosecute them and money laundering offences. It also manages cross-border currency declarations at ports of entry and exit. The Customs and Excise Division is responsible for detection of cross-border transportation of currency. The Legal Division is responsible for prosecution of cases relating to tax and customs offences and related money laundering offences. Historically, the MRA has focused on revenue collection and civil recoveries but, since the implementation of the FCA, in 2017, the MRA is the competent authority for asset forfeiture and similar purposes. The MRA has not played any significant role in the Cashgate investigations and prosecutions but there is clear potential for a more active role in the future.

## Office of the Director of Public Officers' Declarations

The Office of the Director of Public Officers' Declarations is an independent government agency established in 2014 under Section 6(1) of the Public Officers' (Declaration of Assets, Liabilities and Business Interests) Act. The Act provides the legal and institutional framework for prescribed public officers to declare their assets, liabilities and business interests upon assuming office and annually. This agency could potentially play a key role in curbing and deterring high-level corruption among government officials.

## Reserve Bank of Malawi

The Reserve Bank of Malawi (RBM) has an investigation team set up in 2019 and an in-house prosecutor playing an important role with regard to illegal externalisation of foreign exchange coupled and transfer pricing. In 2019, the RBM had cleared almost 40 cases and had 48 cases remaining.<sup>[1]</sup>

## 2. HISTORY OF FIGHTING HIGH-LEVEL CORRUPTION IN MALAWI

This report focuses on the impact of law enforcement's response to a massive corruption scandal in Malawi, known as 'Cashgate.' Discovered in September 2013, the Cashgate scandal was characterized by the theft of substantial government funds and the seizure of large quantities of cash in the possession of government officials and businesspeople.

In Malawi, the spread of corruption is a relatively recent phenomenon that has been linked to the introduction of multiparty representative democracy and the liberalisation of the economy during the mid-1990s (Anders 2010). Prior to democratisation in 1994, corruption was rare, due to the culture of fear under Kamuzu Banda's repressive regime. The boundaries between his own private property, the state apparatus and the Malawi Congress Party (MCP), the only legal political party, became increasingly blurred over the years. Practices, which would qualify as corruption after democratisation, were considered to be part of the political system in which the autocrat exercised absolute control. Banda used his control over state-owned companies that dominated Malawi's economy until the 1990s to strengthen his rule. For example, he ensured that party functionaries and senior civil servants could obtain soft loans from the Commercial Bank, a bank owned partly by the state and partly by Press Corporation, Malawi's largest company. Press Corporation, a conglomerate with substantial interests in all sectors of the economy, was Banda's personal property and he used its resources for his patronage network and personal prestige projects in order to ensure the absolute loyalty of his clients in the economy, the government and the MCP. As there was no independent press or research at the time, it is difficult to determine the levels of corruption but it appears that high-level corruption was rare and remained limited to the highest echelons of power. Petty corruption was virtually unheard of as any official found to violate the rules and regulations would have feared to attract the personal ire of Kamuzu Banda.

Since the mid-1990s, the need for campaign funds to contest elections (Dulani 2019) and the weakening discipline of government employees, who have exploited the newly available economic opportunities, have been fuelling the increase in corrupt practices (Anders 2010: 124-125). There have been a number of high-level corruption scandals involving ministers and directors of parastatal companies (Anders 2010: 122-125) but, in contrast to Cashgate, these scandals remained limited to specific ministries and did not trigger sustained law enforcement efforts.<sup>[2]</sup>

The Cashgate scandal is remarkable for two reasons. On the one hand, it was the biggest corruption scandal ever uncovered in Malawi and, on the other, the scale and scope of the law enforcement response were unprecedented. The latter was mainly due to the political landscape at the end of 2013, which created a favourable climate for sustained law enforcement efforts. It is estimated that within a six-month period between April and September 2013 almost £20 million (US\$ thirty-two million) was stolen and it is possible that more than £173 million (US\$ 280 million)

has been 'lost' since 2009. The large-scale theft of public funds was discovered in September 2013, when the country was at the beginning of the run-up to the May 2014 elections. As the extent of the corruption racket was revealed, President Joyce Banda ordered a forensic audit, which was funded by the British government (Baker Tilly 2014). In October 2013, the arrests of the first suspects followed, increasing to one hundred arrests over the following year.

During this time, the government led by Joyce Banda was reeling from the fall-out of the discovery of the scandal and government officials were scrambling to respond. The government's development partners increased the pressure by suspending more than £100 million budgetary support. In October 2013, Joyce Banda sacked her entire cabinet and, faced with the elections in May 2014, promised to shield no one involved in Cashgate from prosecution. In haste, a coordinating committee was established and, with EU-funding, the government retained Kamudoni Nyasulu SC, a former Director of Public Prosecutions who had worked for the UN. His role was to coordinate the investigations and conduct the prosecutions. The committee included the ACB, the DPP, MPS and representatives of key donor agencies. The committee was chaired by the Deputy Inspector General of the MPS, Nelson Bophani: it developed the Quick Impact Response, informally referred to as the low-hanging fruit strategy. Accordingly, law enforcement agencies focused on relatively straightforward cases, mainly concerning 'contractors'--business people whose non-existent contracts to supply goods or services to government offices were the basis for fraudulent payments from the government's bank account-- involved in fraudulent transactions. The committee's record was chequered at best. It fizzled out after the elections, in May 2014. Further undermining the trust in inter-agency cooperation, Bophani was arrested by the ACB, in October 2014, on charges of perverting the course of justice.

In May 2014, Arthur Peter Mutharika succeeded Joyce Banda as president. As the extent of the scandal emerged, the law enforcement effort gathered steam, resulting in the arrest of dozens of suspects and a series of high-profile criminal trials. Twelve cases were concluded by February 2020. The first trial was heard at the High Court in Lilongwe, against the Principal Secretary in the Ministry of Tourism. She was sentenced in October 2014, to three years in prison for money laundering. Only a month later, an accounts assistant, who had been found with US\$ 66,000 in cash, was sentenced to nine years in prison. Several other government officials were also convicted of money-laundering and received prison sentences. One of them, an Assistant Director in the Ministry of Tourism, entered into a plea bargain agreement, receiving seven years' imprisonment. In September 2015, a wealthy businessman and part-time functionary in Joyce Banda's People's Party, also entered into a plea bargain and was sentenced to eleven years. In a case suspected of being Cashgate-related, a former Minister of Justice was found guilty of plotting the murder of the Budget Director in the Ministry of Finance: he was sentenced to thirteen years in prison (on bail, pending appeal). From 2016 to 2020, that Budget Director has been on trial for money laundering and theft, with seventeen co-accused, including the former Accountant General, several other senior government officials and numerous 'contractors'.

### **3. THE ROLE OF THE INTEGRATED FINANCIAL MANAGEMENT INFORMATION SYSTEM**

The Integrated Financial Management Information System (IFMIS), the system for supporting budget planning, accounting and auditing that was introduced in 2005, has played a major role in the Cashgate scandal. It was not only employed to facilitate the fraudulent transfers of public funds but it also proved key in tracking the money, according to the Baker Tilly forensic audit report. The report covers a period between 1 April and 30 September 2013 and is based on the analysis of payments made from the Government No. 1 account at the RBM. The interim report concludes that 'funds have been stolen from the Government of Malawi' (Baker Tilly, February 2014: 4). One method included the deletion of fraudulent transactions from IFMIS and 'systematic money laundering activities through commercial organizations', using bank accounts to draw large sums of cash (Baker Tilly 2014: 4). The auditors discovered that several companies had opened new bank accounts only 'two or three months prior to the receipt of



government cheques', whilst other bank accounts 'were either dormant prior to payment or showed limited transaction activity' (Baker Tilly 2014: 4). The report confirms 'that up to MK 6,096,490,705 could currently be classified as theft of Government Funds' (Baker Tilly 2014: 5), equating to £10,249,100 in September 2013. In addition, MK 3,619,539,979 (more than £6 million) had been 'spent inappropriately or at worst, [being stolen]' by transferring the money to two newly formed companies and another MK 3,955,366,067 (almost £6.5 million) had been transferred to the same two companies without any supporting evidence. The report suggests that, in total, MK 13,671,396,751 (equivalent to about £23 million) had been misappropriated (Baker Tilly 2014: 5).

According to the evidence presented in the forensic audit report, the scheme operated in a fairly unsophisticated manner. Several conspirators simply logged into IFMIS, using their own access rights, to create false electronic records of transactions between 'contractors' and ministries. A trusted few accessed the main database, through an open firewall and abusing system administrator user rights, to create fake credits ('votes') to the budget lines of four ministries, namely Irrigation and Water Development, Office of the President and Cabinet, Local Government and Tourism, and Culture and Wildlife (Baker Tilly 2014: 24). This facilitated the electronic creation and printing of payment vouchers, on the strength of which collaborators in the Accountant General's Department issued and signed RBM cheques. Afterwards, the transactions were deleted in the IFMIS. The RBM cheques were cashed at commercial banks, specially cleared for immediate or expedited cashing by the recipient 'contractors'. The account holders, retaining some 10% in 'commission', quickly withdrew cash from their bank accounts and delivered it to the government officials who recruited them: 'withdrawals commenced with immediate effect' (Baker Tilly 2014: 27). It appears that a small group formed the inner circle running the process. Soft-Tech, the supplier of the IFMIS, traced the fraudulent transactions to the 'username IDs of four individuals' (Baker Tilly 2014: 25).

The 2014 report delivers a damning verdict on the government's financial management and audit. The Accountant General's Department is criticized for 'significant failures in the control environment' (Baker Tilly 2014: 12) and the Accountant General and the Assistant Accountant General 'could be considered to have failed in their public duties' (Baker Tilly 2014: 13). The weaknesses in overseeing financial transactions were known for some time but not much had been done to address them. A 2009 government report on the implementation of the IFMIS concluded that:

The IFMIS infrastructure does not have any intrusion prevention and detection system or mechanism to easily gain visibility and monitor any potential security threats considering that the access is mainly by user ID and password which can easily be accessed.<sup>[3]</sup>

The Baker Tilly accountants were able to trace the audit trails and cross-check the extracted data with available documentation (Baker Tilly 2014: 3). The manipulation of the IFMIS ledgers demonstrated that the accounting defects were deliberate, not negligent.

The IFMIS was introduced in 2005 as a measure to improve financial management and fiscal discipline. The government signed a contract with a consultancy firm in Tanzania to implement the same system used there. Prior to that, there had been two attempts to introduce a management information system. In 1995, the government followed advice by the World Bank and replaced the manual system with a Public Financial Management system, in a pilot trial covering several key ministries. Due to problems with suppliers, know-how, coordination and implementation, the pilot trial was abandoned. In 2003, another attempt was made to introduce a system, soon abandoned as well.

These efforts have to be considered in the context of the civil service reform that had been implemented since the mid-1990s. The main elements of the reform included the introduction of an automated payroll system, the reduction of support staff, performance-based contracts for senior staff and a functional ministerial review. These measures were part of a wider push to improve governance, promoted by the International Financial Institutions and Western donor

agencies, by improving accountability and transparency (Anders 2008). The reform process was a protracted affair, with significant setbacks and delays in implementing reform measures. Eventually, the government had succeeded in implementing most of them by 2005, when the IFMIS was introduced (Anders 2010). In the light of the Cashgate scandal, it must, however, be concluded that the intended outcomes, efficiency and transparency, have remained elusive, in spite of the implementation of the reform measures, due to weaknesses in system security and auditing.

## PART III: LEGAL FRAMEWORK

Malawi is a signatory of, among others, the United Nations Convention against Corruption (UNCAC) ratified in 2007. The national legal framework relevant to corruption comprises the Penal Code (PC 1930), Criminal Procedure and Evidence Code (CPC 1967), Corrupt Practices Act (CPA 1995), Public Finance Management Act (2003 PFMA) Public Procurement and Disposal of Public Assets Act (2016 PPDA) and the Financial Crimes Act (FCA 2017, replacing the 2006 Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act (MLA)).

The main offences for corrupt activity include theft (PC sections 271, 278 and 283); extortion and bribery (CPA sections 24-25; PC sections 90-92 - these PC provisions are superseded but not repealed<sup>[4]</sup>); abuse of office (CPA sections 25A-25D; PC section 95 – obsolete but not repealed); money laundering and concealment (FCA section 42; MLA section 35); and possession of unexplained property (CPA section 32). Under the CPA and the FCA, respectively, the ACB and FIA have the authority to apply to court for warrants to access and seize bank records. Government officials and ‘contractors’ prosecuted in the context of the Cashgate corruption scandal have mainly been charged with theft and money laundering.

The Malawi Public Service Regulations provide for the interdiction of officials accused of committing offences (Regulation 3:110). Section 10(4) of the CPA enables the ‘interdiction’ (suspension) of persons suspected of corrupt practices; section 40 requires that any person convicted of corruption offences be disqualified for seven years from holding public office including state-owned enterprises.

Given the amendments introduced by the FCA, the targeting of money laundering and financial crimes, the freezing, seizing and confiscation of assets have become key tools in fighting corruption. Under sections 23 and 23A CPA, respectively, assets and transactions may be frozen for up to three months (which can be extended) and documents and property seized. The MLA (repealed) and the FCA provide for the freezing of up to six months, which can be extended. The FCA has introduced ‘civil forfeiture’ of tainted property, to operate alongside or independently of criminal proceedings. In addition, the FCA established a confiscation fund to receive all funds that have been confiscated.

Anti-money laundering legislation is a relatively recent addition to Malawi’s statute book. The Cashgate trials in 2014 were the first time money laundering offences were prosecuted, as such. The first expressly anti-money laundering law was the 2006 Money Laundering, Proceeds of Serious Crimes and Terrorist Financing Act (MLA), enacted to meet a requirement by the Financial Action Task Force (FATF), after a review of Malawi’s compliance with the UNCAC and international standards on money laundering, serious crimes and terrorist financing. FATF’s review identified several gaps in the law and recommended amendments to the MLA, which was replaced by the FCA in 2017. The FCA replaced the FIU with the Financial Intelligence Authority (FIA), that has the legal power to conduct financial investigations to track criminal financial flows and confiscate them. Under the FCA, the FIA has the new authority to ‘request information from any person, institution or agency for purposes of carrying out its mandate’. The FCA also empowers the FIA to

impose administrative penalties for non-compliance; and civil forfeiture has been added to criminal forfeiture. The FCA also increased the maximum punishment for money laundering from ten years imprisonment to a maximum of life imprisonment (FCA sections 42, 43).

## PART IV: CASE STUDIES (NARRATIVES)

This section presents several case studies to highlight the key aspects of law enforcement practice in high-level corruption cases in Malawi. Its main focus is on the first wave of trials of Cashgate offenders; the trial of the former Budget Director, Paul Mphwiyo, at the Ministry of Finance, the former Accountant General and seventeen other defendants; and one of the trials about theft of government funds in 2010-11, predating Cashgate.

### 1. THE FIRST WAVE OF CASHGATE TRIALS, 2014-15

In the wake of the first revelations about the extent of the Cashgate scandal in September 2013 more than fifty people were arrested. The junior government accountant Victor Sithole was the first to be arrested, with more arrests following including government officials and business people. By November more than sixty people had been arrested.

This section focuses on five key trials, fleshing out how they were connected with each other. It examines the trials against Victor Sithole, Tressa Senzani, Principal Secretary at the Ministry of Tourism, Oswald Lutepo, businessman and official of Joyce Banda's People's Party PP, Maxwell Namata, a government IT-expert, and Leonard Karonga, Assistant Director at the Ministry of Tourism. They were part of a wave of about a dozen trials against government officials and businesspeople who were implicated in the Cashgate conspiracy.

#### THE REPUBLIC VS SITHOLE (CRIMINAL CASE NUMBER 908 OF 2013)

Sithole's arrest was the first of a string of investigations and arrests in the immediate aftermath of the Cashgate scandal. In September 2013, he was found in possession of large sums of cash: Malawi Kwacha 112 million, US\$ 31,800 and Rand 122,400. He was charged with possession of stolen goods, illegal possession of forex and money laundering. The magistrate's court in Lilongwe started hearing his trial in April 2014, with Kamunodi Nyasulu prosecuting. When Sithole, who had lived the months prior to his arrest well beyond his means, tried to explain his wealth, he implicated Oswald Lutepo, a businessman who owned several companies and was an official in Joyce Banda's PP. According to Sithole, the money found in his possession did not belong to him but to Lutepo. In fact, when Sithole was arrested, Lutepo applied to the court, claiming that the local currency found in Sithole's possession should be released to him.

In October 2014, the court found Sithole guilty on all charges. He was sentenced to seven years imprisonment for money laundering, one year for possession of stolen money and one year for possession of forex, running consecutively for nine years. In terms of asset recovery, only the cash that was found in Sithole's possession and a vehicle were seized. In April 2015, the Magistrate Court in Lilongwe refused the state's application to recover further assets.

#### THE REPUBLIC VS. TRESSA NAMATHANGA SENZANI (CRIMINAL CASE NUMBER 62 OF 2013)

Senzani, the Principal Secretary at the Ministry of Tourism, is the highest-ranking civil servant convicted for Cashgate-related offences. The forensic audit by Baker Tilly identified the Ministry of Tourism as one of the main conduits for the

money stolen from the RBM Government Account no. 1. She was arrested in October 2013 and charged with theft and money laundering at the High Court in Lilongwe. Her case was prosecuted by the ACB, alleging that she benefited from two payments from her ministry, to a company she owned, for services that were never rendered. Senzani was the first person convicted of Cashgate-related offences. She entered into a plea agreement with the ACB and pleaded guilty in August 2014. She 'restituted' the money she received by surrendering her house, valued at MK 63 million. In October 2014, she was sentenced to three years in prison for money laundering and nine months for theft of government funds of MK 63,540,000, to run concurrently. The media was highly critical of the length of the prison sentence, which was seen as too lenient. Two years later, in October 2016, Senzani was released early, according to standard remission of sentence. She died only two months later in a private hospital in Blantyre.

### **THE REPUBLIC VS. MAXWELL NAMATA AND LUKE KASAMBA (CRIMINAL CASE NUMBER 45 OF 2013)**

In September 2013, the ACB arrested Maxwell Namata (a government Principal Accountant), his wife (a civil servant at the Ministry of Tourism) and a 'contractor', Luke Kasamba. According to the ACB prosecutors, Maxwell Namata was at the very heart of the Cashgate conspiracy. He was familiar with the operation of the IFMIS system, because he was one of the members of the team responsible for the system's maintenance. The case was prosecuted by Nyasulu at the High Court in Lilongwe. Namata was charged with theft of MK 24 million (PC section 278) and money laundering. His co-accused was charged with money laundering. The trial started in July 2014, when both accused pleaded not guilty. During this trial, Namata was also charged with separate offences in the case against the former Budget Director Paul Mphwiyo and eighteen other defendants.

In January 2015, Namata and Kasamba were found guilty of using Kasamba's company, Cross Marketing, to steal MK 24 million. Prior to sentencing, Kasamba restituted MK 24 million. Namata was sentenced to eight years and Kasamba to four years imprisonment. Both appealed their convictions, but Kasamba abandoned his appeal. The Supreme Court of Appeal quashed Namata's conviction in March 2018. The court ruled that Namata could not be party to a theft, after the cheques had been credited to Kasamba's account. That offence was completed before, on the evidence, Namata handled the cash proceeds. The money laundering charges failed because the prosecution had not proven the predicate offence, which created the cash Namata handled. Namata remained on bail as he was still standing trial in another case. In a twist of fate, he died in a car accident in Lilongwe in November 2018.

### **THE REPUBLIC VS OSWALD LUTEPO (CRIMINAL CASE NUMBER 2 OF 2014)**

The most dramatic case was played out both in a protracted trial and the court of public opinion between November 2013 and September 2015. Oswald Lutepo, a successful businessman and official in Joyce Banda's People's Party PP, was charged in November 2013 at the High Court in Zomba with theft (PC section 278 money) and money laundering of several billion Malawi Kwacha (MLA section 35(1)(c)). The trial against Lutepo was jointly prosecuted by the DPP and the ACB. In December 2013, Lutepo was released against an unusually high bail of MK 50 million (£78,000).

Lutepo's trial was rich in drama. In the run-up, he made a number of conflicting public statements to the news media, implicating Joyce Banda, who had lost the presidential elections in May 2014. He also claimed that the then Minister of Justice and DPP were putting pressure on him to implicate specific people connected to Cashgate and the attempted murder on the Budget Director, Paul Mphwiyo, in September 2013. While the trial was progressing, Lutepo gave numerous interviews and issued public statements about his role as 'conduit' for the theft of extraordinarily large sums of money. During 2014, Lutepo was arrested several times for giving false statements to the court and tax evasion but was always released on bail. In November 2014, after his arrest for tax evasion Lutepo claimed to suffer from a problem with his nervous system and began to use a wheelchair. In February 2015, a doctor stated that Lutepo suffered from an anxiety disorder and panic attacks but in April 2015 two doctors declared Lutepo fit to stand trial. For every court hearing, Lutepo had to be carried in his wheelchair up the stairs to the courtroom on the first floor. In June 2015, pursuant to a plea bargain, he changed his plea to guilty on charges of money laundering and conspiracy to

defraud the government of MK 4.2 billion. Prior to sentencing, the judge rejected Lutepo's plea for special privileges in prison. After several adjournments, in September 2015 he was sentenced to eleven years in prison.

Lutepo was the seventh person to be convicted on Cashgate-related charges. Even though he received the highest sentence of all Cashgate suspects, the confiscation of his assets has proven to be a protracted affair. Lutepo did retribute a portion of the Malawi Kwacha 4.2 billion and the DPP accepted surrender of business premises valued at MK 370 million.

### **THE REPUBLIC VS. LEONARD KARONGA (CRIMINAL CASE NUMBER 68 OF 2014)**

Leonard Karonga, sometimes spelt Kalonga, was Assistant Director at the Ministry of Tourism and had served as civil servant for twenty-two years. In October 2013, he was arrested by the ACB. While on bail he was re-arrested, in November 2013, by the FFU in connection with the purchase of several buses that were allegedly bought with diverted government funds. In February 2015, Karonga and an associate businesswoman were charged at the High Court in Lilongwe with theft and money laundering. The case was jointly prosecuted by ACB and DPP. In August 2015, Karonga entered into a plea agreement with the prosecution and pleaded guilty to three charges: conspiracy to defraud the government, facilitating money laundering and money laundering of MK 3.7 billion. During his case, Karonga implicated the President Joyce Banda, Oswald Lutepo and Budget Director, Paul Mphwiyo. Due to the plea bargain agreement, sentencing was held up as the DPP and Karonga's defence team requested the court for time to produce evidence of when his co-operation with the authorities began, enabling the court to recognise the importance of the information provided by him. In March 2017, Karonga was called by the prosecution to testify in the trial against Mphwiyo and eighteen co-accused. In March 2018, Karonga was sentenced to seven and half years in prison, more than two and half years after his conviction.

### **CONCLUSIONS**

By September 2016, twelve cases had been finalised. All trials had the hallmarks of relatively straightforward cases. All of them had been against one or two accused who were charged with theft as predicate offence and money laundering. The majority of trials heard fewer than ten witnesses (for example, the trial against Namata and Kasamba heard three prosecution witnesses, a police witness and, of the court's own motion, the former Accountant General). However, only four cases (Senzani, Sithole, Soko, Msungama) took less than one year to conclude counting from the first arrest to the sentencing exercise (prior to any appeal rulings), two took sixteen months (Namata and Magombo), one took seventeen months (Katengeza), one took nineteen months (Lutepo), one twenty-one months (Savala), and two twenty-four months (Chirwa and Ndovi) resulting in an average length of sixteen months from arrest to sentencing. Not included is Karonga's case, which took more than four years from first arrest to sentencing judgment. This case was exceptional because he waited for more than two and a half years for his sentence after pleading guilty. His case took almost two years from his arrest to his guilty plea.

Valuable time was often lost between the arrest and actual commencement of the trial. Investigators conducted further investigations during this time. It would be more effective to conclude the complete investigation before charging the accused. The accused were left in limbo, even though released on bail after their arrests. For example, Sithole was arrested in September 2013 but his trial started in April 2014. Namata was arrested in September 2013 and his trial commenced in July 2014. Karonga's was the most protracted. He was first arrested in October 2013 but it took more than one year before his trial commenced. The bottom line of the accounts of all cases of the first wave is that even relatively straightforward trials against one or two defendants quickly can be derailed for a number of reasons, which the analytical section of this paper explores in more detail.



These conclusions raise the question whether the trials could have been dealt with more expeditiously. Whilst time has been clearly wasted due to the frequent delays and adjournments it should be noted that this is by no means exceptional within the Malawian context. In general, the justice system in Malawi is slow and prone to delays affecting all types of legal proceedings (Kanyongolo 2006: 101, 140-141). For example, since the 1990s there has been a massive backlog of murder trials clogging the High Court. It is not uncommon for accused people to spend several years in pre-trial and/or pre-sentence detention. By contrast, the accused in the Cashgate trials were sentenced within sixteen months on average. Therefore, within the Malawian context, the justice system actually appears to have performed better than it usually does even though the length of the trials has attracted justified criticism.

## 2. CASHGATE TRIAL AGAINST MPHWIYO ET AL.

The trial against the former Budget Director at the Ministry of Finance, Paul Mphwiyo, and eighteen other defendants, including the former Accountant General and eight other civil servants, is a massive undertaking that has stretched the resources of the judiciary and put pressure on the DPP's office and the FFU. By December 2015, the DPP had consolidated a number of cases against civil servants and 'contractors' because they were implicated in multiple suspicious transactions that were part of the Cashgate scandal. This created a trial of unprecedented scale which was still ongoing at the time of writing in January 2021.

According to the prosecution theory, it was the former Budget Director who orchestrated the industrial-scale embezzlement. The former Accountant General, David Kandoje, was accused, with the other designated cheque signatories in his office, of collectively authorising the payment of 24 cheques, amounting to almost MK2.5 billion, to private companies without the required supporting documents. Among the defendants were two IT-experts, Steve Likhunya Phiri and Maxwell Namata (who was in trial in a separate case, see above). Phiri was added to the consolidated case in December 2015. Both Phiri and Namata had been members of the domestic technical support team for the IFMIS and allegedly played a key role in abusing the IFMIS. The research by Soft-Tech showed that records of the transactions had been deleted from the IFMIS after the payment vouchers had been approved. Nine defendants were civil servants and the remaining nine defendants were business people who were accused of processing the fraudulent cheques through their bank accounts for fictitious services.

Initially, Mphwiyo was considered a victim. On 13 September 2013, he was shot in a failed assassination attempt and then President Joyce Banda first claimed that he was assassinated because he was investigating the Cashgate corruption.<sup>[6]</sup> In November 2013, the police arrested the alleged assassin and the Minister of Justice, Ralph Kasambara, who was accused of having ordered the assassination. Whilst the murder case against Mphwiyo's assassins was unfolding, doubts were raised regarding his role in Cashgate. In October 2014, Mphwiyo was arrested by the ACB and charged with money laundering and theft of MK 2.1 billion. His trial was slow to start. In November 2015, the trial against Mphwiyo, Kandoje and six others was committed to the High Court in Lilongwe, but it took another year to commence. By November 2016, the trial had grown to nineteen accused and a new charge sheet had been drawn up by the prosecution. The first prosecution witness testified in January 2017. It was Leonard Karonga, who was convicted but still waiting for his sentence. According to Karonga's testimony, Mphwiyo and a large number of contractors and civil servants, especially at the Ministry of Tourism and the Treasury, were part of a conspiracy to channelled sixty percent of the stolen funds to Joyce Banda's People's Party to fund the election campaign and forty percent was shared among the conspirators as commission.

The court hearings had to be moved to the chamber of the Lilongwe city council because of the large number of defendants and lawyers. The trial dragged on, with frequent adjournments. The prosecution had thirty witnesses to testify but, by September 2017, only six had appeared in court. At the end of April 2020, the last prosecution

witness, number thirty-five, testified but there have been delays with the defence case as most lawyers terminated the representation of their clients as they could no longer pay the fees.

At the time of writing in January 2021, the trial had not been concluded yet. In May 2020, the judge found the defendants have a case to answer but the defence counsel raised a serious challenge to the trial, which in some ways exemplifies the challenges posed by the patchwork of legislation in Malawi. The Cashgate trial, as all other criminal trials at the High Court, have been heard by judges only, not in front of a jury as required by Section 294(1) CPEC. According to Section 294(2) CPEC, the Minister of Justice has the power to direct that 'any case or class of cases shall be triable by the High Court without a jury'. In the Criminal Procedure (Trials without Jury) Order, 1996, the Minister of Justice specified certain classes of cases to be tried without jury. However, the order did not cover the charges in the Cashgate trials (and many other trials). This was not flagged up for many years and a large number of criminal trials were conducted without a jury even though they should have been, according to Section 294 CPEC. In January 2020, the Minister of Justice sought to rectify this by issuing the Criminal Procedure (Trial without Jury) (Amendment) Order, 2020, expanding the classes of cases to be heard without a jury retroactively. The retroactive element of the order was challenged by the defence counsel in an appeal to the Supreme Court, which was still pending at the time of writing. The defence motion to suspend the trial was rejected by the judge and the defence case was continuing at the time of writing. It is therefore possible that not only the trial against Mphwiyo and the other defendants could be void but hundreds of others, too. It is inexplicable how something as fundamental as this could have been overlooked for fourteen years.

### 3. PRE-CASHGATE OFFENCES: THE NOVATECH TRIAL

The Cashgate scandal happened between April and September 2013 but there is evidence that the abuse of the IFMIS started much earlier (PAC report 2013; PAC report 2014; RSM 2016). For instance, the report of the Parliamentary Committee on Public Accounts, on its investigation into the financial mismanagement and misappropriation in government, highlights the 'first abuse of resources that was brought to light involved the MPS independent Central Payment System in 2011' (PAC report 2013: 4). This was not the only case. There were a number of cases involving the abuse of the IFMIS but none of them was taken forward by the prosecutors after initial hearings. The investigations into Cashgate reinvigorated the investigations into these earlier cases that displayed many similarities with Cashgate. In fact, the impunity enjoyed by the perpetrators of 2010/11 abuse of the IFMIS appears to have emboldened the perpetrators of Cashgate in 2013 (Anders et al. 2020: 327).

In 2015, the ACB relaunched proceedings in one of the 2010/11 cases, the so-called NovaTech case, against fourteen people, including several government officials. The trial was soon adjourned because of security concerns as the prosecutors stated they had received death threats. These threats were taken seriously as only a few months earlier a senior ACB official had been murdered. The case eventually continued and in, April 2019, the High Court in Lilongwe sentenced ten people to between two and five years' imprisonment for theft and money laundering at the Ministry of Elderly and Disability Affairs and the Accountant General's Office in 2010 and 2011.

# PART V: KEY THEMES FIGHTING HIGH-LEVEL CORRUPTION (ANALYSIS)

The analysis of the law enforcement practice in Malawi focuses on four key themes highlighted by the cases discussed in the previous part: (1) The legal framework and prosecution strategies, (2) the institutional architecture, (3) external influences, and (4) defendants' characteristics.

## 1. LEGAL FRAMEWORK AND STRATEGIES

Malawi's legal framework is characterized by the coexistence of statutes dating back to the colonial period and more recent anti-corruption legislation. The introduction of laws such as the 1995 Corrupt Practices Act and the 2006 Money Laundering Act has not been matched by efforts to address inconsistencies, gaps and ambiguous provisions arising from the heterogeneous assemblage of modern statutes and those mainly reproducing English law of the 1950s and 1960s. This had direct effects on the prosecutions and trials targeting the perpetrators of the Cashgate scandal. The prosecutors struggled to frame the charge of theft of money from the government, which requires the perpetrator to take possession of physical property. According to legal experts, theft (Malawi's hybrid form of larceny) is not easily applicable to the unauthorised drawing of government cheques and credit entries between private banks, which were the evidence of a predicate offence for money laundering charges, under the untested 2006 MLA. The major problem was that 'stealing' under the PC is not suited to the abuse of computer systems and the electronic activities in modern banking. PC offences of handling stolen property (with limitations in legal definitions) were not apt and had, probably, been largely superseded by the money laundering offences in the 2006 Act. These had not been used before, so it was difficult to draft charges, challenging investigators, prosecutors, defence lawyers and the judiciary to experiment in active cases.

The inadequacies of the law became apparent when Namata (see previous section) had his convictions quashed on appeal. In 2015, the High Court in Lilongwe sentenced him to eight years in prison for theft and money laundering. In 2018, the Supreme Court overturned the conviction for theft (see above). The conviction for money laundering was also overturned because, without a conviction for the predicate offence of theft, the conviction for money laundering was baseless.

### ZIGOBA AND WHISTLE-BLOWERS

Since 2013, a growing number of civil servants have leaked to journalists information about corruption. This seems to be a direct consequence of the growth of social media, more access to technology to make digital copies and scans and the fall-out of Cashgate attracting increased scrutiny by the media. Since Cashgate, there have been a number of high-profile cases such as the case of the CEO of the Malawi Roads Authority who was suspended in November 2016 because he awarded a MK 217 million contract to his own company. Many civil servants who are concerned about widespread corruption prefer anonymously to leak information to the media. Some of them use fake identities on social media, so-called *zigoba* (mask in Chichewa). In fact, the media often does not publish all leaked information due to its sensitive nature and political ramifications, according to one well-informed interviewee.

The trend to leak sensitive information to the media is not matched by civil servants coming forward to assist law enforcement. Government officials are rightfully concerned about their personal safety and people are reluctant to come forward for fear of repercussions. It seems that the narrow legislation aimed at protecting whistle-blowers

(CPA 1996 Sec. 51A) is, (if known to them at all, not deemed sufficient by government officials, who prefer to remain anonymous. This is due to mainly three factors. First, whistle-blowers may face threats and attacks. The media linked the unsolved murders of a prosecution witness in the trials against Namata and Karonga in April 2014 and one of the Directors of the Anti-Corruption Bureau in July 2015 to the Cashgate scandal. This highlights the potential for intimidation of government officials. Linked to this is the perception of political influence preventing action and compromising the protection of whistle-blowers. Thirdly, office culture of the civil service strongly discourages whistle-blowing (cf. Anders 2010). The loss of position, career advancement, or retirement benefits, and the risk of being transferred to a remote service station and ostracism serve as powerful means to inhibit government officials from speaking out against corruption.

## **DELAYS AND ADJOURNMENTS**

The criminal trials against the Cashgate offenders have been hampered by frequent and lengthy delays. For example, the trial at the High Court in Lilongwe against eighteen of the main suspects including the former Budget Director at the Ministry of Finance and the former Accountant General started in April 2016 and had not been concluded at the time of writing in November 2020. The slow progress is a result of frequent adjournments and the limited number of sitting days per month in 2017 and 2018. The trial sped up when the number of sitting days was significantly increased in 2019 and 2020.

Of the initial sixty Cashgate-related cases in 2014, only twelve had been concluded by 2019. At the time of writing, about forty cases have not made it to the trial stage yet. These delays can undermine prosecutions. For instance, in August 2019, the Magistrate's Court in Lilongwe ordered the Anti-Corruption Bureau to appear in court to explain why fourteen accused who had been charged with pre-Cashgate offences dating back to 2010/11 should not be discharged. The backlog of cases and frequent delays are by no means unique to the Cashgate prosecutions. They affect all aspects of the justice system in Malawi (Kanyongolo 2006: 101, 140-141). In fact, it could be argued that the Cashgate cases were dealt with more expeditiously than other serious cases (see above).

Adjournments are common to all legal proceedings in Malawi. The Cashgate trials are no exception in this regard. The issue is contentious and shaped by people's role in the trial. Prosecutors tend to complain about frequent adjournments requested by defence counsel and often see it as delaying tactic. By contrast, prosecutors also seek adjournments to strengthen their cases but the failure of defence counsel to resist prosecution requests suggest that adjournments tend to be useful to the defence.

In this context, it should be noted that the courts determine applications for adjournments as an exercise of judicial discretion. According to members of the judiciary interviewed for this study, there are structural conditions in Malawi's legal system that contribute to frequent and lengthy adjournments. First, there are few legal restrictions on adjournments. Defence counsel as well as prosecutors requesting adjournments are well within their rights. Second, apart from the small Criminal Division of the High Court, there is no dedicated bench for criminal cases and judges and magistrates often preside over a large number of cases. Consequently, they are not able to allocate enough time to each trial and there are often weeks and even months between hearings. Any delay in any of the large number of trials a judge is dealing with at any moment is bound to have significant knock-on effects in the other cases allocated to this judge. Third, both prosecution and defence are responsible for a large number of concurrent cases, resulting in frequent scheduling conflicts. Lawyers tend to operate only as individuals and they usually do not call on someone to replace them when they are not able to be present in court, contributing to frequent adjournments. Judges and lawyers often struggle with case management. The absence of administrative support and basic tools aggravates the problem. Fourth, indisposal is a frequent occurrence affecting both parties and the bench, necessitating further delays. Fifth, in recent years the functioning of the judiciary has been hit by strike action. In November 2014 support staff went on strike and shut down judicial services for several weeks; in February 2017, judges and magistrates went on strike over

the payment of housing allowances; in August 2017, junior judicial workers went on strike over the same issue. These strikes in combination with the other factors have further disrupted the Cashgate trials.

According to our interviewees, delays to criminal proceedings can be in the interest of the accused, when on bail. The fact that the defence counsel rarely objects to adjournments applied for by the prosecution lends support to this view. Given the general lack of resources of law enforcement agencies and the judiciary, it is not unknown for prosecutions to fizzle out. For example, the move by the fourteen NovaTech accused to get the magistrate to throw out their cases demonstrates the potential value of delays, from the perspective of the accused. But, even if a case reaches the trial stage, delays tend to be to prosecution's disadvantage. In trials that experience significant delays it is more likely that witnesses change their mind about testifying and drop out, change address without informing the prosecution, are bribed or intimidated into failing to cooperate or simply lose their recollection of events.

Delays might also result in scepticism and resignation to the failure of the whole system to operate efficiently and effectively. The judgments in the first wave of Cashgate trials convey a clear sense of urgency in the immediate aftermath of the scandal. For example, the sentencing remarks to Tressa Senzani refer to the 'untold misery and suffering of innocent Malawians' as result of Cashgate'.<sup>[7]</sup> The sentencing judgment against Lutepo also highlighted the sheer scale of Cashgate. The judge emphasised that 'this case therefore stands out as unprecedented in Malawian economic crimes law for its seriousness. Its seriousness, in the view of this Court, falls into the category of the worst instances thereof.'<sup>[8]</sup> According to our interviewees, this sense of urgency decreased somewhat as the trials dragged on and other matters such as the prosecution of the Minister of Agriculture or the contested elections of May 2019 soon eclipsed the Cashgate scandal of 2013 and the judiciary quickly fell back into business as usual mode.

## **STRATEGIES: QUICK IMPACT OR CONSOLIDATED TRIALS?**

The law enforcement response to Cashgate has given rise to two strategies: the quick impact response with trials against one to two defendants and the large, consolidated trial against a group of alleged conspirators. The focus of the quick impact response was on contractors and aimed at scoring early convictions as a signal to Malawi's development partners and the larger population in the run-up to the election that the authorities were taking immediate action. The second strategy was developed during 2015 and focused on consolidating several cases into one trial with nineteen accused, including the former Budget Director Paul Mphwiyo, and former Accountant General David Kandoje.

In the immediate aftermath of Cashgate, the government and a group of donor agencies led by DFID, set up the Strategic Committee headed by the then Deputy Inspector General of Police and an action plan was drawn up, targeting public finance management, investigations and prosecutions and recovery. The EU funded the Quick Impact Response to 'gain quick impact, to get the low-hanging fruit, all the easy cases', according to one of the members of the Strategic Committee. At first, the prosecutors focused on the 'contractors', as these were considered to be relatively straightforward. At the time of writing, almost twenty of more than thirty cases against 'contractors' had been completed but only four cases against government officials had been concluded.

Within Malawian law enforcement circles, the Quick Impact Response has proven to be controversial. Critics have pointed out that the emphasis on scoring quick convictions against people who essentially aided and abetted the theft of government funds prevented the law enforcement effort from targeting the government officials who played a central role in the Cashgate conspiracy. Some observers even argued that the focus on so-called small fish was exploited, by interests within the law enforcement apparatus, to shield senior government officials from prosecution. In support of this theory they cite the case of the former Deputy Inspector General of Police, who chaired the Strategic Committee but was soon accused of withholding material evidence. These suspicions are symptoms of a general lack of trust between and within law enforcement agencies, where a colleague or partner might be corrupt and intent on shielding certain people from prosecution (see also below on inter-agency relations).



The second strategy of consolidating several connected cases was developed during 2015 when the investigations revealed a widespread conspiracy spanning several government departments and agencies. The connections between a number of individual cases became clearer and what had started out as a quick impact case against a fraudulent ‘contractor’ (Stafford Mpoola) soon became an element in a complex case centering on the former Budget Director and the Accountant General’s Office. In the Malawian context, the second strategy has had a significant drawback. The large number of accused has slowed down the case as the defence counsel subjects the prosecution’s case to the scrutiny they are entitled to in their role to safeguard due process and fair trial rights. This is especially time-consuming in a case of white-collar crime perceived to be complex (cf. the history of Malawi’s legal framework discussed earlier). In combination with the propensity of judicial proceedings to be interrupted by adjournments and other delays there is a significant risk of substantial delays. And indeed, the trial against Mphwiyo and the eighteen other accused has experienced significant delays due to its unwieldy size and nature (see above).

## ASSET RECOVERY

Asset recovery has become a principal concern in many jurisdictions but, in Malawi, it is still very much in its infancy. According to our interviewees, the law enforcement agencies have drawn lessons from the response to Cashgate and are now much more aware of financial crime and how to tackle it than before 2013. The FCA with its more robust measures available to the law enforcement agencies and the combination of civil and criminal forfeiture promises to be more effective than the MLA they replaced. The Cashgate cases constituted very much new territory for the law enforcement agencies and the judiciary. They relied on the, at the time untested, MLA and the existing provisions in the PC, CPA and CP&EC. The efforts to recover the stolen assets and inflict financial punishments have had a degree of success even though the recovered assets fall well short of the sums that have been stolen and misappropriated. In the Cashgate trials where the accused admitted guilt, they restored the stolen or laundered money as a means of mitigating sentence. For example, after her guilty plea, Senzani surrendered a house, valued at MK 61 million, and paid back MK2 million in cash, to reconstitute the MK 63 million she had received. Even in trials where the accused did not plead guilty, they restored the money stolen in the hope the judges would take it into account as a mitigating factor for their sentencing. In another case (against Soko) the court refused the state’s application to confiscate assets because the prison sentence was said to be high, to reflect the convict’s inability to make good the loss to the government.

There is a clear expectation that criminal and especially civil forfeiture will be playing a more important role as Malawian law enforcement agencies gain more experience but it is fair to say that the challenges in this domain remain formidable. Malawi is a cash economy and as soon as money is drawn from a bank account it is almost impossible to trace it, unless the suspect is in possession of the cash at the time of arrest or has deposited or used it, leaving an audit trail. This was the case in the forfeiture proceedings against one of the first Cashgate offenders, the ‘contractor’ Caroline Savala, who was convicted in July 2015.

## 2. INSTITUTIONAL ARCHITECTURE

The principal issues with regard to the institutional architecture of anti-corruption law enforcement are the internal dynamics of various law enforcement agencies and inter-agency relations.

### INTERNAL DYNAMICS

Law enforcement efforts in Malawi have been significantly affected by a lack of resources. A recent study (Chingaïpe 2017) found that the Anti-Corruption Bureau (ACB) is understaffed, especially in the prosecution and investigation departments which have significant staff shortages (Chingaïpe 2017: 162-163). According to a recent report (ESAAMLG 2019: 57), at the ACB two thirds of the prosecutors’ positions are vacant (twenty-three of thirty-six). In

2019, the FIA had only appointed half of the fifty established positions. Another major factor affecting law enforcement agencies' effectiveness is the lack of reliable financial resources. According to Chingaipe (2017: 154), 'the ACB faces acute resource constraints which [are] compounded by erratic funding'. Without adequate resources, law enforcement efforts are easily undermined. The lack of staff and resources affects investigations and prosecutions. For example, in 2013, the ACB initiated investigations in sixty-nine money laundering cases, most of which were linked to Cashgate. Between 2014 and 2018 this number appears to have decreased significantly.

With the Cashgate investigations and prosecutions in 2014 and 2015, the law enforcement agencies entered uncharted waters. The money laundering offences on which they drew had been introduced in 2007 but remained unused. Investigators and prosecutors were not familiar with money laundering offences and they were untested in court. Change was more difficult with regard to the lack of experience and expertise, which do not lend themselves to a quick fix. This was reflected in the quality of the evidence that had been gathered initially. One of the reasons for the delay in the proceedings against Mphwiyo and the eighteen other accused was that, in 2015, the DPP employed the FFU to conduct further investigations to strengthen the prosecution case. Six years later, the ACB, the FFU, the DPP and the FIA have learnt from these experiences and made progress in investigating and prosecuting money laundering offences. Six years later, the ACB, the FFU, the DPP and the FIA have learnt from these experiences and made progress in investigating and prosecuting money laundering offences thanks to the efforts of ACB Director General Reyneck Matemba, Director of Public Prosecutions Mary Kachale, the head of the FFU Isaac Norman and the Director of the Malawi Financial Intelligence Unit Atuweni-Tupochile Agbermodji.

The relationship between investigators and prosecutors constitutes a crucial interface in any criminal proceeding. This is especially the case with regard to relatively complex white-collar criminal offences such as corruption and money laundering. In Malawi, law enforcement agencies continue to operate mainly according to the traditional model, in which one team (Police or ACB) conducts the investigations and upon conclusion of the investigation hands over the file (docket) to the prosecutor. The lack of communication at this vital interface can affect the quality and completeness of evidence presented in court. Prosecutors often hesitate to follow up with requests for more evidence and investigators may not welcome requests for additional inquiries. Generally, with regard to conventional offences this model tends to have no adverse impact but it can prove problematic in complex cases, especially when the investigators have only limited familiarity with the offences suspected. Even at the ACB, where investigations and prosecutions are handled under one roof, there has not been an integrated approach as recommended by FATF, where one multi-disciplinary team handles both investigations and prosecutions.

Law enforcement officials investigating or prosecuting in high-level corruption cases face threats, intimidation or worse. Officials of the ACB and FFU have faced threats and intimidation. For example, in November 2014 the Director General and two ACB investigators received death threats because of arrests in the Cashgate affair.<sup>[9]</sup> Other forms of intimidation are more visible. For example, an ACB staffer reported that members of the youth league of a political party occupied the ACB and took all the officers there hostage, until they released a politician of that party who had been arrested on corruption charges. The NovaTech trial was also interrupted due to death threats against ACB officials.<sup>[10]</sup> Threats and attacks are not limited to law enforcement officials. Witnesses in high-level corruption cases also face intimidation and one has even been assassinated.<sup>[11]</sup> At the time of writing, no one had been arrested and the police investigation appeared to have made no progress. Threats and intimidation are likely to strengthen the culture of fear and silence in government ministries and departments that has been exploited by corrupt officials and their networks.

## INTER-AGENCY RELATIONSHIPS

Anti-corruption law enforcement in Malawi is facing multiple challenges ranging from the lack of resources to the difficulties of producing evidence that holds up in court. This section focuses on one aspect of anti-corruption law

enforcement, which has proven to be particularly challenging: Inter-agency relationships. In Malawi, the principal law enforcement agencies tend to operate in parallel with only a minimum of strategic coordination and virtually no tactical cooperation in investigations. Instead, the relationships between the various agencies are characterised by rivalry and competition. This is particularly striking with regard to the Anti-Corruption Bureau's (ACB) independence. Our research shows that the agency's independence, originally deemed one of its greatest strengths, can cause problems.

### The creation of anti-corruption agencies in Africa

During the 1990s and the early 2000s many African governments drew up anti-corruption legislation and established anti-corruption agencies (ACAs). These agencies were vigorously promoted by bilateral and multilateral development agencies such as the World Bank. They were seen to be key to the promotion of the good governance agenda and the global fight against corruption, which had gained prominence since the end of the Cold War. In Malawi, the 1996 Corrupt Practices Act established the ACB, which became fully operational in 1998.

The hallmark feature of the ACB is its independence from the rest of the government apparatus, deemed to be key to the new agency's success: Section 4(3) CPA 'The Bureau shall exercise its functions and powers independent of the direction or interference of any other person or authority.' During the 1990s, there was concern in the development community that, without institutional and legal independence<sup>[12]</sup>, the ACAs might fall prey to the inertia and inefficiency seen to affect African government departments at large. Consequently, the points of connection to the rest of government, especially the Ministry of Justice and the police, were kept to a minimum, to shield the agency from undue influence.

### The ACB's distinct features

One important dimension of the ACB's independence is its organisational set-up and culture. In the early days, the ACB had its own terms of service, offering much better salaries than regular government departments. In contrast to the police, the ACB deliberately recruited university graduates regardless of relevant background. This policy prejudiced police officers, many of whom did not have degrees when the ACAs were created. This resulted, at least in the early years, in a different organisational culture and a lack of forensic experience at the ACB. The distinct set-up reflects the new thinking about public management and civil service reform at the time of its establishment. Throughout the developing world, independent anti-corruption agencies were supposed to function as so-called enclaves acting as drivers of good governance policies.

### Overlaps and rivalry

Since the ACB has embarked on its mission and started to investigate and prosecute corruption offences in the early 2000's, its independence often proved to be an obstacle rather than an asset. The ACB has tended to conduct investigations separately from the police, resulting in occasional overlap, even rivalry and limited coordination. This can negatively affect the evidence gathered and, in turn the strength of the cases brought to court. It also increases the risk of conflicts between prosecution strategies. In Cashgate, there were a handful of examples of ACB and MPS embarking on investigations into the same suspects, looking at them in different groupings or as more or less important actors and even arresting them more than once. Having multiple proceedings against defendants in different combinations was one of the drivers of the DPP seeking consolidation of cases. In settings where resources are extremely limited, the lack of coordinated investigations is bound to undermine the efficiency of law enforcement efforts. Police and the ACB tend to operate without sharing information and evidence in the early stages. Apart from the failure to conduct more efficient investigations, this has often contributed to a lack of trust and rivalry between the two organisations.

Friction also characterises the relationship between the ACB and the DPP, because the ACB requires the consent of the DPP to prosecute cases (CPA Section 42). This is one of the few provisions explicitly addressing the interface between different law enforcement agencies and has attracted criticism, for giving the DPP too much influence. For instance, in 2004, ACB representatives claimed they had been unable to prosecute several high-level corruption cases because

the DPP withheld his consent.<sup>[13]</sup> The 2004 amendment of Section 42 of the CPA addressed these concerns, defining the grounds and procedure of withholding consent, but critics continue to bemoan the lack of ACB independence. In 2012, the ACB submitted a request to the Attorney General to amend the CPA to further limit the requirement to seek the DPP's consent. Against that, the weighing of the discretionary factors relevant to the decision to prosecute can be a particularly sensitive and difficult exercise in many cases, making it desirable for the ACB to obtain, from an independent reviewer, prior approval for prosecution.

The requirement to obtain the DPP's or the Attorney General's consent is common to many jurisdictions and serves as a measure both to constrain prosecutors' enthusiasm and to regulate private prosecutions. What appears to be missing is an agreement between DPP and ACB, stipulating what policy objective is served by requiring the DPP's consent; what material should accompany the request for consent<sup>[14]</sup>; whether the DPP can delegate review of the request and material to a state advocate; how the DPP/delegate can discuss with ACB whether the material submitted is sufficient to perform an effective review and trigger the 30 day limit for grant of consent or reasons for withholding it, under section 42(3); what should be done, if it is agreed that the material is insufficient for that purpose; how to resolve disputes over the adequacy of the material and whether the DPP has authority to require additional material to be submitted; and how the DPP may use the powers implied by section 10(f) to give directions for an approved prosecution.

The lack of a regulatory framework governing inter-agency cooperation has exacerbated rivalries in a setting that does not facilitate or reward cooperation. The consequences are failures in communication and collaboration that undermine high-level corruption investigations.

### 3. EXTERNAL INFLUENCES

Law enforcement practice is affected by and responds to a wide range of influences such as public opinion and pressure from the media, open and covert attempts by politicians and other actors both within and beyond government to steer investigations and prosecutions, as well as calls by Malawi's development partners to curb high-level corruption. This section highlights the two primary external influences: political influence and influence by foreign donor agencies.

#### POLITICAL INFLUENCE

Malawi's political and bureaucratic elite is a small and tightly-knit community where personal relationships tend to override bureaucratic hierarchies and procedures. In many ways, the official hierarchy is only one aspect of governance in Malawi as elsewhere in Africa, where formal and informal modes of governance have become closely intertwined since independence. Informal governance is mainly organised along patron-client relationships usually based on kinship and friendship. To some extent, the parallel formal and informal modes of governance converge at the top in the person of the President who exercises a large degree of control over both. Under Kamuzu Banda's regime this control was almost absolute, certainly until the late 1980s when a tightly-knit circle close to the President gained more influence. During the 1990s, this system changed to some extent. Under the new multi-party representative system and a less autocratic understanding of the presidency, powerful politicians were able to carve out niches as patrons in their own right further expanding the system of the late 1980s under Banda when a small circle of people close to the President established themselves as influential patrons (Anders 2010: 124).

The intertwined modes of formal and informal governance characterised by the Presidency as the apex of a multitude of semi-autonomous patron-client relationships have affected the ACB as well as the other law enforcement agencies. Contrary to the original aim, the ACB's independence has not proven to be an effective safeguard against political influence. The President and allies have exercised a considerable degree of influence as the Director General is appointed and – crucially – dismissed by the President (the confirmation required by the Public Appointments Committee

has been treated as mere formality that has not functioned as meaningful check on the President's discretion, according to Nkhata (2020: 222)). This problem has been recognised and, in 2018, Parliament took steps to create a more transparent appointment procedure for the ACB's Director General, which now requires the Minister of Justice and Constitutional Affairs to advertise the position and convene a panel of seven, drawn from the public and private sectors, civil society and faith organisations, that will forward a shortlist of two to three candidates to the President for selection. Whether this new provision will effectively safeguard the independence of the Director General remains to be seen but it is certainly a step in the right direction.

## **DONOR INFLUENCE**

In Malawi, policies and projects designed and funded by foreign development agencies feature prominently. The national budget relies to a large extent on donor funding. Donor funding is either channelled through specific projects implemented by NGOs, private companies and sometimes government departments and agencies or direct budget support.

External influence by donors has proven to be a double-edged sword. On the one hand, it has proved to be key to the sustained law enforcement effort. The pressure exercised by the international development partners has spurred the government into action and has proved to be a strong driver of the government's law enforcement efforts both under Joyce Banda and Arthur Peter Mutharika. Especially the suspension of general budget support has been quite effective as it has had severe consequences on the government budget. Faced with a massive cut in available funding as her election campaign was forming the president had no other option than to take action. Her successor was under continued pressure by Malawi's development partners demanding decisive action against corruption.

On the other hand, the influence exercised by foreign donor agencies can also be an inhibiting factor. The financial and technical support for specific government departments or agencies can undermine the cohesion of the government apparatus. Since liberalisation during the 1990s, foreign donor agencies have become very much involved in the design and implementation of public policies. The donor agencies and international NGOs often work with specific government departments and agencies or they contribute to the creation of new ad hoc task forces or units that over time become more closely aligned with the respective donor agency in terms of planning, implementation and reporting. In turn, the alignment with the respective donor agencies has undermined the cohesion of the Malawian government apparatus where central planning and control is refracted by the various donor-led programmes and projects implemented by specific government departments and agencies.

The creation of enclaves by donors can also undermine the coordination. Since its inception, the ACB has been development partners' preferred beneficiary in the fight against corruption. By contrast, until 2014 the DPP and the Fiscal and Fraud Unit of the MPS have received only scant attention from Malawi's international development partners. The reason for this focus on the newly created Anti-Corruption Bureau is its independence, which allows for more direct engagement. By contrast, for foreign donor agencies it is more difficult to collaborate with the police and the DPP since these organisations are firmly embedded in the government bureaucracy.

## **4. DEFENDANT CHARACTERISTICS**

In the media and the general public there have been widespread concerns about selective prosecutions due to political influence. Selective justice is a common theme in media reports, with the assumption that certain people are targeted in or protected from investigation, arrest and punishment. Even when prominent people are punished, such as the former Minister of Justice, they are seen as political victims. That these common perceptions are not entirely without foundation became clear during the Cashgate trials when several accused people (Senzani, Lutepo and Karonga) stated that they

had been promised, by their co-conspirators, protection from prosecution.

A careful analysis of the characteristics of defendants cannot be based on media reports and rumours, even if they do appear to be well-founded. So far, most convictions have been achieved against 'contractors'. Most had personal relationships with or were related to the civil servants who were involved in Cashgate. In some cases, the companies used for the money laundering operation were owned by the civil servants themselves. Senzani, for example, channelled the payments through a company she owned. Some observers in Malawi have seen this as part of a deliberate strategy to shield highly-placed conspirators from prosecution. However, it will be recalled that the focus on the 'contractors' was part of the Quick Impact Response, aimed at securing early convictions with the 'easy' cases first, before targeting government officials and those higher up the hierarchy. In addition, two senior civil servants (Senzani and Karonga) were sentenced to significant custodial sentences. The trial against the former Budget Director, the former Accountant General and seventeen others constitutes the second phase following the Quick Impact Response. This trial will to a large degree determine whether the law enforcement agencies succeed in holding accountable at least some of the so-called big fish.



# PART VI: CONCLUSIONS AND RECOMMENDATIONS

## KEY TAKEAWAYS

The research findings challenge the conventional view of law enforcement in Malawi and Africa at large. The study maps examples of law enforcement sending out a message of deterrence and holding accountable a surprisingly large number of offenders in spite of formidable challenges, ranging from a lack of resources and the untested law to delays affecting swift and certain punishment. Since 2013, the MPS, ACB, FIA and DPP have gained experience and have succeeded in securing convictions and achieving asset recovery to a modest extent.

The findings suggest that since 2015, law enforcement efforts have flagged to some extent, compared to the vigorous, though often uncoordinated, actions in 2013 and 2014. The study presents evidence of investigations and prosecutions against the odds. The investigators and prosecutors navigate a complex, multi-layered legal framework characterised by the uneasy coexistence of colonial criminal and modern legislation. The latter is still relatively new and unfamiliar territory while the former is ill-suited to prosecute financial crimes committed employing digital and electronic technologies. Whistle-blowing violates cultural norms in a tightly knit community and whistle-blowers experience problems. Delays and frequent adjournments result in protracted criminal trials that always are in danger of being derailed. Quick impact strategies risk limiting the law enforcement efforts to the small fry while the consolidated trials aiming for the big fish face manifold challenges in a judicial system under great stress. Asset recovery is novel terrain, requiring persistence and resources that are in short supply due to manifold pressures on the law enforcement agencies.

Law enforcement agencies are generally as underfunded and overwhelmed as all government departments. Experienced staff are in low supply and daunted. Investigators and prosecutors, even at the same agency, do not work together to deal with high-level corruption cases. The compartmentalisation within the law enforcement agencies is mirrored by a lack of inter-agency cooperation. The creation of the ACB and the involvement of international development partners have exacerbated rivalries and competition resulting in overlaps and gaps.

And yet, Malawi has experienced a remarkable law enforcement effort that has transcended the immediate focus on the Cashgate scandal. Investigators and prosecutors strive to make a difference, working very hard to hold accountable government officials, politicians and their co-conspirators. They have achieved convictions for people at the heart of high-level corruption, conspiracies including senior civil servants, as the narrative section on the trials highlights. It is to be hoped that the conclusion of the consolidated trial against the former Budget Director, the former Accountant General and their co-defendants provides a spark for further efforts that continue to have a deterrent effect and recover stolen assets.

## FEASIBLE, TAILORED POLICY RECOMMENDATIONS

The recommendations proposed in this report are based on the research findings. They focus on recommendations on how to strengthen the law enforcement efforts against high-level (grand) corruption in Malawi. They do not cover other areas relevant to curbing high-level corruption such as preventive measures. For example, the maintenance of safeguards pertaining to the Integrated Financial Management System and the operations of the Accountant General's

Office and the Reserve Bank of Malawi is key to reduce levels of corruption in the government as has been pointed out by the audit reports produced by Baker Tilly (2014), Price Water House Coopers (2015), RSM (2016), and the National Assembly's Parliamentary Committee on Public Accounts (2013, 2014).

## LEGAL FRAMEWORK

### Review of anti-corruption legislation

Highly recommended to conduct a comprehensive review of the Penal Code, the Corrupt Practices Act and the Financial Crimes Act to ensure uniformity and clarity.

Specifically:

- The Penal Code (PC) definition of theft is insufficient for contemporary requirements, being based on the larceny notion of taking away a portable thing: it is unfit for offences involving interference with rights over incorporeal property, such as balances in bank accounts, electronic transfers of funds and votes entered into the IFMIS.
- There is a PC suite of offences including 'false pretences' but no offence of fraud which includes intangible property.
- A number of PC offences have survived the creation of similar and/or overlapping offences, with heavier sentences, in the CPA, PFMA, MLPSCTFA, FCA and PPDA, which can lead to misconceived but time-consuming arguments about fairness to the accused when the statutory offence is prosecuted; and confront prosecutors with unnecessary choices.
- A number of other statutes create offences similar to those in the CPA etc. and should be subjected to analysis and rationalisation, e.g. Parks and Wildlife, Reserve Bank, Malawi Revenue Authority, Immigration, ODPOD, Registrar General and so on.
- The money laundering offences, carried forward from the MLPSCTFA to the FCA, need to be updated and clarified.
- The asset preservation/ restraint and recovery provisions in the FCA and the Civil Procedure rules on freezing orders need to be corrected and improved.
- Accreditation of financial investigators should be applied to those in a specialist unit or team, empowering them to employ coercive and investigative powers enjoyed by officers in cooperating agencies.
- Sentencing Guidelines are required for financial crimes and corruption offences.
- There is a need for plea-bargaining rules and provisions for agreements between the prosecutor and witnesses giving evidence against accomplices, in exchange for abatement of sentence.
- This should be initiated by the Ministry of Justice drawing on input from stakeholders including the MPS, the ACB, the DPP, the Ombudsman, the Human Rights Commission and the Malawi Law Commission in close collaboration with the Parliamentary Legal Affairs Committee to ensure that any amendments constitute actual improvements.

This could reasonably be done within a mid-term time frame of one to three years.

### Witness protection, safeguards for whistle-blowers and managing cooperating defendants

It is recommended that a commission examines the case for a suite of legislative measures for the provision of a safe space for and protection of whistle-blowers; the ethical handling of those assisting the authorities, namely informants and accused or convicted persons (offering intelligence and/or evidence); and the care and security of witnesses in criminal cases. Law enforcement agencies and all MDAs should have in place standing orders and guidance to promote compliance with legal provisions. This could reasonably be done within one to two years.

## Reducing delays

It is highly recommended to conduct a review of the Criminal Procedures and Evidence Code with the aim to reduce delays and exceedingly long trials. Rules of court, for the management and expedition of trials in corruption and financial crime cases, are necessary for improving public confidence in the criminal justice system. The review should be initiated by the Ministry of Justice drawing on input from stakeholders including MPS, ACB, DPP, Ombudsman, Human Rights Commission and Malawi Law Commission in close collaboration with the Parliamentary Legal Affairs Committee to ensure that any amendments constitute actual improvements and strike the balance between human rights concerns and effective rule of law. Further, the long time between first arrest and actual commencement of the trial should be reduced by concluding investigations prior to arrest.

A commission should urgently examine the allocation of cases between Magistrate Courts and the Criminal Division of the High Court, identify measures to reduce congestion of court lists and recommend rules of court for the expedition of complex and/or high-profile cases of financial/ economic crime, including corruption. The expense of and delay in setting up a special court or judicial division could be avoided by selecting senior magistrates and experienced judges, to apply advanced case management rules and techniques in defined classes of proceedings. A trained judicial cadre, presiding in eligible cases, will acquire the necessary experience. Swift and sure justice will build public confidence in the courts, deter criminal activity and support prompt recovery of the proceeds of crime. This could reasonably be initiated within one year and implemented within one to three years.

## Prosecution strategy

Prosecution strategy development should begin before executive action, so discussions might include all or some of DPP, ACB, MPS, FIA and institutions with comparable powers and duties, e.g. RBM, MRA, DNPW and even Immigration, Forestry and the Ministry of Health Drug Theft Investigation Unit. Guided by experienced prosecutors, investigation strategies should be tailored to complement holistic casework strategies. Both should include financial investigations and profiling, leading to asset tracing and recovery, also involving civil litigators (AG's office) where necessary. Design of intra- and inter-agency agreements and MoUs could be achieved within half a year (cf. RBM-led MoU on forex cases).

## Asset recovery

Civil and criminal forfeiture require sustained efforts by all relevant law enforcement agencies, including the Malawi Revenue Authority and the Office of the Director of Public Officers' Declarations at both the operational and strategic level. Expropriation of illicit wealth should be integrated into all forms of disciplinary and court proceedings against malefactors, in the public and private sectors. To be consistent and effective, this practice should be founded on policy. A new National Economic Crime Strategy (which, championed at ministerial level, would encompass the 2019-2024 National Anti-Corruption Strategy, the National Risk Assessment and AML/CFT Strategy and a new Asset Recovery Strategy) would establish a structure for policy-making and a whole system response, including a multi-agency asset-tracing and recovery scheme. This could be addressed and implemented within a year.

Specifically needed are:

- a National Corruption & Financial Crime Strategy/Improvement Plan (from and monitored by CJ's Criminal Justice Co-ordination Committee or National Anti-Money Laundering & Counter Terrorist Financing Committee);
- an Integrated Proceeds of Crime Initiative and Strategy;
- a multi-agency partnership to superintend operational activity;
- a Corruption & Financial Crime Office/Bureau (AFU with extended remit, to include investigation and

- prosecution, in addition to asset tracing and recovery);
- the use of the FCA's Confiscation Fund needs to be spelt out, to provide for recovered proceeds of crime to be recycled into more asset recovery activity.

This could be designed and implemented in the short-term within a year.

## INSTITUTIONAL ARCHITECTURE

### Resources

It is important that the principal law enforcement agencies, the Directorate of Public Prosecutions, the Fiscal and Fraud Unit, the Anti-Corruption Bureau, and the Financial Intelligence Authority have sufficient funding to support high-level corruption investigations and prosecutions. The President of the Republic and the National Assembly led by the Public Accounts Committee would be encouraged to ensure that the budget for law enforcement efforts is protected and as high as possible. It is acknowledged that the demands on Malawi's limited budget are considerable and that it is a challenge to ensure an equitable distribution between all government functions. This could reasonably be initiated within one year and implemented within a mid-term timeframe of one to three years.

### Inter-agency and intra-agency cooperation

It is highly recommended that, with Ministerial support, the Director of Public Prosecutions, the Anti-Corruption Bureau and the MPS follow the guidance on the establishment of integrated teams for investigations and prosecutions of high-level financial crimes and corruption, as provided by the UN Convention against Corruption and 2012/15 FATF Recommendation 30 and FATF's October 2013 Best Practice Paper. Following an integrated model, one multi-disciplinary team would handle investigation and prosecution of the predicate crimes (generating profits for the perpetrators) and the laundering of the proceeds. These teams would include FIA, FFU and ACB investigators, at least one DPP prosecutor and representatives of MRA and Office of the Director of Public Officers' Declarations to assist in the tracing of assets. These teams should have access to adequate forensic tools, modern IT-resources and a case management system. This measure is expected to reduce rivalry and distrust between the various law enforcement agencies and strengthen inter-agency cooperation at the operational level. This would entail a review of the ACB Standing Orders and MPS Standing Orders.

The overriding aim of the integrated team approach would be to promote, in a practical, case-oriented way, the strengths and virtues of inter-agency collaboration. The successful implementation of the scheme would inspire professional, ethical staff with a desire to perform to the best of their ability, in the interests of each other, their parent and partner organisations and the people of Malawi. another recommendation for setting it up and experimenting with different approaches to tackling the crimes most difficult to investigate and prosecute. Would be to see the project was as a template for a national law enforcement unit, as a separate institution or under the aegis of an existing one. The project could support a trial of a new way of working across boundaries and disciplines, in a co-operative and collegial environment. It would serve to demonstrate to the public and also to ESAAMLG reviewers that Malawi's institutions take their repeated commitments to tackling corruption and money laundering seriously. This could be designed and implemented in the mid- term.

## EXTERNAL INFLUENCES

### Safeguarding independence

To ensure the independence of the law enforcement agencies tackling high-level corruption it is important to establish and adhere to transparent appointment procedures, based exclusively on applicants' merit, performance and potential, robust vetting procedures, rules of nomination and appointment and, even more important, enforcement of regulations regarding dismissals and suspensions from service. It is key to the independence of officials that their employment is not subject to arbitrary executive decisions. The Public Appointments Committee could play a constructive role in this

project. This could be designed and implemented within one year.

### **The role of international development partners**

The support of international development plays a crucial role in supporting Malawi's law enforcement agencies. Investigators and prosecutors often warmly welcome technical, financial and political support for their efforts. However, the interventions by international and foreign development agencies can also undermine the cohesion of the government apparatus and may fuel inter-agency rivalries. There is also the issue of ownership, which can be seen to be a problem due to external support. This is of particular importance in a domain as central to national sovereignty as law enforcement. Therefore, international development partners should further strengthen their current efforts to coordinate their input with each other and the government of Malawi. This could be designed and implemented in the short-term within a year.

### **FREE PRESS, MEDIA AND CIVIL SOCIETY**

Cashgate would not have been exposed without free press and media as well as a critical civil society. Free news media as well as civil society are essential to the successful campaign against high-level corruption. Journalists and citizens play an important role in exposing the theft of public resources. Therefore, law enforcement agencies, government at large and international development partners should develop a coherent and compatible communications strategy (internal, interagency and public). This could be designed and implemented in the short-term within a year.

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[1] Mtika, C. 2019. 'Malawi tames financial crimes – turf battle ends', Centre for Investigative Journalism CIJM, 9 February 2019 < <https://www.investigative-malawi.org/631/malawi-tames-financial-crimes-turf-battle-ends/> > (accessed in December 2020).

[2] Two high-profile cases during the 1990s were the Fieldyork scandal and the Petroleum Commission scandal. The Fieldyork scandal concerned a procurement fraud at the Ministry of Education in the mid-1990s, which led to the 2008 conviction of the former Minister of Education and six years' imprisonment. The Petroleum Commission scandal concerned procurement fraud by the Commission's General



Manager between 1996 and 2000. It led to a trial of two years but, in August 2004, the court eventually sentenced Dennis Kambalame to six years' imprisonment with hard labour (Malawi retained the colonial terminology even though in effect the sentence consists of imprisonment). This conviction was the ACB's first success in targeting high-level corruption.

[3] Government of Malawi, 'Quick assessment of the Integrated Financial Management Information System' (Office of the President and Cabinet, 18 November 2009), p. 13. It is interesting to note that this report observed that 'IFMIS contractual costs are too high than anticipated (sic.) (almost UD\$1.7 million) more particularly on the user licenses, consultancy, training services and travel which accounted for almost 91% of the total cost' (p. 9). This would indicate that the practice of overvalued transactions was common, even tainting the contract that concerned the introduction of the management system itself. It was in this context that the seeds of Cashgate were sown. To save money the Government of Malawi opted to have a group of Malawian government officials trained who would be responsible for the maintenance of IFMIS and, ultimately, its abuse.

[4] Convention requires prosecutors to use the legislature's latest expression of what amounts to a crime.

[5] The Nation, 5 November 2014, Sithole gets nine years for Cashgate role.  
<https://mwnation.com/sithole-gets-9-years-for-cashgate-role/> (accessed in January 2021).

[6] Nyasa Times, 15 September 2013, Top government official implicated in shooting of Mphwiyo: JB knows assailant. Accessed on 20 February 2020  
<https://www.nyasatimes.com/top-govt-official-implicated-in-shooting-of-mphwiyo-jb-knows-assailant/>  
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[7] High Court of Malawi, Lilongwe District Registry, Criminal Case No. 62 of 2013, The Republic versus Senzani, 23 October 2014, p. 21.

[8] High Court of Malawi, Zomba District Registry, Criminal Case No. 2 of 2014, The Republic versus Oswald Lutepo, 4 September 2015, p. 28.

[9] Nyasa Times, ACB officials receive death threats over Malawi Cashgate crackdown, 11 November 2014. <https://www.nyasatimes.com/acb-officials-receive-death-threats-over-malawi-cashgate-crackdown/> (accessed January 2021).

[10] Nyasa Times, Death threats in Malawi 2011 Cashgate trial: Mphwiyo corruption rap begins March 16.  
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[11] Nyasa Times, Cashgate Witness murdered, Malawi Police confirms, 8 April 2014,  
<https://www.nyasatimes.com/cashgate-witness-murdered-malawi-police-confirms/> (accessed January 2021).

[12] Not forgetting section 42 CPA (DPP consent to prosecute) and section 10(f) (prosecution subject to directions of DPP), below.

[13] Mail & Guardian, 'Fat cats are rolling money in Malawi', 13 January 2004.  
< <https://mg.co.za/article/2004-01-13-fat-cats-are-rolling-in-money-malawi/?amp> >  
(accessed in January 2021).

[14] ACB Standing Orders require delivery of a prosecution docket to the DPP, if a prima facie case is believed to have been made out. This can be a long way short of evidence required to prove a case at trial.