

Mitigating Malawi's Corruption Crisis: Lessons from Botswana

Esther Gumboh

Esther Gumboh
Senior Lecturer, Department of Criminal and
Procedural Law, Nelson Mandela University
Esther.Gumboh@mandela.ac.za

Submitted: 24 October 2023

Accepted: 07 March 2024

<https://doi.org/10.70139/rolacc.2024.1.3>

© 2024 Gumboh, licensee LU Press. This is an open access article distributed under the terms of the Creative Commons Attribution license CC BY 4.0, which permits unrestricted use, distribution and reproduction in any medium, provided the original work is properly cited.

ABSTRACT

Malawi is losing its fight against corruption. Despite improvements to its anti-corruption measures, the country continues to multiply its high-level corruption scandals. Anti-corruption agencies work in a challenging environment underpinned by systemic challenges. Recent events at the Anti-Corruption Bureau (ACB), Malawi's main corruption watchdog, have further dented the country's anti-corruption efforts, undermining public trust in the ACB and fuelling speculation on political interference in the institution. A presidential commission of inquiry into the matters revealed a sombre image of a broken anti-corruption front fostered by misconceptions of absolute independence that have bred animosity and mistrust. Worse, stripped of integrity and public trust, the Bureau is isolated from key anti-corruption agencies like the Director of Public Prosecutions, the Attorney General, and the Malawi Police Service. Unsurprising, Malawi's anti-corruption fight has been left compromised. Meanwhile, despite its challenges, Botswana remains a beacon for anti-corruption strategies in Africa and offers some lessons. Sustained genuine political will and cooperation amongst anti-corruption institutions are key. These factors, plus an enabling institutional environment uninterrupted by political interference and which fosters well-resourced and unified mechanisms, will assist Malawi to restore public trust in its anti-corruption drive and steer the country towards success.

Keywords: Corruption; anti-corruption; Anti-Corruption Bureau; Martha Chizuma; DCEC; Malawi; Botswana

Cite this article as: Gumboh E. Mitigating Malawi's Corruption Crisis: Lessons from Botswana, Rule of Law and Anti-Corruption Center Journal, 2024:1, <https://doi.org/10.70139/rolacc.2024.1.3>

1. INTRODUCTION

Malawi has a corruption crisis. Corruption has become institutionalised,¹ “entrenched [and] systemic”.² Malawi performs poorly on the Corruption Perception Index (CPI), ranking 115 out of 180 countries with a score of 34% in 2023.³ 97% of Malawians believe that corruption is a serious problem⁴ and 72% that it increased between 2021 and 2022.⁵ Further, 40% of the population consider senior government officials – including from the President and the Office of the President, Parliament, and the Judiciary – corrupt.⁶ Malawians also distrust their law enforcement agencies.⁷ Ironically, key agencies like the Anti-Corruption Bureau (ACB), the Director of Public Prosecutions (DPP), and the Attorney General (AG) themselves do not trust each other!⁸ Recent events have further compromised anti-corruption agencies, undermining public trust in and revealing discord amongst them. The ACB Director was embroiled in dramatic protracted wrangles following a leaked audio where she decried a lack of support from other law enforcement in the fight against corruption.⁹ The leak triggered events that culminated in the Director's suspension and arrest. A presidential commission of inquiry¹⁰ into the events returned damning findings of challenges eroding the integrity and effectiveness of key institutions. These challenges include rifts between the ACB and other agencies, fostered by misconceptions of absolute independence that have bred animosity and mistrust.

Meanwhile, Botswana has a stellar anti-corruption record, ranked second in Africa.¹¹ What lessons can Malawi draw from Botswana? In addressing this question, this contribution examines the ACB, unpacking its legal framework

and highlighting its challenges and recent events as evidence of the corruption crisis in the country. The paper then examines Botswana's Directorate on Corruption and Economic Crimes (DCEC), to identify propellants for its success. It then compares the ACB and the DCEC to extract lessons for Malawi. For context, the paper commences with an overview of corruption in Malawi.

2. MALAWI

2.1. Overview of Corruption

Malawi has a long history with corruption. Before 1994, Malawi was considered one of the least corrupt countries in sub-Saharan Africa.¹² This perception has been attributed to the suppressed civic space at the time which limited public discourse on corruption and other issues inimical to the ruling party.¹³ Things changed after 1994 with the introduction of multiparty democracy. There was a more vibrant civil society, media fraternity, and increased donor scrutiny focusing on good governance. Malawi was characterised by endemic corruption a public exposure arose.¹⁴ Amidst domestic and international pressure, the government committed to developing and supporting anti-corruption measures, including the establishment of the ACB.¹⁵ However, corruption persists. Spurred by decentralisation¹⁶ and other factors, it is rife at national and local government level.¹⁷ Public perception is that government agencies are corrupt.¹⁸ Indeed, recent years have witnessed several high profile corruption scandals across the public sector.¹⁹ For example, the 2013 Cashgate scandal involved high-level corruption orchestrated through a complex syphoning of public funds to service providers.²⁰ The looted

- 1 S. Mtuwa & A.L. Chiweza, *Implications of Corruption on Public Administration in Malawi*, 91 J. Human. 91, 92 (2023), citing J.J. Chunga & R. Ned, *Malawians Dissatisfied with Government Efforts on Corruption, Want Swift Action against Corrupt Officials*, Afrobarometer Dispatch No. 522 (May 2022).
- 2 P.G. Strasser, *An Anti-Corruption Bureau's Inexorable Endeavor: A Study of Malawi's Cashgate Scandal*, 73 Wash. & Lee L. Rev. Online 303, 309 (2016).
- 3 Transparency International, *Corruption Perception Index* (2023). The CPI ranks 180 countries and territories around the world by their perceived levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean).
- 4 B. Dulani et al., *Corruption Perceptions Survey 2019* (2019).
- 5 Transparency International, *Global Corruption Barometer* (2022).
- 6 Afrobarometer, *Summary of Results: Afrobarometer Round 9 Survey in Malawi*, 2022, at 49–50 (2022). See also: B. Chinsinga et al., *Governance and Corruption Survey*, 2010 (2010).
- 7 J.J. Chunga & H. Kayuni, *Two Decades of Governance in Malawi: Examining Citizen Trust in Malawi from 1999–2019*, in *Beyond Impunity: New Directions for Governance in Malawi* 77, 77–96 (K.R. Ross et al. eds., Univ. of Cape Town Press 2022).
- 8 Malawi Government, *Report of the Commission of Inquiry on the Arrest of the Head of the Anti-Corruption Bureau (ACB) and Ancillary Matters*, at 60 (2023) [Twea Commission Report].
- 9 L. Masina, *Malawi Police Arrest Anti-Graft Director Over Leaked Audio*, *Voice of America* (Dec. 6, 2022), <https://www.voanews.com/a/malawi-police-arrest-anti-graft-director-over-leaked-audio-/6864787.html>.
- 10 Twea Commission Report, *supra* note 8.
- 11 Transparency International, *supra* note 5.
- 12 S. Burrowes, *Katangale or Kuba? Development Assistance and the Experiences and Perceptions of Local Corruption in Malawi*, 5(1) Development Studies Research 39 (2018).
- 13 D. Hall-Matthews, *Tickling Donors and Tackling Opponents: The Anti-Corruption Campaign in Malawi*, in *Corruption and Development: The Anti-Corruption Campaigns*, edited by S. Bracking, at 77–102 (New York: Palgrave Macmillan 2007).
- 14 *Id.* at 78.
- 15 See: G. Anders, *In the Shadow of Good Governance: An Ethnography of Civil Service Reform in Africa*, at 45–48 (Leiden: Brill 2010).
- 16 R. Tambulasi & H. Kayuni, *Decentralisation Opening a New Window for Corruption: An Accountability Assessment of Malawi's Four Years of Democratic Governance*, 42(2) J. Asian & Afr. Stud. 101, 105 (2007). R.I.C. Tambulasi, *All That Glisters Is Not Gold: New Public Management and Corruption in Malawi's Local Governance*, 26(2) Dev. S. Afr. 291, 294 (2009).
- 17 R. Tambulasi, *Who Is Fooling Who? New Public Management-Oriented Management Accounting and Political Control in Malawi's Local Governance*, 3(3) J. Acc. & Organisational Change 321, 323 (2007). M.H.M. Chasukwa & B. Chinsinga, *Slapping Accountability in the Face: Observance of Accountability in Malawi's Local Governments in the Absence of Councillors*, 36(5) Int'l J. Pub. Admin. 362 (2013).
- 18 S. Khaile & C. Chibwana, *Ten Years of Democracy in Malawi: Are Malawians Getting What They Voted for?*, Afrobarometer Working Paper No. 46, at 24–25 (2005).
- 19 See: Reuters Staff, *Malawi President Dissolves Cabinet in Response to Graft Scandal*, *Reuters*, Oct. 10, 2013, <https://www.reuters.com/article/uk-malawi-cabinet-idUKBRE9990RR20131010>. G. Matonga, *A Corruption Scandal Smoulders in Malawi, as Pres. Chakwera Fires Cabinet*, *Democracy in Africa* (2020), <https://democracyinfrica.org/a-corruption-scandal-smoulders-in-malawi-as-pres-chakwera-fires-cabinet/>.
- 20 See: Baker Tilly (National Audit Office Malawi), *Report on Fraud and Mismanagement of Malawi Government Finances Covering Transactions and Controls in the Six-Month Period, 1 April 2013 – 30 September 2013* (Feb. 21, 2014).

funds were enough to fund several government agencies for a year.²¹ Dubbed the “climax of corruption”,²² Cashgate implicated former president Mutharika²³ and senior government officials including the Vice President, the President’s Chief of Staff, cabinet members, and officials from the Malawi Defence Force, the Malawi Police Service (MPS), and other law enforcement agencies.²⁴

2.2. Drivers and effects of corruption

The National Anti-Corruption Strategy II²⁵ identifies several drivers of corruption. These include cumbersome and complex procedures, lack of a culture of holding duty-bearers accountable, informal networks, institutional gaps, capacity challenges within law enforcement strategies, inadequacy of resources for anti-corruption efforts, collaboration challenges between law enforcement agencies, lack of integrity, public apathy, perceived lack of political will to fight corruption, social norms, poor remuneration for public servants and living beyond means/lifestyle.²⁶

Corruption compromises the rule of law and occasions human rights violations.²⁷ It is rampant in several sectors including health,²⁸ education, agriculture, food security, wildlife and forestry,²⁹ construction,³⁰ the judiciary³¹, and law enforcement. Corruption escalates Malawi’s already high debt burden and dissuades donor funding.³² It also fuels organised crimes in the country.³³ Malawi has, therefore, established numerous anti-corruption mechanisms.

2.3. Anti-corruption mechanisms

2.3.1. International instruments

Malawi has ratified several anti-corruption instruments at

regional and international level. These include the 2001 Southern Africa Development Community Protocol Against Corruption (SADC Protocol), the 2002 African Union Convention on Preventing and Combating Corruption (AUCPCC), and the 2005 United Nations Convention against Corruption (UNCAC).

2.3.2. Legislative framework

Malawi has a range of anti-corruption legislation. The main domestic law is the Corrupt Practices Act (CPA).³⁴ Others include the Financial Crimes Act,³⁵ the Public Audit Act,³⁶ the Penal Code,³⁷ the Public Procurement and Disposal of Assets Act,³⁸ the Public Finance Management Act,³⁹ the Public Officers (Declaration of Assets, Liabilities and Business Interests) Act,⁴⁰ the Mutual Assistance in Criminal Matters Act,⁴¹ and the Access to Information Act.⁴²

2.3.3. Institutional framework

Malawi boasts many anti-corruption institutions. Apart from the ACB, it has also established the National Audit Office, the Office of the Ombudsman, the Office of the Director of Public Officers Declaration, the Public Procurement and Disposal of Assets Authority, the Financial Intelligence Authority, and the Attorney General. The country also benefits from the contributions of the private sector, civil society, the media, and faith-based organisations.

Malawi’s escalating corruption levels amidst multiple anti-corruption measures raises questions about the efficacy of existing strategies.⁴³ The paper now turns to an assessment of the ACB.

21 M.K. Hussein, *The Challenges Facing Development Policy and Projects Implementation in Malawi*, Conference paper at the 3rd Annual International Conference on Public Administration and Development Alternatives (July 4-6, 2018, Saldahna Bay) (2013) at 356.

22 S.W. Kayuni, *Running to Stand Still: Reflections on the Cashgate Scandal Heist in Malawi*, 19 (2) *Journal of Money Laundering Control* 170 (2016).

23 B. Dulani, *Political Parties, Campaign Financing and Political Corruption in Malawi*, in *Political Corruption in Africa: Extraction and Power Preservation*, edited by I. Amundse, 143 (Cheltenham: Edward Elgar Publishing, 2019).

24 G. Camacho & M. Jenkins, *Malawi: Overview of Corruption and Anticorruption Efforts*, U4 Anti-Corruption Helpdesk, 5 (2022).

25 Anti-Corruption Bureau, *National Anti-Corruption Strategy II 2019-2024*, at 10-11 (2020) (NAC II).

26 *Id.* See also: J. Tengatenga & S. Sojiyo, *Drivers of Corruption and Anti-Corruption Policies in Malawi*, 5(1) *Journal of Public Administration and Development Alternatives* 49 (2020).

27 K. Anan, *Foreword*, in *United Nations Convention Against Corruption by United Nations Office on Drugs and Crime*, at vi (2014).

28 See: S. Masefield et al., *Challenges to Effective Governance in a Low-Income Healthcare System: A Qualitative Study of Stakeholder Perceptions in Malawi*, 20 *BMC Health Serv. Res.* (2020). C.T. Mhango & G.C. Chirwa, *Government Health Expenditure and Health Outcomes in Malawi: Does Governance Matter?*, 3(1) *J. Pub. Admin. & Dev. Alternatives*, at 5-6 (2018).

29 A. Bacarese et al., *Dirty Money: The Role of Corruption in Enabling Wildlife and Forest Crime in Malawi: Review and Recommendations*, 15 (2021).

30 C.I.M. Chiocha, *Corruption and Its Effects on the Development of the Construction Industry in Malawi*, Master’s Thesis, Nelson Mandela Metropolitan University, 134-136 (2009).

31 See: R.R. Mzikamanda, *Some Thoughts on Effective Strategies for Combatting Corruption in the Malawi Judiciary*, in *Goal 16 of the Sustainable Development Goals: Perspectives from Judges and Lawyers in Southern Africa on Promoting Rule of Law and Equal Access to Justice*, ed. Southern Africa Litigation Centre, Johannesburg; Southern Africa Litigation Centre 124 (2016).

32 Oxford Analytica, *Malawi Anti-Corruption Drive Faces Multiple Obstacles* (June 4, 2021), <https://www.emerald.com/insight/content/doi/10.1108/OXAN-DB261904/full/html>. See also: N. Mbowela & O. Mwalubunju, *A Scrutiny of Voter Participation and Civic and Voter Education*, in *The Malawi 2014 Tripartite Elections: Is Democracy Maturing?* 17-34 (N. Patel & M. Wahman M eds., Lilongwe: National Initiative for Civic Education 2015), noting that over USD150 million was withheld by donors in the wake of the Cashgate scandal.

33 R.I.C. Tambulasi, *The Public Sector Corruption and Organised Crime Nexus: The Case of the Fertiliser Subsidy Programme in Malawi*, 18(4) *African Security Review* 19 (2009).

34 1995.

35 2017.

36 2014.

37 2017. This repealed the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act (2006).

38 2017.

39 2014.

40 2014.

41 1994.

42 2017.

43 M.K. Hussein, *Are Anti-Corruption Mechanisms Working in Developing Countries? Challenges and Lessons from Malawi’s Public Bureaucracy*, 49(4) *Africa Insight* 15 (2020).

2.4. The ACB

2.4.1. The institution

The ACB is a government department instituted by section 4 of the CPA. This was in fulfilment of section 13 of the Constitution which requires the introduction of measures “which will guarantee accountability, transparency, personal integrity and financial probity and which by virtue of their effectiveness and transparency will strengthen confidence in public institutions.” The ACB aspires to “[promote] integrity and good governance towards attaining a corruption free Malawi”.⁴⁴

2.4.2. Appointment of the Director

It is headed by a Director General assisted by a Deputy Director General, both presidential appointments approved by Parliament's Public Appointments Committee (PAC).⁴⁵ The Director position is publicly advertised by the Minister of Justice and candidates shortlisted by a selection panel empanelled by the Minister. The PAC then interviews the candidates and recommends three names to the President.⁴⁶ Section 6 provides that, subject to confirmation by PAC, the President can remove the Director “for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour”.

2.4.3. Independence

The Bureau has a degree of independence. Section 4(3) instructs the institution to “exercise its functions and powers independent of the direction or interference of any other person or authority”. The Director is subject to the direction and control of the Minister of Justice on all matters of policy, but otherwise is not subject to any direction or control in the performance of their professional duties. The Minister must also approve any standing orders made by the Director relating to the Bureau's control, direction and administration, staff related matters, and financial regulations.⁴⁷ The Director must submit an annual report to the President and Parliament through the Minister on “the general conduct of affairs of the Bureau”.⁴⁸ The ACB is funded by the government through the Consolidated Fund.⁴⁹

2.4.4. Powers and functions

Law enforcement: This mandate empowers the ACB to investigate and prosecute corruption. It can investigate

suspected corrupt practices or other offences under the CPA or other law if disclosed during such investigations.⁵⁰ Investigative powers extend to public officers whose conduct relates to or is conducive to corruption. Here, the Bureau may report its findings to the appropriate authority.⁵¹ The agency's prosecutorial powers are subject to the directions of the DPP⁵² who has general powers to control public prosecutors and to intervene in any criminal prosecution.⁵³

Prior consent requirement: Previously, the ACB needed prior consent from the DPP to prosecute.⁵⁴ The now repealed section 42 of the CPA was a source of tension between the two institutions. The DPP often withheld consent in high profile cases involving politicians from the ruling party.⁵⁵ The ACB decried “the DPP's lack of interest” in granting consent to prosecute cases, especially high-profile cases involving politicians.⁵⁶ This left cases pending for prosecution before the courts and ultimately they were discharged under the CPEC. These cases were usually never reinstated despite the law providing for this possibility.⁵⁷ Parliament has intervened in two instances to soften the grip of the DPP on ACB prosecutions.

First, the 2004 Corrupt Practices Amendment Act compelled the DPP to respond to a request for consent within 30 days. It also required them to provide reasons of fact and law for any instance where consent is denied and lodge them with the Legal Affairs Committee of Parliament. A failure to do so would enable the ACB to proceed with a prosecution.

The second intervention came in 2022 when the consent requirement was wholly discarded,⁵⁸ liberating the ACB to launch prosecutions independently. This amendment allows the institution to proceed with past cases where consent had been withheld.⁵⁹ However, it is the focus of a legal challenge⁶⁰ on the basis that the removal of prior consent from the DPP creates parallel prosecutorial authorities in Malawi. This, it is argued, contravenes section 99 of the Constitution which concentrates all prosecutorial authority in the DPP. This contention is incorrect. The amendment does not tamper with laws that elevate the DPP over the ACB's prosecutorial powers. For instance, section 10(1)(g) of the ACB leaves all ACB prosecutions subject to the directions of the DPP. Sections 76 and 77 of the CPEC on the DPP's powers also remain applicable. ACB prosecutors remain subject to the direction and control of the DPP under sections 76(b) and 79(b) of the CPEC. Further, the DPP retains discretion to take over or discontinue any ACB

44 <http://acbmw.org/acb-history/>.

45 § 5(1) of the CPA.

46 § 6a of the CPA.

47 § 18(1) of the CPA.

48 § 4(4) of the CPA.

49 § 4 of the CPA.

50 § 10(b) of the CPA.

51 § 10(1)(g) of the CPA.

52 § 10(1)(f) of the CPA.

53 See: §§ 99(2)(b) and (c) of the Constitution; §§ 76 & 77 of the Criminal Procedure and Evidence Code (1967) (CPEC).

54 § 42 of the CPA.

55 G. Anders, *Law Enforcement and High-Level Corruption in Malawi: Learning from Cashgate*, 26 African Journal of Political Science (2021).

56 S. Chitete, *Assent Liberates ACB*, The Nation (Sept. 21, 2022), <https://mwntion.com/assent-liberates-acb/>.

57 I. Kamanga, *Combating Corruption: Challenges in the Malawi Legal System*, in *The Tenth International Training Course on the Criminal Justice Response to Corruption*, at 154 (United Nations Asia and Far East Inst. for the Prevention of Crime and the Treatment of Offenders, undated).

58 See: Corrupt Practices Amendment Act, 2022.

59 R v Matemba [2023] MWHC 31.

60 S v Director of the Anti-Corruption Bureau, Judicial Review Cause No. 6 of 2023 [MWHC].

prosecutions as provided in sections 99(2)(a) and (b) of the Constitution. Thus, the removal of prior consent does not install the ACB as an independent prosecutorial authority akin to the DPP.

Prevention of corruption: The ACB must prevent corruption and raise public awareness. Section 10(1)(a) requires the agency to “take necessary measures for the prevention of corruption in public bodies and private bodies” in at least two ways. First, it must examine “the practices and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which ... may be prone or conducive to corrupt practices”.⁶¹ Second, the Bureau may play an advisory role to these institutions regarding the prevention of corruption and the reforms “necessary to necessary to reduce the likelihood of the occurrence of corrupt practices”.⁶² Lastly, the public awareness aspect of the ACB's work is rooted in sections 10(1)(a)(iii) and (iv). The Bureau must disseminate information on the negative effects of corruption on society and garner public support against corrupt practices.

2.4.5. Achievements

The Bureau has had some successes. It has concluded several investigations and prosecutions including some high-profile cases.⁶³ The institution also utilises the restriction notice mechanism under section 23 of the CPA to halt potentially corrupt transactions pending investigations.⁶⁴ In relation to its public education mandate, the ACB has tailored interventions to effect behavioural change through citizen engagement. Outreach efforts to rural areas use radio programmes for dissemination of information. The Bureau also conducts sensitisation trainings with public and private bodies.

Some initiatives focus youth to cultivate a culture of integrity and good morals necessary for responsible citizenship such as motivational talks in schools and football bonanzas. The Bureau recently launched an anti-corruption source book to be taught in primary schools to foster the creation of a corruption free generation.

The ACB has also recorded success in its prevention efforts. It launched the second National Anti-Corruption Strategy in 2019. The Bureau conducts training and

sensitisation campaigns for stakeholders including government agencies. It also advises various sectors on preventing and combatting corruption. Moreover, the institution participates in the implementation of government programmes at risk of corrupt elements. For instance, it was in the National Task Force Committee for the implementation of the Affordable Inputs Program which sought to increase farmers access to farm inputs.⁶⁵ The Bureau verified beneficiaries and conducted public awareness and sensitisation sessions with potential beneficiaries. It also monitored delivery of inputs to beneficiaries for compliance⁶⁶ and arrested some individuals for corruption.⁶⁷ The institution made several recommendations to the Ministry of Agriculture on improvements to the program including corruption training.⁶⁸ Aside these successes,⁶⁹ the Bureau has serious challenges.

2.4.6. Challenges

Increased incidence and scale of corruption: The greatest indictment on the ACB's performance is its failure to prevent corruption. Despite extensive prevention campaigns and public education, the biggest corruption scandals yet hit Malawi in quick succession, beginning with Cashgate. These incidents involve offensively extensive looting of public funds and implicate senior officials. The latter reality poses a hurdle for the Bureau because it justifies public perceptions that political leaders and senior officials are not interested in fighting corruption.

Independence: The independence of the ACB is wanting. First, the appointment and removal framework for the Director is vulnerable to political manipulation. The security of tenure in section 5(3) of the CPA is weak at best and non-existent at worst. In practice, the Director serves “at the pleasure of the President”⁷⁰ and the Bureau is “used for political agendas”.⁷¹ For instance, in 2006, the Director was fired by President Mutharika hours after the ACB arrested former President Muluzi,⁷² an arrest which was politically inconvenient.⁷³ The charges against Muluzi were then quickly dropped by the DPP. This political interference, partly enabled by the failure of the law to elaborate the tenure of the Director, also manifested in recent events involving Martha Chizuma, the Bureau's current Director.

61 § 10(1)(a)(i).

62 § 10(1)(a)(ii).

63 Several case summaries are available on the ACB's website: <http://acbmw.org/acb-cases/>.

64 See: Anti-Corruption Bureau 'Court Renews Restriction Notice Issued by the Director General of ACB on Properties in which Zuneth Sattar has Beneficial Interest', (March 28, 2022).

65 Anti-Corruption Bureau, 2022/23 Affordable Inputs Program Report (2023).

66 *Id.* 66, at 13.

67 *Id.* at 16.

68 *Id.* at 26.

69 Compare: H. Chingaipe, *Malawi, in Effectiveness of Anti-Corruption Agencies in Southern Africa*, edited by Open Society Initiative for Southern Africa, at 160 (2017), who asserts that these “successes” are essentially “mere activity reporting”, devoid of a properly designed monitoring and evaluation tool that sincerely measures performance against set measurement tools.

70 M.J. Nkhata, *A Hollow Commitment? Constitutional Promises and Anti-Corruption Efforts in Malawi*, in *Corruption and Constitutionalism in Africa*, edited by C.M. Fombad & N. Steytler, at 222 (2020).

71 *Id.*

72 The New Humanitarian, *New Twist in Political Drama*, *The New Humanitarian* (July 28, 2006), <https://www.thenewhumanitarian.org/news/2006/07/28/new-twist-political-drama>.

73 M.H. Hara, *The Independence of Prosecuting Authorities: The Malawi Experience*, in *Corruption and Constitutionalism in Africa*, edited by C.M. Fombad & N. Steytler, at 83 (2020).

The Chizuma saga: In January 2022, Chizuma was at the centre of a debacle when a leaked recording in which she shared information about an ongoing ACB investigations and implicated various named persons in corruption including the President, the DPP, judges, and other officials. She also expressed dissatisfaction with the handling of corruption cases by the President and other officials. Chizuma also made aspersions on the DPP.

After meetings with the Director, President Chakwera characterised Chizuma's actions as "improper conduct ... justifying her removal as Director ... on the grounds of misconduct".⁷⁴ In an unexpected twist, the president continued:⁷⁵

I have determined that the best thing to do in this instance is to keep a watchful eye on her general conduct of the Bureau's affairs ... to ensure that there are no other incidents of concern about her fitness for office going forward. As such, I have given her a stern warning about what the law demands and what I expect from her as the person I appointed to that office.

In December, Chizuma was arrested for defamation of the DPP in the recordings. This time, the President appointed a commission of inquiry into the circumstances of her arrest.⁷⁶ Led by former Justice Twea, the Commission found that there were reasonable grounds to suspect that the Director "committed offences" and demonstrated lack of "sound judgment" in the leaked audio.⁷⁷ It recommended that "appropriate action" must be taken against her and that anyone affected by the leaked information should lay charges.⁷⁸ In response, Chakwera admonished Chizuma, cautioning her to not repeat her mistake.

On 31 January 2023, the Secretary to the President and Cabinet suspended Chizuma, in her capacity as a public officer, pending the conclusion of criminal charges that were laid against her.⁷⁹ The suspension order was later set aside by the High Court⁸⁰ and the charges subsequently dropped.⁸¹ Chizuma returned to the ACB in February while the DPP was fired for having "a moment of unsound judgment or conflict of arrest" that resulted in Chizuma's arrest.⁸²

Executive overreach: Chizuma's arrest and subsequent events highlight the loopholes in the CPA which allow extensive executive overreach into the Bureau. Clearly, the president holds all the power to fire a director and that they may decide to not fire a director guilty of misconduct that justifies removal and instead issue "a stern warning" and "keep a watchful eye" on the Director. The perception is that the President "forgave" the Director.⁸³ This leaves the Director at the mercy of the president, an untenable position for a critical institution like the ACB.

Parliament previously resisted efforts to make the institution more independent. In 2016, for instance, it rejected a motion to limit presidential appointment and dismissal powers by making Parliament the appointing authority for the Director. The motion was viewed as an unjustifiable attempt to usurp executive power contrary to the principle of the separation of powers.⁸⁴ Recent law reform such as the removal of the prior consent requirement signals renewed political will towards greater ACB independence.

Non-cooperation with other anti-corruption agencies: The ACB enjoys a cordial operational relationship with other institutions. The Bureau often conducts investigations in conjunction with its counterparts and engages them in various campaigns and public education exercises. Beyond this, however, anti-corruption work is hampered by non-cooperation amongst key agencies. The Twea Commission aptly captures this dissonance.

Mistrust and animosity: The Commission found that the relationship between the DPP, the AG, and the ACB lacks cordiality and is characterised by "animosity and mistrust".⁸⁵ This was largely triggered by a mutual legal assistance agreement between the ACB and British authorities relating to investigations into Zuneth Sattar, a British businessman linked to public procurement-related corruption allegations involving the vice president and other key politicians.⁸⁶ Also, it concluded that the ACB mishandles confidential and sensitive information; there is "common leakage of information" from the ACB which undermines its operations and integrity.⁸⁷ The Commission lamented that the mistrust has not only

⁷⁴ Malawi24, Chizuma's Remarks are Painful — Chakwera, *Malawi24* (Jan. 25, 2022), <https://malawi24.com/2022/01/25/chizumas-remarks-are-painful-chakwera/>.

⁷⁵ L. Ndebele, Malawi President Spares Anti-Corruption Unit Boss as Leaked Audio Points to Graft Tussle, *News24* (Jan. 6, 2022), <https://www.news24.com/news24/africa/news/malawi-president-spares-anti-corruption-unit-boss-as-leaked-audio-points-to-graft-tussle-20220126>.

⁷⁶ Malawi Gov't, In the Matter of the Arrest of Ms. Martha Chizuma, the Director General of the Anti-Corruption Bureau, Gov't Notice No. 45 of 2022, Gazette Supplement No. 26 of 2022 (2022).

⁷⁷ Twea Commission Report, *supra* note 8, at 60.

⁷⁸ *Supra* note 77.

⁷⁹ Chizuma faced two charges under section 113(1)(d) of the Penal Code: "making use of speech calculated to lower the authority of a person before whom a judicial proceeding is being had"; and "making use of speech capable of prejudicing a person against a party to judicial proceedings".

⁸⁰ See: *S (on the application of Malawi Law Society) v. Prosecutor Levison Mangani, SAC, Chief Resident Magistrate (Lilongwe) & Secretary to the President and Cabinet*, [2023] MWHC 35 (Feb. 8, 2023).

⁸¹ G. Masanza-Kanyang'wa, DPP Kayuni's Charges Against Chizuma Dropped: Justice Minister, *The Africa Brief* (Dec. 8, 2022), <https://africabrief.substack.com/p/dpp-kayunis-charges-against-chizuma>.

⁸² W. Mzungu, Malawi: Chakwera Fires Malawi Top Prosecutor Dr. Steven Kayuni Over Anti-Corruption Director's Arrest, *The Southern Herald* (Jan. 20, 2023), <https://www.southernafricanherald.com/politics/malawi-chakwera-fires-malawi-top-prosecutor-dr-steven-kayuni-over-anti-corruption-directors-arrest>.

⁸³ D. Mlanjira, Chizuma Arrest Commission of Inquiry Faults DPP Kayuni, Police on the Illegal Arrest, *Nyasa Times* (Jan. 4, 2023), <https://www.nyasatimes.com/chizuma-arrest-commission-of-inquiry-faults-dpp-kayuni-police-on-the-illegal-arrest/>.

⁸⁴ M. Nkhoma, MPs Push to Appoint Anti-Graft Head; Minister Chiumia Votes Yes and No, *Nyasa Times* (Feb. 26, 2016), <https://www.nyasatimes.com/mps-push-to-appoint-anti-graft-head-minister-chiumia-votes-yes-and-no/>.

⁸⁵ Twea Commission Report, *supra* note 8, at 60.

⁸⁶ *Id.* at 63.

⁸⁷ *Id.* at 65.

jeopardised the operations and integrity of the two offices but also compromised Malawi's anti-corruption efforts.⁸⁸ The ACB Director has received "pressure against prosecution of some corruption cases and non-cooperation from offices that are supposed to support the ACB".⁸⁹

An isolated watchdog: The ACB is isolated from other anti-corruption agencies, rendering it less effective as the driver of anti-corruption in Malawi.⁹⁰

[T]he Commission's view was that leaked audio creates the impression that the [ACB Director] does not trust anyone, including ... the judiciary, media, civil society, private and public officers in the fight against corruption. The Commission deduced that the [Director] displayed a sense of being isolated. [H]owever, it was also evident that in her commitment to fight against corruption, she has not been able to carry along the critical offices that she needs to fight corruption. Consequently, she appears to be working alone and the fight against corruption has been compromised.⁹¹

The Commission also observed that the police, DPP, ACB, and AG misconstrue their functional independence "to mean absolute independence and almost creating anarchy. This has created disconnect in the interdependence of the government systems".⁹²

Hampered collaboration: The Commission's conclusions on the disharmony between law enforcement agencies are supported elsewhere. In *Chilima* where the vice president applied for variation of bail conditions, the ACB prosecutor stated that the Bureau did not trust the police and thus did not share the view that the applicant's tight security detail reduced his risk of evading justice.⁹³ This mistrust creates a tricky situation for the Bureau when it has to rely on other law enforcement agencies for collaboration in the investigation of corruption cases, reliance necessitated by its lack of adequate resources or expertise. For instance, the Cashgate investigations required extensive forensic analysis of electronic data at a time when the agency's capacity was basically inexistent.⁹⁴ The ACB had to rely on the MPS for assistance. Chinsakaso, then an ACB investigator, writes that this arrangement "had challenges as

there was mistrust ... on how the information was handled. The best practice was to analyse the ... data at the ACB as it would be handled by selected few individuals who could be trusted and trained to handle such sensitive information".⁹⁵

Resource constraints: Poor funding, staff shortage and high turnover are a common challenge of anti-corruption agencies.⁹⁶ The ACB lacks financial independence; its budget is centrally controlled by the executive through the Consolidated Fund. It is chronically underfunded by the government, never receiving 100% of its budget from the government. Thus, the Bureau heavily relies on donor aid. Financial constraints compromise investigations as the Bureau is unable to acquire and utilise special advance techniques which require equipment and training.⁹⁷ For instance, the agency did not have forensic equipment until 2016. It relied on other agencies for processing of sensitive information.⁹⁸ While it now has the equipment, the new challenge is the renewal of its software licences due to funding.⁹⁹

ACB staff are poorly paid and their offices under equipped to properly support its anti-corruption work. This has led to low morale and generally poor working conditions.¹⁰⁰ The staff are contractual employees with no pension benefits and at times receive lower annual salary increments than the rest of the civil service.¹⁰¹ In 2014, ACB staff went on strike demanding higher wages and harmonisation after being excluded from a harmonisation policy which saw the government increase the salaries of civil servants, parliamentarians, and politicians by 70%.¹⁰² In a move that shocked many, the police responded by sealing off the ACB offices.¹⁰³ The strike ultimately secured a 9% increase for ACB staff.¹⁰⁴

The NAC II flags underfunding as a major corruption driver in Malawi.¹⁰⁵ The underfunding of the ACB is a deliberate move by the government which does not prioritise the work of the institution¹⁰⁶ and proof of its unwillingness to have an effective anti-corruption drive.¹⁰⁷ Ironically, the president claims the ACB is adequately capacitated to deliver its mandate effectively.¹⁰⁸

88 *Id.* at 63 & 65.

89 *Id.* at 60.

90 *Id.* at 63.

91 *Id.* at 61.

92 *Id.* at 62.

93 *R v Chilima* [2023] MWHC 40, paras 107 and 108.

94 See: F. K. Chinsakaso, *Detection, Investigation, Prosecution and Adjudication of High-Profile Corruption in Malawi*, at 135 (2019).

95 *Id.*

96 A. Doig et al., *Why Do Developing Country Anti-Corruption Commissions Fail to Deal with Corruption? Understanding the Three Dilemmas of Organisational Development, Performance Expectation, and Donor and Government Cycles*, 27 *Pub. Admin. & Dev.* 251, 254 (2007).

97 Chinsakaso, *supra* note 94.

98 *Id.* at 136.

99 *Id.* at 135.

100 M.G. Manamela et al., *Corrosiveness of Corruption and the Quest for Good Governance in South Africa and Malawi*, 5 (1) *J. Pub. Admin. & Dev. Alternatives* 117 (2020).

101 Chingaipe, *supra* note 69, at 148-9.

102 *Id.* at 148.

103 E. Nyirongo, *ACB Offices Closed, Scholar Faults Sealing*, *The Nation*, Dec. 17, 2014.

104 Chingaipe, *supra* note 69, at 149.

105 Anti-Corruption Bureau, *supra* note 25, at 10.

106 Nkhata, *supra* note 70, at 221.

107 Chingaipe, *supra* note 69, at 149.

108 D. Mlanjira, *The ACB Is Fully Capacitated with Hundreds of Human and Billions of Financial Resources at Its Disposal—Chakwera*, *Maravi Post*, Feb. 19, 2023, <https://www.maraviexpress.com/the-acb-is-fully-capacitated-with-hundreds-of-human-and-billions-of-financial-resources-at-its-disposal-chakwera/>.

Perceptions of selective justice: The ACB is criticised for failing to successfully prosecute high profile cases involving politically connected individuals. Chirambo describes it as a “toothless monster”.¹⁰⁹ The Bureau is also faulted for perceived selective justice and delay in its handling of cases.¹¹⁰ The prevailing view is that it prioritises cases involving low scale corruption while skirting grand corruption cases that implicate politicians. Delays in the prosecution of corruption cases are common. For instance, the ACB-initiated corruption case against former president Muluzi was dragged for 14 years before its discontinuance by the DPP.¹¹¹ The DPP blamed lack of evidence and unavailability of witnesses for the withdrawal.¹¹² The withdrawal is cited as confirmation that the ACB is “a toothless bulldog” and “that corruption by those at the top will be tolerated and left unpunished, at great expense to Malawians”.¹¹³ It was also described as “a mockery” of Malawi’s anti-corruption efforts that “represents the lowest watermark for the [ACB’s] record of prosecutions and convictions”.¹¹⁴ These perceptions are further fuelled by the absence of instant transparency on reasons for discontinuance since the DPP is only accountable for reasons to Parliament’s Legal Affairs Committee within 10 days¹¹⁵ and even then the inquiry is not public.

Delayed investigations and prosecutions: Broadly, the rate of arrests of politicians and other high-profile individuals does not match the rate of prosecutions. While the ACB cannot be sanitised from this criticism, it must be recalled that there are some high-profile corruption cases that have been concluded or are ongoing. Moreover, the problems with understaffing and funding hamper the institution’s investigation and prosecution of cases. One must also consider the role of other players in the criminal process, such as the defence teams and the judiciary. The latter is understaffed and overwhelmed.

Further, until September 2022, the prosecution of corruption cases also required consent from the DPP. Time will tell how much of a stumbling block the consent requirement posed. Should the ACB fail to improve its prosecution records, the problem clearly lies elsewhere. At the time of

the amendment, the ACB was reportedly sitting on 150 cases for which it already had consent. The establishment of the Economic and Financial Crimes Court, devoted to corruption and financial crimes, is designed to hasten corruption cases.¹¹⁶

Inadequate whistleblower and witness protection: A further challenge for the ACB is ineffective witness protection mechanisms, especially in high profile cases or where a subordinate reports their superior to the ACB.¹¹⁷ The CPA provides for witness protection in section 51A. However, the mechanism is hampered by resource constraints¹¹⁸ and a weak national witness protection system¹¹⁹ which leads to “the refusal of witnesses to testify and the loss of evidence”.¹²⁰ This undermines the effective investigations and prosecutions of corruption cases.

Political will:

Political rhetoric: Political anti-corruption rhetoric abounds in Malawi. The ruling party won on an anti-corruption platter;¹²¹ its campaign included calls for the removal of presidential immunity from criminal prosecution as an anti-corruption measure.¹²² While there is room for a pure good governance justification in creating an effective development state, anti-corruption strategies have been engineered by ulterior motives like the sustenance of donor aid and political suppression.¹²³ Unless there is political mileage to gain, major corruption scandals are often ignored until a new regime takes power.

Indecisive and tainted leaders: Malawi lacks strong, genuine sustained political will. There is “little tangible effort at engaging comprehensively, and earnestly” with corruption.¹²⁴ Presidents have shielded corrupt ministers and often delayed acting until there is intense public outrage.¹²⁵ Worse, Malawi’s leaders have failed to lead by example, accused of corruption and other dishonest dealings. Vice President Chilima, who fervently campaigned against corruption and spearheaded public sector reforms, is himself on bail in relation to six corruption charges concerning the award of government contracts.¹²⁶

Pardons for corruption convicts: A growing concern is

109 R. Chirambo, *Corruption, Tribalism and Democracy: Coded Messages in Wambali Mkandawire’s Popular Songs in Malawi*, 23 *Critical Arts: South-North Cultural & Media Studies* 45, 45 (2009).

110 See: L. Masina, Malawi’s Ex-Information Minister Jailed Amid Concerns of Selective Justice, *Voice Of America*, Mar. 3, 2023.

111 Xinhua, Charges Against Malawian Ex-President Who “Chewed” \$11 Million Donor Cash Dropped, *Monitor*, May 30, 2023, <https://www.monitor.co.ug/uganda/news/charges-against-malawian-ex-president-who-chewed-11-million-donor-cash-dropped-4251984>.

112 J. Pasungwi, Why Muluzi Was Set Free, *The Nation*, June 9, 2023, <https://mwnation.com/why-muluzi-was-set-free/>.

113 J. Pasungwi, Muluzi Freedom Raises Queries, *The Nation*, May 30, 2023, <https://mwnation.com/muluzi-freedom-raises-queries/>.

114 Const. § 99(3).

115 *Id.*

116 See: The Courts Amendment Act, Act No. 32 of 2022.

117 Chinsakaso, *supra* note 94, at 134-5.

118 *Id.* at 135.

119 See: S.W. Kayuni & E. Jamu, *Failing Witnesses in Serious and Organised Crimes: Policy Perspectives for Witness Protective Measures in Malawi*, 41 *Commonwealth L. Bull.* 422, 422–33 (2015).

120 United Nations Office on Drugs and Crime, *Country Review Report of Malawi*, at 6 (2015).

121 P. Fabricius, Is Malawi’s Chakwera Actively Stifling His Corruption Buster?, *Inst. For Sec. Stud.* (Feb. 2023), <https://issafrica.org/iss-today/is-malawis-chakwera-actively-stifling-his-corruption-buster>.

122 W. Chiuta, Chilima Insists on Stripping Malawi President of Immunity Even if Chakwera Wins, *Nyasa Times* (May 17, 2020), <https://www.nyasatimes.com/chilima-insists-on-stripping-malawi-president-of-immunity-even-if-chakwera-wins/>.

123 Hall-Matthews, *supra* note 13, at 77.

124 Nkhata, *supra* note 70, at 217.

125 J. McBrams, President Dissolved Cabinet to Unravel Malawi’s Web of Corruption, *Mail & Guardian* (Feb. 1, 2022), <https://mg.co.za/africa/2022-02-01-president-dissolved-cabinet-to-unravel-malawis-web-of-corruption/>.

126 N. Mkwanda, Malawi Vice President Dr. Saulos Chilima Arrested, Charged and Bailed, *Nyasa Times* (Nov. 25, 2022), <https://www.nyasatimes.com/malawi-vice-president-dr-saulos-chilima-arrested-charged-and-bailed/>.

the questionable pardoning of offenders jailed for corruption.¹²⁷ In 2023, for instance, the president pardoned a corrupt former minister serving six years for corruption.¹²⁸ This is against the pardon guidelines¹²⁹ and sends conflicting messages in the anti-corruption drive¹³⁰ that punishment for corruption may be mitigated. “Without the perception of a credible threat of certain, stiff and proportionate punishment, there is little hope that entrenched corruption can be curbed”.¹³¹ The ACB advocates against the pardoning of corruption offenders¹³² while other stakeholders have called for the review of pardon guidelines to limit this presidential power.¹³³

Renewed political will? The government sporadically shows genuine will to support anti-corrupt strategies. For example, this is demonstrated through law reforms to enhance the operational independence of the ACB¹³⁴ and speed up corruption cases through the creation of the Economic and Financial Crime Court.¹³⁵ However, these advances must be accompanied by sustained political backing to materialise into mechanisms of practical significance to anti-corruption efforts. Further, the president and other political leaders must show commitment to consistently play their role in the prevention of corruption by sealing legislative and other loopholes that enable it. This includes implementing reforms to counter executive authority and strengthen Malawi's anti-corruption agenda.

The paper will now consider anti-corruption work in Botswana to extract lessons for Malawi.

3. BOTSWANA

3.1. Overview of corruption

Botswana is touted as “a shining light and beacon of hope in the fight against corruption in Africa”.¹³⁶ This is not to say that the

country has no corruption challenges. Indeed, 79% of Botswana suspect corruption in the presidency and amongst public officials.¹³⁷ Nevertheless, Botswana boasts a comparatively stellar anti-corruption record and ranks second in Africa with a score of 60 on the CPI.¹³⁸ This has not always been the case. While Botswana had low levels of corruption before 1990,¹³⁹ it experienced multiple high level corruption scandals in the 1990s.¹⁴⁰ What changed to boost its anti-corruption efforts? In response to public outrage over heightened corruption, Botswana passed the Corruption and Economic Crime Act (CECA)¹⁴¹ in 1994. The Act created new corruption offences and established the DCEC. Despite initial criticism,¹⁴² the DCEC has been at the heart of Botswana's anti-corruption performance and internationally lauded as a top-performing anti-corruption agency.¹⁴³ The Directorate is enveloped by a comprehensive legislative and institutional framework.

3.2. Anti-corruption mechanisms

3.2.1. Legislative framework

Botswana does not have a national anti-corruption strategy. It addresses corruption at policy level through legislation to protect public law and order, uphold integrity, and promote transparency and accountability in government and the private sector.¹⁴⁴ The principal law is the CECA. This is bolstered by the Proceeds and Instruments of Crime Act,¹⁴⁵ the Public Service Act,¹⁴⁶ the Public Finance Management Act,¹⁴⁷ the Financial Intelligence Act,¹⁴⁸ the Mutual Assistance in Criminal Matters Act,¹⁴⁹ the Penal Code,¹⁵⁰ the Electoral Act,¹⁵¹ and the Whistleblowing Act.¹⁵² This framework is complemented by the SADC Protocol, the AUCPCC, and the UNCAC.

¹²⁷ See generally: J. Hatchard, *Some Specific Aspects of Corruption and Constitutionalism, Politically Exposed Persons, Corruption, and the Use and Abuse of the Constitutional Power of Pardon: A Comparative Perspective*, in Fombad & Steytler, *supra* note 70.

¹²⁸ L. Masina, Malawi president pardons former minister jailed for corruption, *Voice of America* (Apr. 11, 2023), <https://www.voanews.com/a/malawi-president-pardons-former-minister-jailed-for-corruption/7046204.html>.

¹²⁹ See: Malawi Government, *Amended guidelines for the exercise of the prerogative of mercy adopted by the Advisory Committee on the Granting of Pardon* (2005).

¹³⁰ Malawi24 Reporter, ACB Appeals to Malawi Prison Service Not to Pardon Corruption Convicts, *Malawi24* (Dec. 4, 2020), <https://malawi24.com/2020/12/04/acb-appeals-to-malawi-prison-service-not-to-pardon-corruption-convicts/>.

¹³¹ G. Anders et al., *Corruption and the Impact of Law Enforcement: Insights from a Mixed-Methods Study in Malawi*, 58 (3) *J. Mod. Afr. Stud.* 332 (2020).

¹³² Malawi24 Reporter, ACB Appeals to Malawi Prison Service Not to Pardon Corruption Convicts, *Malawi24*, Dec. 4, 2020, <https://malawi24.com/2020/12/04/acb-appeals-to-malawi-prison-service-not-to-pardon-corruption-convicts/>.

¹³³ N. Mkwanda, Malawi Law Society Wants Review of Guidelines on Presidential Pardon, *Nyasa Times*, Apr. 13, 2023, <https://www.nyasatimes.com/malawi-law-society-wants-review-of-guidelines-on-presidential-pardon/>.

¹³⁴ Corrupt Practices Amendment Act, 2022.

¹³⁵ Courts Amendment Act, 2022.

¹³⁶ United Nations Economic Commission for Africa, *Botswana is a Shining Beacon of Hope in the Fight Against Corruption in Africa* (June 18, 2018), <https://repository.uneca.org/handle/10855/45749>.

¹³⁷ Afrobarometer, *Growing Number of Botswana See Corruption in the President's Office*, Afrobarometer Survey Shows, at 1 (Dec. 1, 2022).

¹³⁸ Transparency International, *supra* note 5.

¹³⁹ K. Good, *Corruption and Mismanagement in Botswana: A Best-Case Example?*, 32 (3) *The Journal of Modern African Studies* 499-500 (1994).

¹⁴⁰ See: G.I Kaboyakgosi, Botswana. In Open Society Initiative for Southern Africa, *supra* note 69, at 48.

¹⁴¹ 1994.

¹⁴² See: C.M. Fombad, *Curbing Corruption in Africa: Some Lessons from Botswana's Experience*, 51 (160) *International Social Science Journal* 241 (1999).

¹⁴³ G. Kuris, *Managing Corruption Risks: Botswana Builds an Anti-Graft Agency, 1994-2012, Case Study, Innovations for Successful Societies*, at 16 (2013).

¹⁴⁴ United Nations Office on Drugs and Crime, *Country Review Report of the Republic of Botswana*, at 18 (2021).

¹⁴⁵ 2014.

¹⁴⁶ 2010.

¹⁴⁷ 2011.

¹⁴⁸ 2022.

¹⁴⁹ 1990.

¹⁵⁰ 1964.

¹⁵¹ 1968.

¹⁵² 2016.

3.2.2. Institutional framework

Several authorities facilitate the prevention of corruption. The main anti-corruption institution is the DCEC which is complemented by various entities. These include: the Directorate of Public Prosecutions (DPP), the Office of the Ombudsman, the Directorate of Public Service Management, the Public Procurement and Asset Disposal Board, the Independent Electoral Commission, the Financial Intelligence Agency, the Office of the President, the Botswana Unified Revenue Services, the Bank of Botswana, the Ministry of Finance and Economic Development, the Competition Authority, the Non-Banking Financial Regulatory Authority, the Police Service, the Attorney General, and the Auditor General. The DCEC is the focus of this discussion.

3.3. The DCEC

3.3.1. Legal framework

The DCEC is a government department in the presidency. The Director is appointed by the President “on such terms and conditions as he thinks fit”.¹⁵³ The DCEC enjoys operational independence. The Director oversees its direction and administration.¹⁵⁴ Decisions by the Director are not subject to “the direction and control of any person or authority”.¹⁵⁵

3.3.2. Powers and functions

The agency has powers of investigation, prevention, and public education. Its investigative powers include authority to arrest, and to search and seize¹⁵⁶. Its prosecutorial powers are subject to the DPP’s consent;¹⁵⁷ all prosecutable outcomes must be referred to the DPP.¹⁵⁸

The DCEC’s corruption prevention mandate permits it proactive auditing exercises to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Director, may be conducive to corrupt practices.¹⁵⁹

The Directorate advises public and private bodies on changes in practices and procedures to reduce the likelihood of corruption.¹⁶⁰ Here, the agency basically provides free consultancy services that are tailored to the client, yielding

specific recommendations to eliminate loopholes for corruption.¹⁶¹ This mandate enhances the implementation of corruption prevention techniques in public and private sectors through enhanced accountability and transparency in their activities and the development of codes of ethics and conduct. The DCEC’s education obligations require it to teach the public about corruption and garner support for its work.¹⁶²

3.3.3. Achievements

The Directorate has succeeded on multiple fronts. It has mastered a sustained focus on corruption resulting in increased reporting of corrupt practices.¹⁶³ The DCEC has also created a non-exhaustive list of “the most strategic corruption-prone areas”,¹⁶⁴ such as the construction industry, allocation of government land, and the licencing and permits processes. The DCEC also enjoys high rates of completed investigations, prosecutions, and convictions.¹⁶⁵

A further success is the agency’s assistance to institutions in developing strong anti-corruption prevention mechanisms like codes of conduct and ethics. The DCEC effectively provides consultancy services to public and private organisations to ensure that their procedures and policies are not prone to corruption.¹⁶⁶ It has heavily capitalised on its prevention and public education mandates. Through the latter, the Directorate has incorporated corruption awareness into elementary and tertiary education curricula.¹⁶⁷

The prevention function has seen the DCEC do tremendous work in auditing government departments to identify and remedy situations that can foster corrupt practices. This function has also been used to establish internal corruption prevention committees at ministerial level. The agency has devolved its preventive function to these committees which conduct corruption risk assessments of their ministries and recommend remedial action.¹⁶⁸ They also monitor the implementation of the Directorate’s recommendations reading measures to reduce the risk of corruption.¹⁶⁹ Significantly, the agency seconds its officers to ministries to provide “in-house anti-corruption advice” and build the capacity of these committees.¹⁷⁰ The DCEC itself also conducts its own corruption audits of ministries and public bodies to detect loopholes for corruption and recommend appropriate action.

153 § 4(1) of the CECA.

154 § 4(2) of the CECA.

155 § 4(3) of the CECA.

156 §§ 10 to 15 of the CECA.

157 § 39 of the CECA.

158 § 39(1) of the CECA.

159 § 6(f) of the CECA.

160 § 6(h) of the CECA.

161 A. Hirschfeld, *The Role of Civil Society in Combating Organised Crime: Botswana's Experience*, 5 Trends in Organised Crime 71, 75 (2000).

162 §§ 6(i) and (j) of the CECA

163 B. Olowu, *Combating Corruption and Economic Crime in Africa: An Evaluation of the Botswana Directorate of Corruption and Economic Crime*, 12(7) Int'l J. Pub. Sec. Mgmt. 604, 609 (1999).

164 *Id.* at 609 & 610.

165 Kaboyakgosi, *supra* note 140, at 57. Kuris, *supra* note 143, at 16.

166 L. Mwamba, *An Evaluation of the Anti-Corruption Initiatives in Botswana and their Relation to Botswana's Development*, Master of Arts Thesis, University of South Africa, at 78 (2013).

167 D.S. Jones, *Combating Corruption in Botswana: Lessons for Policy Makers*, 6(3) Asian Educ. & Dev. Stud. 213, 218 (2017).

168 *Id.* at 216–217.

169 *Id.*

170 Mwamba, *supra* note 166, at 159.

To supplement its investigative reach, the DCEC has established anti-corruption units in ministries and parastatals to detect and investigate corruption before reporting to the DCEC.¹⁷¹ This is prioritised for operational areas like procurement, licencing, and finance.¹⁷² The committees also monitor the implementation of Directorate's recommendations. This arrangement has improved the effectiveness of the audits. It prevents the institutionalisation of corruption by preventing it before it becomes endemic. Indeed, the stance of the institution on corruption prevention has led to permanent secretaries of various government ministries proactively introduce preventive measures to further curb corruption.¹⁷³

Like its Malawian counterpart, the DCEC operates within an imperfect setting that frequently jeopardises its operations.

3.3.4. Challenges

Perceived lack of independence: The first challenge is a perceived lack of independence. The DCEC's location in the presidency creates a perception of partiality in tackling high profile corruption.¹⁷⁴ These concerns are deepened by the CECA's silence on the tenure of the Director whose appointment and removal is left solely to the President. Frequent changes of directors within a short space of time coupled with the perception that the office is occupied by those in favour of the President, is cited as evidence of the politicisation of the Directorate.¹⁷⁵ Moreover, there is recent evidence that high profile cases implicating politicians warrant interference from institutions such as the Botswana's intelligence services.¹⁷⁶ This has strained relationships amongst law enforcement agencies. This is amidst allegations that it has not done enough to hold the "big fish" accountable but rather focusses on low-profile cases.¹⁷⁷

There are also concerns that the DCEC lacks financial independence; its funds are attached to the Ministry of Presidential Affairs. Further, it submits annual reports to the President.¹⁷⁸ However, there is no evidence that the president interferes with the agency's mandate.¹⁷⁹

Resource constraints: The DCEC's efforts are often hampered by financial and human constraints which limit its

staffing levels, training, and budgets.¹⁸⁰ The agency is also unable to procure adequate equipment for its operations.¹⁸¹

Institutional problems: The DCEC also faces institutional problems. The first is the relationship between the agency and the AG on approval for prosecutions. Resource constraints in the office of the DPP hamper the Directorate in a twin fashion: first, through knock-off effects when the DPP is unable to speedily review cases referred to it by the DCEC,¹⁸² and, secondly, when the Bureau's prosecutorial work is compromised by its own internal constraints after the DPP grants consent.¹⁸³ Further, cases are often delayed by the courts. Courts have also given rise to criticism that the sentences imposed on corruption offenders are lenient. Though not attributable to the DCEC, it has enabled a negative public perception on the institution's commitment to fight corruption.¹⁸⁴

Given these shortcomings, how does Botswana account for the success of the DCEC and its broader anti-corruption sector?

3.4. Success factors for Botswana's anti-corruption project

3.4.1. Genuine political will

The enabling environment for success of the anti-corruption efforts in Botswana is complex. Beyond the DCEC's overarching contribution, substantial recognition goes to exterior factors that bolstered the country's achievements. The first is genuine political will to support anti-corruption efforts. Fairly consistently, successive presidents have shown strong leadership in support of anti-corruption mechanisms and enabled a conducive space for them to function.¹⁸⁵ This sends out right messaging that corruption is an evil that must be uprooted. Political leadership is a critical in kickstarting and sustaining the anti-corruption project.¹⁸⁶ Political commitment to the anti-corruption agenda must manifest in policy and legal reform that foster a non-problematic climate for its fulfilment.¹⁸⁷ This includes a hands-off approach which curtails any political interference in the operations of corruption watchdogs and other role players.¹⁸⁸

3.4.2. Democratic accountability

Democratic accountability keeps the government in check.¹⁸⁹

¹⁷¹ Kuris, *supra* note 143, at 7.

¹⁷² Mwamba, *supra* note 166, at 78.

¹⁷³ D. Sebububu, *The Evolving State of Corruption and Anti-Corruption Debates in Botswana: Issues in Good Governance*, in *Anti-Corruption Policies Revisited* 14 (C. von Soest et al. eds., German Inst. of Global & Area Studies 2014).

¹⁷⁴ B. De Speville, *Review of Botswana's National Anti-Corruption Strategy and its Implementation* (2007).

¹⁷⁵ Botswana Centre for Public Integrity, *The Directorate on Corruption and Economic Crime (DCEC): Botswana's Anti-Corruption Agency* (2023), <https://bcpi.org/bw/storage/assets/1702634010.pdf>, at 6.

¹⁷⁶ *Id.*

¹⁷⁷ G. Gbadamosi, *Corruption Perception and Sustainable Development: Sharing Botswana's Anti-Graft Experience*, 9 (2) S. Afr. J. Econ. & Man. Sci. 262, 280 (2006).

¹⁷⁸ § 22 of the CECA.

¹⁷⁹ Kaboyakgosi, *supra* note 140, at 54.

¹⁸⁰ Jones, *supra* note 167, at 221.

¹⁸¹ *Id.*

¹⁸² Olowu, *supra* note 163, at 606.

¹⁸³ Kaboyakgosi, *supra* note 140, at 57.

¹⁸⁴ R. Theobald & R. Williams, *Combating Corruption in Botswana: Regional Role Model or Deviant Case?*, 37 (3) J. Commonwealth & Comp. Politics 117, 124 (1999).

¹⁸⁵ J.S.T. Quah, *Five Success Stories in Combating Corruption: Lessons for Policy Makers*, 6 (3) Asian Educ. & Dev. Stud. 275, 286 (2017).

¹⁸⁶ *Id.* at 175.

¹⁸⁷ R. Gregory, *Political Independence, Operational Impartiality, and the Effectiveness of Anti-Corruption Agencies*, 4 (1) Asian Educ. & Dev. Stud. 125 (2015).

¹⁸⁸ *Id.* at 177.

¹⁸⁹ J.D. Holm, *Curbing Corruption through Democratic Accountability*, in *Corruption and Development in Africa: Lessons from Country Case Studies* 288–304 (K.R. Hope & B.C. Chikulo eds., Macmillan 2000).

Parliament and opposition parties enhance accountability and reduce opportunities for corruption. Apart from dedicated parliamentary oversight committee, Botswana has set up ad hoc committees to investigate specific corruption scandals.¹⁹⁰

3.4.3. Unbureaucratic procedures

Third, the government has made efforts to reduce opportunities for corruption by minimising bureaucracy and red tape in dealing with government or complying with the law like when procuring licences and permits.¹⁹¹ It has also implemented procurement reforms that are more transparent and better suited to corruption prevention.¹⁹² Lastly, anti-corruption institutions have leveraged their unique contributions to establish collaborations in fighting corruption.

4. IS BOTSWANA'S SUCCESS REPLICABLE?

4.1. Botswana's unique blend

Botswana has a unique blend of underlying factors that may make its anti-corruption model difficult to replicate.¹⁹³

In favourable circumstances, the DCEC is an organisation which is stretched by its workload. Given that other countries in the region do not enjoy similar levels of economic and political stability and require substantial donor assistance, the prospects for replicating the DCEC elsewhere are not promising. In countries where the incidence of corruption is much higher, where economic security is a remote aspiration and where political stability is fragile and temporary, an anti-corruption agency like the DCEC would simply be overwhelmed.

Nevertheless, there are valuable lessons that Malawi and Africa can learn from Botswana. Malawi already aspires to emulate Botswana's DCEC.¹⁹⁴ Overall, the factors that enable Botswana's success may be impossible to secure in Malawi. However, Botswana does offer lessons to Malawi, more so given the similarities between the two countries.

4.2. Similarities between Botswana and Malawi

A comparison of the work of the DCEC and the ACB reveals that they are quite similar in their approach to anti-corruption. A scrutiny of the CECA and CPA shows that the enabling law of the two watchdogs is mostly identical, in some instances even verbatim. For example, the Directorate and the Bureau are government departments with fettered independence in favour of the executive which remains in control of leadership appointments and funding. Their mandates enable them to work effectively on the prevention of corruption and raise public awareness.

4.3. Malawi's relatively advantageous position

Courtesy of recent amendments to the CPA, the Bureau is better

placed than the Directorate. Certainly, it is more institutionally independent in the appointment of its directorship since parliament and civil society are involved in the process. Even before the 2018 amendment to the appointment process, Malawi accorded the ACB Director and their deputy semblance of security of tenure by referencing grounds of misbehaviour and unfitness for removal. Second, the ACB has been unshackled from the prior consent requirement for prosecutions while the DCEC's prosecutorial mandate remains a delegated function at best.

Yet, the two watchdogs suffer similar limitations around independence, funding, staff shortages, and perceptions of selective justice and delays in concluding matters. These commonalities create the possibility that Malawi can transplant some of Botswana's success strategies into its own jurisdiction while also taking lessons from the challenges of the Directorate that undermine its performance.

5. LESSONS FOR MALAWI

5.1. Internal institutional anti-corruption mechanisms

The first lesson is from the DCEC's work through internal anti-corruption committees in public and private bodies. While the ACB has a similar advisory mandate, it has not established internal mechanisms within institutions to detect and report corruption and monitor the implementation of its recommendations. The ACB should emulate this approach to enhance its work.

5.2. Unified anti-corruption front

This relates to the working environment for anti-corruption institutions. While the ACB and the DCEC share similar weaknesses, the former is disadvantaged by poor working relationships with other agencies. The lesson goes to anti-corruption agencies and political leadership in Malawi. Agencies must work on their differences and create a framework for collaboration. The existing acrimony undermines their work and wanes public confidence.

Relevant authorities must urgently work to rebuild the public trust in and integrity of anti-corruption institutions.¹⁹⁵ Boosting public confidence also needs these institutions plus the Judiciary to hasten the conclusion of major corruption cases.¹⁹⁶

5.3. Genuine political will

Political leadership must lead by example in unconditionally supporting anti-corruption mechanisms. This must be seen in their continued support for law reform and its materialisation into practical advances in anti-corruption efforts. Aside positive

¹⁹⁰ Jones, *supra* note 167, at 220.

¹⁹¹ *Id.* at 222.

¹⁹² *Id.*

¹⁹³ Theobald & Williams, *supra* note 184, at 133.

¹⁹⁴ *Id.* at 127.

¹⁹⁵ Twea Commission Report, *supra* note 8, at 61.

¹⁹⁶ *Id.*

legal reform – such as the enhancement of the operational independence of the ACB through the removal of the DPP consent requirement and the establishment of the Economic and Financial Crimes Court – more is required to ensure an independent ACB and effective anti-corruption sector. This includes adequate funding and stronger tenure for the Director that minimises the role of the executive. There must be genuine and sustained political commitment to the anti-corruption agenda that transcends ulterior motives and materialises in tangible progress. Eventually, the fight against corruption in Malawi needs all stakeholders to play their part in addressing the corruption drivers identified in NACS II. Genuine political will provide an enabling environment for all actors to work effectively.

6. CONCLUSION

Corruption is an indictment on any country. Malawi has made some strides in its anti-corruption efforts but still lags when compared to its regional counterparts. Strengthening anti-corruption work requires sustained political will and commitment beyond rhetoric and mere law reform. There must be tangible action that demonstrates sincere devotion to the anti-corruption agenda.

As the main anti-corruption institution, the ACB must be truly independent and well-resourced. Its legal framework must be revised to limit political interference and boost public confidence in the Bureau. Botswana's success shows that a perfect environment is not a prerequisite for anti-corruption work to flourish. The DCEC thrives in a relatively institutionally compromised legal framework. While Malawi strives to a corruption-free society, the existing weak anti-corruption law enforcement agencies must be supported.

Cooperation amongst anti-corruption agencies is indispensable. Relevant institutions must develop a framework that enables a conducive environment for the effective utilisation of existing limited resources in which they can complement their efforts towards a common goal. Where necessary, legal barriers to such cooperation must be removed to reduce the opportunity for interagency abuse. Public trust in anti-corruption strategies in Malawi must be rebuilt. As recommended by the Twea Commission, the ACB must urgently rebuild its partnerships with other key anti-corruption agencies to reinstate trust and cordiality in their work.¹⁹⁷ It defies logic to expect public confidence in law enforcement agencies when the agencies themselves mistrust each other. Together they stand, divided they fall and Malawi with them.

Disclosure of interest

The author has no competing interests to declare.

¹⁹⁷ Twea Commission Report, *supra* note 8, at 58, 60 and 64.