

Fighting high-level corruption in Africa: Learning from effective law enforcement

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PROBLEM STATEMENT

- There is only limited knowledge about the efficiency of law enforcement efforts against high-level corruption in Africa.
- African law enforcement efforts appear ineffective, haphazard and prone to external influence.
- Reforms are often piecemeal, compartmentalized, ad hoc and mainly responses to external pressure (UN Convention against Corruption, Financial Action Task Force, International Financial Institutions)

PROJECT OVERVIEW

- First systematic study of law enforcement efforts targeting high-level corruption in Africa that aims at identifying the enabling and constraining factors and conditions for effective enforcement practice. It examines law enforcement efforts in two countries where corruption is rife but where authorities have undertaken efforts to tackle grand corruption: Nigeria and Malawi.
- Taking seriously the perspectives of law enforcement officials and others at the forefront of the fight against high-level corruption to identify what works and what doesn't in Malawi's socio-cultural and political setting.
- We challenge the dominant narrative representing anti-corruption efforts in Africa as haphazard, ineffective and prone to political influence by examining moments and sustained periods of effective law enforcement generating a deterrent effect. This takes into account that definitions of effectiveness may vary.



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KEY FINDINGS



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KEY FINDINGS: LEGAL FRAMEWORK I

The legal framework is characterized by a patchwork of statutes resulting in discrepancies, overlap, gaps and lack of clarity. The layering of new laws, such as anti-corruption and money laundering legislation, 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.

KEY FINDINGS: LEGAL FRAMEWORK II

- Plea bargaining is still in its infancy. There have been promising beginnings but no comprehensive and consistent approach has been developed yet.
- 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. Length of time between arrest and actual commencement of trial is striking.

FINDINGS: INSTITUTIONAL ARCHITECTURE I

Context: Prevention through control systems, accounting standards and audit procedures has gaps and experiences frequent lapses.

Law enforcement is hampered by lack of resources and sufficiently trained staff. The lead agencies are understaffed and the universal inadequacy of funding affects the efficacy of all relevant institutions.

FINDINGS: INSTITUTIONAL ARCHITECTURE II

The interface between investigators and prosecutors is characterized by a lack of consistent cooperation and coordination although in Nigeria efforts have already been made to address this.

Law enforcement agencies continue to operate mainly according to the traditional Common Law model, in which one team of investigators 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.

FINDINGS: INSTITUTIONAL ARCHITECTURE III

- In Malawi and Nigeria, 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 often typified by rivalry and competition.
- This is particularly striking with regard to the ACB's, ICPC's and EFCC's statutory independence. Originally deemed an asset, it can cause problems, as our research shows.

KEY FINDINGS: EXTERNAL INFLUENCES

- Investigators and prosecutors work in a largely hostile and at best indifferent environment. Moral values and social sanctions that compel compliance with the law of the modern state are constantly undermined by other logics.
- Politicians and other members of the elite occasionally seek to influence law enforcement officials. The official hierarchy is only one aspect of governance in Malawi and Nigeria where formal and informal modes of governance have become closely intertwined since independence.

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MAIN RECOMMENDATIONS



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LEGAL FRAMEWORK I

- **Review of legislation:** To ensure uniformity and clarity, there should be a comprehensive review of the relevant legislation (MoJ, legislature).
- **Witness and whistle-blower protection:** 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 and the care and security of witnesses in criminal cases (MoJ, commission).
- **Reducing delays:** Review of 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, are necessary for improving public confidence in the criminal justice system. Further, the length of time between first arrest and actual commencement of the trial should be reduced by concluding investigations prior to arrest (MoJ, commission).

LEGAL FRAMEWORK II

- **Prosecution strategy:** Prosecution strategy development should begin before executive action, so discussions might include all or some of law enforcement agencies and institutions with comparable powers and duties. 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 (MoJ, Anti-Corruption Agencies, LEAs).
- **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 a new National Economic Crime Strategy (MoJ, ACAs, LEAs, FIA).

INSTITUTIONAL ARCHITECTURE II

- **Resources:** It is acknowledged that the demands on the 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 Court Service should be adequately resourced to ensure timely proceedings (President, legislature).
- **Inter-agency and intra-agency cooperation:** Law enforcement agencies should follow the guidance on the establishment of integrated teams for investigations and prosecutions, as provided by the UN Convention against Corruption and 2012/15 FATF Recommendation 30 and FATF's October 2013 Best Practice Paper (MoJ, ACAs, LEAs).



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EXTERNAL INFLUENCES

- **Political influence:** Transparent appointment procedures based exclusively on merit, performance and potential; robust vetting procedures; rules for nominations and appointments and 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 (President, legislature).
- **The role of international development partners:** International development partners should further strengthen their current efforts to coordinate their input with each other and the government of Malawi.
- **Free press, media and civil society:** Law enforcement agencies and international development partners should support and engage with these pillars of open public debate (ACAs, LEAs).



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