

MPCC

MALAWI PARLIAMENTARY
CONSERVATION CAUCUS

THE ROLE OF CORRUPTION

in Enabling Wildlife & Forest Crime in Malawi

Review & Recommendations



ICON

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Malawi Parliamentary Conservation Caucus (MPCC)

MPCC joined a growing global network of caucuses when it was established in 2015. As a multiparty coalition of MPs committed to conservation and natural resource-based economic growth, MPCC aims to develop capacity, and raise awareness and active participation on conservation issues both between parliamentarians and stakeholders including government, civil society organisations, and the private sector.

Lilongwe Wildlife Trust (LWT)

LWT was established in 2008; its mission is to save wildlife, campaign for conservation justice and inspire people to value and protect nature in Malawi. LWT supports the Government of Malawi in its efforts to end illegal wildlife trade through a multi-disciplinary wildlife justice programme. LWT became the Secretariat for the MPCC in 2016.

International Conservation Caucus Foundation (ICCF)

The ICCF Group is a non-profit organization at the forefront of building political will to improve conservation governance through public and private partnerships, and by raising conservation awareness among policymakers through parliamentary conservation caucuses. The ICCF Group supports and facilitates the work of parliamentary caucuses to toughen national policies, coordinate across borders, and access international support for conservation.

Institute for the Conservation of Nature (ICON)

ICON is an independent, non-partisan policy and research organisation dedicated to advancing conservation and sustainable development in Malawi. It strives to connect science with decision-making for a clear and accessible discourse that engages, informs, and inspires action.

This report is furnished at the request of the Malawi Parliamentary Conservation Caucus. The information and materials that it contains have been obtained in good faith from sources deemed reliable. The validity of all this information cannot be guaranteed. The authors do not accept legal responsibility for any inaccuracy, omission or opinion this report contains.

ACRONYMS

ACB	Anti-Corruption Bureau
AU Convention	African Union Convention on Preventing and Combatting Corruption
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CIU	Crime Investigation Unit
CoP17	Conference of the Parties 17 (CITES, September 2016)
CPI	Corruption Perception Index
DNPW	Department of National Parks and Wildlife
DoF	Department of Forestry
DPP	Director of Public Prosecutions
ETIS	Elephant Trade Information System
FATF	Financial Action Task Force
FIA	Financial Intelligence Authority
GoM	Government of Malawi
IACCWC	Inter-Agency Committee on Combatting Wildlife Crimes
ICCF	International Conservation Caucus Foundation
ICON	Institute for the Conservation of Nature
JIT	Joint Investigation Teams
LWT	Lilongwe Wildlife Trust
M&E	Monitoring and Evaluation
MP	Members of Parliament
MPCC	Malawi Parliamentary Conservation Caucus
MPS	Malawi Police Service
NACS-II	National Anti-Corruption Strategy II
NIS	National Integrity System
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community
SADC Protocol	SADC Protocol Against Corruption
SADC LEAP	SADC Law Enforcement and Anti-Poaching Strategy
TI	Transparency International
UNCAC	United Nations Convention Against Corruption
UNODC	United Nations Office on Drugs and Crime
UNTOC	Convention on Transnational Organised Crime
WCIU	Wildlife Crime Investigation Unit

TERMINOLOGY

Wildlife and forest crime

This report follows the definitions of UNODC and CITES. **Wildlife and forest** as defined by UNODC¹ refers to all fauna and flora, including animals, birds and fish, as well as timber and non-timber forest products.

UNODC defines **wildlife and forest crime** as the taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna and flora, including timber and other forest products, in contravention of national or international law.

Therefore, *wildlife crime* can include offences related to flora, timber and non-timber forest products. However, offences referring to flora, timber and non-timber forest products are often more commonly referred to as *forest crime*. For the purposes of this report, the term 'forest crime' will be used in relation to those involving trees and plants and 'wildlife crime' will be used to describe offences involving wild animals.

Specimens, parts and derivatives

CITES defines **specimen** as any animal or plant, whether alive or dead and **part** as any part of an animal or plant (e.g., skin, shell, root) whether raw or processed in a simple way (e.g., preserved, polished, etc.); parts are usually readily identifiable. **Derivatives** are any processed part of an animal or plant (e.g., medicine, perfume, watch strap).²

Corruption

As noted in the National Anti-Corruption Strategy (NACS-II), "the Corrupt Practices Act of the Laws of Malawi does not give a singular definition of **corruption** but instead lists several acts that constitute the crimes of corruption".³ While this report acknowledges the acts listed in the NACS-II, it offers the use of the acts of corruption agreed upon by the legally binding United Nations Convention against Corruption (UNCAC), keeping in line with promoting international law and best practices.

UNCAC is the only universal, legally binding anti-corruption instrument; it recognizes that corruption is a continuously evolving phenomenon that is affected by various factors.⁴ Legal frameworks therefore differ in their descriptions of corruption. The Convention does, however, provide a baseline list of universally agreed acts of corruption (see Box 2), leaving each State free to go beyond the minimum standards set out in the Convention.⁵

Organised crime

The UNODC Wildlife Trafficking Report, May 2020, defines **organised crime** as involving criminal groups of three or more people working together for a period of time, with the aim of committing one or more serious crimes in order to generate financial or material benefits, often by providing illicit goods and services. **Transnational organised**

¹ UNODC Wildlife and Forest Crime Overview. <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/overview.html>.

² CITES Glossary. <https://www.unodc.org/unodc/en/wildlife-and-forest-crime/overview.html>.

³ NACS-II <https://acbmw.org/wp-content/uploads/2020/03/NACS-II-1.pdf>.

⁴ UNODC, *United Nations Convention against Corruption* (2004).

⁵ UNODC, *United Nations Convention against Corruption* (2004).

criminal groups operate across borders, launder the proceeds of their crimes, corrupt officials or engage in corrupt acts, and actively work to obstruct justice.⁶

Pursuant to the Convention on Transnational Organized Crime (UNTOC), **serious crime** refers to an offence punishable by a maximum penalty of at least four years of imprisonment. By increasing the maximum penalties for the most serious types of wildlife offences, some countries have started to frame these offences as serious crimes in their national legislation; combined with their transnational nature, these crimes fall under the scope of UNTOC, and therefore governments can benefit from the various tools for international cooperation contained in the Convention.⁷

Supply chains

A **supply chain** is a set of actors involved in the (licit or illicit) flow of products, services, information and finances from the source to the end customer. A common model to describe the illegal supply chain in the wildlife and forest trade uses six different trade levels: poachers, runners or brokers, intermediaries, exporters, importers/wholesalers and retail traders. Often more than one group is involved in the supply chain, fulfilling different roles.⁸



Malawi's largest seizure of ivory: 2.6 tonnes confiscated by Malawi Revenue Authority which intercepted a shipment in Mzuzu in the Northern region of Malawi in 2015. © MPS

⁶ UNODC World Wildlife Crime Report. Trafficking in protected species (2020). https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf

⁷ Ibid.

⁸ Ibid pg. 111.

FOREWORD

In 2016, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) identified Malawi as a regional hub for wildlife trafficking syndicates⁹. Legislation and governance were weak, enforcement poor, and pervasive levels of corruption were a critical enabler for illicit operations. Wildlife criminals could operate with relative impunity and the largest ivory seizure of all time reported to CITES (7 tonnes seized in 2002) was exported from Malawi.¹⁰

Five years on, significant progress has been made. Thanks to new legislation, a progressive investigations and prosecutions model and increased inter-agency cooperation, Malawi is now viewed globally as hugely successful model for combating wildlife crime, rather than a country of primary concern.

The number of prosecutions has greatly increased, and sentences are now more commensurate with the gravity of the offence. From 2010-15, the average sentence for wildlife crime offences was a fine of USD \$40 and only two custodial sentences had been given. The custodial conviction rate now stands at c. 90%, averaging at 4.5 years, while privately prosecuted cases have resulted in convictions of up to 18 years, with no option of a fine. In the landmark case in 2020, custodial sentences of 11 years were handed down to leading members of an organised crime group, which had been trafficking ivory and rhino horn in Malawi and across the region for at least a decade.

MPCC has played a key role in improving criminal justice by pushing illegal wildlife trade to the top of the political agenda, facilitating cross-sector dialogue, and expediting the much-needed policy reform. However, it is critical that momentum is maintained, and addressing corruption will undoubtedly sit at the heart of this next chapter. Alongside money laundering and violence, it is a key hallmark of such organised crimes.

Of particular concern is the illicit charcoal trade, which is driving Malawi's rates of deforestation to catastrophic levels. Supply chains are becoming increasingly controlled by illicit trafficking syndicates and facilitated by a network of corrupt and greedy individuals employed across multiple government agencies. Recent commitments made by the Department of Forestry to hold the perpetrators to account are encouraging, as part of a progressive multi-disciplinary model which it is hoped will emulate successes similar to that seen within the wildlife sector.

The timing of this publication is also pertinent given current national outrage on the wider topic of corruption. In a recent address to the nation, Head of State, H.E. Lazarus McCarthy Chakwera, said, "There is no Government Ministry, Department, or Agency where the culture of impunity for wastage, misappropriation, and theft is not entrenched...we cannot afford to deal with corruption selectively by focusing on the tip of the iceberg. It is the whole system that is corrupt and therefore it is the whole system we must clean up".

⁹ Report on the Elephant Trade Information System (ETIS) CoP17 Doc. 57.6 (Rev. 1) presented to the 17th Conference of the Parties of CITES. Pg.14.

<https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf>

¹⁰ *Ibid*, Pg. 19.

His Excellency has since ordered a systemic review including any legislative changes necessary to protect public resources, and further acknowledged that the review would be “resisted by so many who are benefiting from the looting, including greedy politicians from all our political parties, greedy businesses from the private sector and greedy civil servants they partner with inside the machinery”.¹¹

It is imperative that Malawi continues to investigate, and where necessary prosecute, the high-level organised crime groups which are exploiting Malawi's natural resources and using the country as a transit route for their criminal operations. Malawi's natural resources must be protected for all Malawians to enjoy and benefit from. Wildlife crime is a transnational crime; Malawi must comply with obligations under international conventions and maximise opportunities for support and international co-operation to address corruption within wildlife and forest crime. CITES recognises the enabling role of corruption in wildlife crime and in 2016 adopted a resolution, Res. Conf. 17.6 on ‘Prohibiting, preventing, detecting and countering corruption, which facilitates activities conducted in violation of the Convention’.

Thanks go to the Anti-Corruption Bureau, Department of National Parks & Wildlife, Department of Forestry, International Conservation Caucus Foundation and the Lilongwe Wildlife Trust for their dedication to this review, and also to the United States Fish & Wildlife Services for the financial support.

MPCC welcomes the recommendations within this report and is committed to working with all stakeholders to ensure that they are well considered and acted upon to combat the enabling role of corruption within wildlife and forest crime. MPCC will continue to raise the issue of natural resource protection and combating wildlife and forest crime at the highest levels of government.



Hon. Werani Chilenga

Co-Chairperson, Malawi Parliamentary Conservation Caucus



Hon. Chilenga (centre) and Brighton Kumchedwa (right, also a co-author of this report) at a televised panel discussion on the illicit bushmeat trade. © DNPW

¹¹ Sixth National Address on the War on Covid-19 By His Excellency Dr. Lazarus McCarthy Chakwera, President of the Republic of Malawi.

SUMMARY OF RECOMMENDATIONS

The recommendations are presented in detail in Part II.

1. Develop national and departmental level strategies to address corruption within wildlife and forest crime.

1.1 Embed Malawi's National Anti-Corruption Strategy-II (NACS-II) recommendations into the work plans of Department of National Parks and Wildlife (DNPW) and Department of Forestry (DoF).

1.2 Develop National Action Plans under the SADC Regional Strategy for Combating Transnational Organised Crime and the SADC Law Enforcement and Anti-Poaching (LEAP) Strategies and ensure these include measures to prevent and manage corrupt practices.

1.3 Inter-Agency Committee on Combating Wildlife Crime (IACCWC) should take a leading role in co-ordinating monitoring and evaluation (M&E) of the NACS-II for wildlife and forest crime.

2. Legislation and policy developments.

2.1 Increase internal transparency and accountability of wildlife and forest management authorities.

2.2 Ensure all incidences of corrupt practices by public officials are investigated as part of wildlife and forest crime cases.

2.3 Review closed cases of high-level wildlife and forest crime to determine potential corruption offences that were not investigated and develop lessons learnt.

2.4 Increased reporting of corruption in court processes.

2.5 Enforce standard procedures and ensure full transparency in land gazetting, forestry concessions and other revenue generating activities within the Department of Forestry.

3. Review current whistleblowing protections and ensure use and enforcement.

3.1 Review current provisions in the Corrupt Practices Act and other relevant legislation and where necessary revise these to ensure appropriate protections are in place for informers.

4. Conduct parallel financial investigations alongside corruption and wildlife and forest crime investigations.

4.1 Review the recommendations within the FATF (2020) report on Money Laundering and the Illegal Wildlife Trade.

5. Improve accountability and transparency through improved public access to information, and capacity building of the media.

5.1 Improve transparency of information to the public from wildlife and forestry (and fisheries) sectors.

5.2 Support media engagement in wildlife and forestry crime cases

5.3 Build capacity and awareness of investigative journalists on corruption within the associated sectors.

6. Improve processes within the CITES Scientific Authority (SA) and Management Authority (MA) to a) increase transparency and limit discretionary power, b) reduce opportunities for fraudulent permitting, c) automate revenues.

6.1 Separate Malawi's CITES SA and MA.

6.2 Digitise the permit system for import/export of CITES species.

6.3 Automate sources of DNPW revenues e.g., park fees and permits.

7. Ensure that the WCIU complies with best practice on investigating corruption within wildlife and forest crime investigations.

7.1 Review legal options for wildlife and forest crime corruption investigations.

7.2 Utilise the UNODC Wildlife and Forest Crime Analytic Toolkit.

8. Promote multi-agency cooperation.

8.1 Review the achievements and effectiveness of the IACCWC to date and propose recommendations where necessary to improve multi-agency working practices including on a joint response to tackling corruption within the wildlife and forestry sectors. Include anti-corruption measures in IACCWC's Terms of Reference and Action Plan.

9. Enhance regional & international cooperation.

9.1 Increased communication among regional joint investigations units.

9.2 Improve prosecutorial use of Mutual Legal Assistance.

9.3 Support the adoption of a Fourth Protocol under the UNTOC against the illicit trafficking in species of wild fauna and flora.

EXECUTIVE SUMMARY

MPCC commissioned this report to review current anti-corruption practices within the wildlife and forestry sectors, and to understand how utilising international best practices to tackle corruption could support the government's efforts to combat corruption within wildlife and forest crime. Globally, there has been limited interaction between conservation and anti-corruption communities, and it is important to ensure developments in one field do not supersede the other.¹² The report reflects on national, regional and international research and best practice to outline the extent and impact of corruption in the illegal trafficking chains, and the opportunities to reduce such practices, as outlined in the recommendations.

The 2016 Report on the Elephant Trade Information System (ETIS)¹³ presented to the 17th Conference of the Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) listed Malawi as a country of 'primary concern' due to its role as an entrepôt or exit point within southern Africa. The report noted that the prospect of trade governance failure and the potential for considerable quantities of illicit ivory traffic to flow through Malawi without being detected was of concern.

Since 2016, Malawi has made significant progress in addressing these concerns. The establishment of Malawi's first specialised Wildlife Crime Investigations and Intelligence Unit (WCIU), and the Wildlife Justice Programme has already seen impressive improvements in investigations and prosecutions. However, to date, despite reports of corruption in several high-profile wildlife cases, incidents of corruption have not regularly or systematically been addressed within wildlife crime cases in Malawi. In addition, as the MPCC noted in their '2018-20 MPCC Priority Areas', it is not just wildlife crime that requires attention; Fisheries, Forestry and Mining sectors also fall prey to corruption. Corruption is often perpetrated with support from powerful political figures, and in the context of factors such as weak deterrent legislation and poor law enforcement. In addition to this, political will has so far been lacking in some sectors in terms of proactive commitment and this report seeks to provide strategies to mitigate existing inter-agency disparity.

The economic, social and environmental consequences of corruption share similarities globally and unabated can contribute to the devastation of a country's natural resources. Analysing Malawi's current situation can help MPCC push for tailored policy, legal and social changes geared towards reducing corruption and wildlife and forest offences. The challenges faced in Malawi with regard to corruption and illicit trade, and associated offences related to both, are considerable.

However, a proactive approach to cascading recommendations from the National Anti-Corruption Strategy-II to the relevant government agencies, utilising the powers in the amended wildlife and forestry laws, increased appreciation of the categorisation of wildlife crime as a serious crime in the courts, and a multi-agency approach in the adoption of international best practices outlined in this report will

¹² Topic Brief, Hard-won wisdom: what conservationists need to know about wildlife-related corruption, IIED, WWF, U4, December 2020.

¹³ Report on the Elephant Trade Information System (ETIS) CoP17 Doc. 57.6 (Rev. 1) presented to the 17th Conference of the Parties of CITES. <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf>.

ensure that corruption offences are investigated as part of all wildlife and forest crimes to address the contributing role of corruption in the devastation of Malawi's natural resources through wildlife and forest crime.

METHODOLOGY OF STUDY

The review utilized a mixed-methods approach combining multiple sources of qualitative and quantitative information. Verified statistical data was obtained from the agencies themselves, and from public sources, as well as qualitative and corroborated inputs from interviewees across multiple agencies.

A desk review of anti-corruption laws, policies, procedures, and other documentation was supplemented with academic and practitioner literature pertaining to anti-corruption efforts, both in Malawi and internationally, in the wildlife sector was also reviewed.

The MPCC also chaired a three-part round-table consultation series with members of the IACCWC, including director-level representation from the ACB, DNPW, DoF, Financial Intelligence Authority (FIA), Malawi Police Service (MPS) and Director of Public Prosecutions (DPP).

The authors further conducted one-on-one interviews with agency staff as required. Unfortunately, the DoF were largely unavailable during this period of consultations, however, new leadership has since committed to future cooperation.

Impounded trucks with their illicit timber cargo © DNPW



PART I INTRODUCTION TO
WILDLIFE AND FOREST
CRIME AND THE ENABLING
ROLE OF CORRUPTION

INTRODUCTION

Corruption is 'at the root of the problem' of wildlife crime¹⁴ and any commitments to address wildlife trafficking will be dependent on addressing corrupt practices within law enforcement agencies, wildlife departments, the judiciary and the private sector. Corruption is a national, regional and international issue, and Malawi is no exception.

This report examines how Malawi's governance structures allow for embedded patterns of corruption and how this becomes an enabling factor in wildlife and forest crime. The recommendations offer proposed actions for MPCC, government institutions and partners to tackle the corruption within wildlife and forest crime, with the parallel benefits of reducing institutional corruption more generally and protecting Malawi's precious wildlife and forests.

The report draws together best practices at a national and international level to provide actionable recommendations to combat corruption in wildlife and forest crime in Malawi and thereby contribute to wider regional and international efforts. The analysis and recommendations focus on institutions rather than individuals at the community level, who are more likely driven by immediate financial needs compared to public officials participating in a system of entrenched corruption.¹⁵

To achieve this, the report will:

- Present the current status of wildlife and forest crime in Malawi, discuss progress to date in combatting these crimes, and outline the on-going challenges.
- Discuss the mechanisms by which corruption is currently enabling wildlife and forest crime in Malawi and transnationally and its effect on the conservation of natural resources.
- Review national, regional and international legislation, tools and strategies in place to address corruption in wildlife and forest crime.
- Propose recommendations to reduce the enabling effect of corruption on wildlife and forest crime in Malawi.

Wildlife and forest crime are major contributing factors to the threatened status of many species of plants and animals; indeed, illicit timber trafficking can result in the destruction of vast areas of primary forest. Organised criminal groups benefit from wildlife and forest crime while destroying the natural resources on which national economies and local livelihoods depend, thus undermining conservation and development efforts. In recognition of this, Sustainable Development Goal 15 includes a specific target on wildlife trade: *'Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products'*.¹⁶

The extremely high value of some illegally traded wildlife and forest products (e.g., ivory, rhino horn, tropical hardwoods, rare live parrots and tortoises) and the potential for high profits, fuels and incentivises corruption at all levels. Historically, weak law

¹⁴ Global Initiative against Transnational Organized Crime Tipping Point: Transnational organised crime and the 'war' on poaching, p56. https://globalinitiative.net/wp-content/uploads/2016/07/TGIATOC-Tipping-Point_Transnational-organised-crime-and-the-'war'-on-poaching-web.pdf

¹⁵ Basel Institute, Wildlife Trafficking in Uganda, Working Paper, October 2020

¹⁶ UN Sustainable Development Goals. <https://www.un.org/sustainabledevelopment/biodiversity/>.

enforcement and a lack of recognition of wildlife and forest crime as a serious crime has also led to the perception of it as a low-risk and high reward crime.

Box 1. International declarations on corruption in wildlife crime

The enabling effect of corruption in wildlife and forest crime is now widely accepted. International bodies and conventions such as the **United Nations General Assembly** (UNGA), the **United Nations Convention Against Corruption** (UNCAC), **United Nations Convention against Transnational Organised Crime** (UNTOC) and the **Convention on International Trade in Endangered Species of Wild Fauna and Flora** (CITES) have all issued resolutions and declarations detailing the importance of preventing and addressing corrupt practices throughout the wildlife trade supply chain. For example, the **UNGA** in 2017 adopted Resolution 71/326 'Tackling illicit trafficking in wildlife', reaffirming a previous similar resolution in 2015, and calling on all Member States to '*prohibit, prevent and counter any form of corruption that facilitates illicit trafficking in wildlife and wildlife products, including by assessing and mitigating corruption risks in their technical assistance and capacity-building programmes related to wildlife, by strengthening their capacity to investigate and by prosecuting such corruption*'.¹⁷

Box 2. Various acts of corruption as provided by UNCAC¹⁸

Various acts of corruption

- **Active bribery:** the promise, offering or giving to a national public official, a foreign public official or an officials of a public international organisation, directly or indirectly, of an undue advantage, in order to act or refrain from acting in matters relevant to official duties.
- **Passive bribery:** the solicitation or acceptance by a national public official, a foreign public official or an official of a public international organisation, directly or indirectly, of an undue advantage, in order to act or refrain from acting in matters relevant to official duties.
- **Embezzlement:** theft, diversion or misappropriation of property, funds, securities or any other item of value entrusted to a public official in his or her official capacity.
- **Bribery in the private sector:** active or passive bribery, directly or indirectly, to or by any person who directs or works, in any capacity, for a private sector entity, to act or refrain from acting in breach of his or her duties.
- **Embezzlement of property in the private sector:** embezzlement by any person who directs or works, in any capacity, for a private sector entity.
- **Abuse of functions:** performance of, or failure to perform an act, in violation of the law, by a public official in order to obtain an undue advantage.
- **Trading in influence:** abuse of a public official's real or supposed influence with an administration, public authority or State authority in order to gain an advantage or influence particular outcomes.
- **Illicit enrichment:** a significant increase in assets of a public official or that cannot reasonably be explained as being the result of his or her lawful income.
- **Money laundering:** the concealment of the origins of proceeds of crime, often by means of conversion or transfers involving foreign banks or legitimate businesses.
- **Concealment:** hiding or continued retention of property, knowing that it has resulted from corruption.

¹⁷ Tackling illicit trafficking in wildlife. Resolution adopted by the General Assembly on 11 September 2017. <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N17/276/60/PDF/N1727660.pdf?OpenElement>

¹⁸ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020.

https://www.unodc.org/documents/corruption/Publications/2020/Scaling_back_corruption_FINAL.pdf .

As stated in the Annex to the 2017 G20 Leaders Declaration, corruption has a multitude of effects on wildlife crime, including facilitating the establishment of an illegal market and the mixing of illegal with legal products, reducing opportunities for legitimate revenue generations and livelihoods, undermining enforcement efforts to curb poaching and trafficking and mismanagement of the apprehension and prosecution of offenders.¹⁹

More recently, recognition of the large profits derived from wildlife and forest crime, and the associated corruption offences, has led to a focus on these crimes by financial bodies and institutions and anti-corruption task forces. For example, in 2019, the UNGA reiterated its call for all members 'to amend national legislation, as necessary and appropriate, so that offences connected to illegal wildlife trade are treated as predicate offences for money laundering'.²⁰

Two pertinent sets of guidelines were published in 2020 focusing on the financial and corruption aspects of wildlife and forest crime. The Financial Action Task Force (FATF) published a study on money laundering and the illegal wildlife trade, which found that despite the global impact of wildlife crime, many jurisdictions fail to prioritise combatting financial flows connected to illegal wildlife trade in line with risk, often due to a lack of knowledge, legislative basis and resources. The report goes further to state that 'jurisdictions should view the proceeds generated by illegal wildlife trade as a global threat, rather than as a problem only for those jurisdictions where wildlife is illegally harvested, transited or sold'.²¹ This report also draws on the recommendations made in UNODC's 2020 report 'Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities'.²²

The transnational nature of all high value wildlife crime necessitates not only a national multi-agency approach, but also sharing of intelligence and inter-agency collaboration in investigations across borders. To date, corruption within high-profile wildlife and forest crimes in Malawi has not been adequately addressed, and no public officials have been charged with corruption offences, despite clear evidence of their involvement. At a regional level, the SADC Law Enforcement and Anti-Poaching Strategy (due to be updated in 2021) offers recommendations for SADC-wide co-operation; Malawi is a member state and will be expected to develop a national action plan for combating transnational organised crime²³. The provisions within these declarations, international strategies and guidelines are discussed in detail in Part II of this report.

¹⁹ Annex to G20 Leaders Declaration. G20 High Level Principles on Combatting Corruption Related to Illegal Trade in Wildlife and Wildlife Products <http://www.g20.utoronto.ca/2017/2017-g20-acwg-wildlife-en.pdf>.

²⁰ UN General Assembly Resolution 73/343, <https://undocs.org/en/A/RES/73/343>.

²¹ FATF (2020), *Money Laundering and the Illegal Wildlife Trade*, FATF, Paris, France, www.fatf-gafi.org/publications/methodandtrends/documents/money-laundering-illegal-wildlife-trade.html

²² UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020.

https://www.unodc.org/documents/corruption/Publications/2020/Scaling_back_corruption_FINAL.pdf

²³ SADC Law Enforcement and Anti-Poaching Strategy 2016-2021.

<https://dc.sourceafrica.net/documents/26991-SADC-Law-Enforcement-and-Anti-Poaching-Strategy.html>.

The high financial value of wildlife and forest products, and the multi-staged transit routes to move goods from Africa to destination countries, as well as the financial transactions involved through trade and the proceeds of crime, results in multiple corruption risks across a range of institutions. Corruption risks start when criminals are planning the crime, through procurement of the commodity, transport to the end point of sale and also throughout investigations and prosecution of offenders. Note that high-level wildlife crimes, involving millions of dollars, can include both low-level bribery (e.g., bribing park rangers for information on the whereabouts of specific animals, or to customs officials for safe-passage of commodities) through to sophisticated money-laundering operations. Box 3 provides some examples of corruption risks within wildlife and forest crime:

Box 3. Examples of corruption risks throughout a wildlife crime supply chain

Wildlife officials

- Bribery and abuse of office offences to allow prohibited access to national parks (or stockpiles of ivory and other wildlife products), providing information on location of animals, diversion of anti-poaching patrols to another area and allowing poachers to leave the Park with prohibited items (e.g., elephant tusks).
- Bribery and abuse of office offences to provide false permits to move illegal goods in or out of the country.
- Abuse of functions or trading in influence during tendering processes e.g., for a new concession area.

Customs officials

- Bribery and abuse of office offences to allow illegal goods through roadblocks or in the provision of false documentation, or bribed to fail to correctly conduct their duties, e.g., in using the scanners or performing physical searches of a passenger's luggage or cargo items where illicit goods are concealed.

Handling agents, post office and courier service staff

- Bribery in the private sector offences to allow the passage of illicit goods through their companies.

Police officers

- Bribery and abuse of office offences in mishandling investigations, e.g., provide tip-offs ahead of searches for people/commodities, lenient bail terms, deliberate mistakes/negligence in evidence gathering and case management.

Prosecutors and judiciary

- Bribery and abuse of office in handling cases and handing down weak sentences. Theft of evidence (e.g., ivory tusks) has also been recorded by court clerks.

Financial institutions and international money transfer companies

- Bribery to e.g., bank staff or those in money transfer companies to facilitate money-laundering offences.

BACKGROUND ON WILDLIFE AND FOREST CRIME

Wildlife and forest crime is a global issue, as UNODC reports, “most countries play a role as source, transit, transshipment hub or destination for contraband wildlife and wildlife products”.²⁴ As a major transnational crime, criminal gangs trading in wildlife are using the same techniques for wildlife trafficking as for drug, arms and people trafficking and exploit similar gaps in national law enforcement and criminal justice systems. Wildlife and forest crime has multiple negative effects:

- Damages biodiversity and ecosystems, causing extinction as well as cascade effects that can damage water supply, food production and habitats on which human beings depend.
- Poses public and animal/plant health risks by circumventing measures that regulate legal trade in animals, plants and timber (for example zoonotic diseases such as COVID-19 spread to humans through unsanitary conditions in wildlife trade as well as through the effects of habitat loss, intensive agriculture etc).
- Robs countries of revenue from tax, duty and the sale of licenses and concessions, and hinders countries' efforts to manage their natural resources for the benefit of the national economy and socio-economic development.
- Widely recognized as a serious threat to national and international security. Much illegal wildlife trafficking is carried out by organized, often international, crime networks, and some may even fund terrorist groups and civil conflict.

Wildlife crime in Malawi

Malawi is a regional trafficking and processing hub for wildlife trafficking syndicates operating in Southern Africa and it has been linked to some of the largest ever seizures of ivory. Its geographical location, neighbouring countries with large wildlife populations (Zambia, Mozambique, Tanzania, Zimbabwe) and its historically weak law enforcement, porous borders and reported high levels of corruption puts Malawi at high risk for wildlife and forest crime. This risk is exacerbated since in addition to large wildlife populations, Mozambique, Tanzania and Zimbabwe have high levels of criminality and low levels of resilience.²⁵

Commonly trafficked, high value wildlife products in Malawi include ivory, rhino horn, and increasingly live pangolins and their scales (pangolin meat is consumed in Asian countries and their scales are also used in traditional medicines). This correlates with the global trade; in 2014-18 seizures of elephant, rhino and pangolin parts constituted 56.3% of total seizures based on standardised financial values (UNODC World Wise Database, UNODC, 2020).²⁶

Investigations in Malawi have also uncovered trafficking in CITES I & II listed species which are less well known and that have now been afforded stronger protection under regulations, such as the Zambezi flapshell turtle (*Cycloderma frenatum*), African grey parrot (*Psittacus erithacus*) and a number of orchid species (some of which are

²⁴ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020.

²⁵ Organised Crime Index – Africa, ENACT, 2019. https://globalinitiative.net/wp-content/uploads/2019/09/enact_report.pdf.

²⁶ World Wildlife Crime Report, UNODC, 2020. https://www.unodc.org/documents/data-and-analysis/wildlife/2020/WWLC20_Summary_Overview.pdf.

endemic, all of which are traded as *chikanda*, a savoury 'cake' made from grinding the orchid tubers).

The 2016 Report on the Elephant Trade Information System (ETIS)²⁷ presented to the 17th Conference of the Parties of CITES (CoP17) listed Malawi as a country of 'primary concern' due to its role as an entrepôt or exit point within Southern Africa. The report noted that the prospect of trade governance failure and the potential for considerable quantities of illicit ivory traffic to flow through Malawi and other similarly categorised countries without being detected was of concern. Consequently, the CITES Secretariat requested Malawi to develop and implement a National Ivory Action Plan (NIAP). Malawi's NIAP and subsequent reports were approved by CITES.

The ETIS report to the next CITES conference, CoP18, highly commended Malawi's progress, noting that Malawi had 'implemented comprehensive measures and activities combating illegal trade in ivory and is no longer identified as a priority Party (author note: *i.e.*, of concern) in the report prepared for CoP18'²⁸. Consequently, the CITES Secretariat recommended that Malawi should exit the NIAP process.

Charcoal supplying local markets is increasingly controlled by organised syndicates © LWT



²⁷ Report on the Elephant Trade Information System (ETIS) CoP17 Doc. 57.6 (Rev. 1) presented to the 17th Conference of the Parties of CITES. <https://cites.org/sites/default/files/eng/cop/17/WorkingDocs/E-CoP17-57-06-R1.pdf>.

²⁸ SC71 Doc. 11 Annex 3. National Ivory Action Plan Process. Pg. 4. <https://cites.org/sites/default/files/eng/com/sc/71/E-SC71-11-A3.pdf>.



Members of the Lin-Zhang gang leaving court during the trial in 2020. They have since been convicted. © MPS

Case study 1: the Lin-Zhang Gang

In November 2020, members of what is believed to be Southern Africa's most prolific wildlife trafficking syndicate were sentenced to a total of 56 ½ years in prison. Ten Chinese nationals and four Malawians were convicted on trafficking offences related to the possession of pangolin, rhino horn, ivory and hippo teeth, all of which are listed or protected species under CITES and under threat of extinction, in part, due to the illegal wildlife trade.

The 'Lin-Zhang gang' had been operating out of Malawi for at least a decade and Malawi's victory was met with global commendation. The landmark case is notable both for the scale of the operation and because it led to the first non-African nationals being sentenced for wildlife offences in Malawi. Repeat offenders, Quinhua Zhang and Li Hao Yuan, were both jailed for 11 years, sending a powerful message to organised crime actors.

Whilst the first arrests occurred as far back as May 2019, investigations and prosecutions are ongoing. At the time of writing (March 2021), the alleged kingpin, Yunhua Lin, remained on trial for money laundering and rhino horn trafficking offences, and Lin Hui Xin - the daughter of Mr Lin and Mrs Zhang, and the husband of Mr Yaun – had just been arrested for alleged financial crimes.

This syndicate was highly organised and operated transnationally over many years; it is therefore inconceivable that the syndicate could achieve this level of criminality without the involvement of corrupt officials in Malawi and other countries.

"It is critical that wildlife criminals can expect to feel the full weight of the law and the message needs to be loud and clear: Malawi is no longer a playground for the likes of the Lin-Zhang syndicate that exploit our natural heritage, damage our economy, incite corruption and pose a risk to national security".

Brighton Kumchedwa, Director of the DNPW

Forest crime in Malawi

Malawi's fast-growing population, extreme reliance on biomass for cooking energy, poor forest management and weak law enforcement have all driven Malawi's deforestation to unsustainable levels. Investigating illegal timber trafficking presents many challenges, such as species identification, which is often only possible by experts and sometimes necessitates specialised testing. Raw timber may be shipped from the source country to an intermediary country for processing before the final products are exported again to the destination country. Timber is not sold in illegal markets in the same way as illegal drugs or some wildlife products are, but rather it is traded into legal industries, thereby obscuring its illegal origin.²⁹

Illegal logging of hardwoods and roundwoods in Lengwe National Park, Chikwawa is a major contributor to the high deforestation rate in Malawi, which is reported to be the highest rate of deforestation in the SADC³⁰. Much of the illicit activity went unchecked for years, however in 2016, various members of a syndicate trading in high value Mopane trees were convicted in Malawi's largest ever recorded illegal logging case.

A lack of enforcement in the timber trade in Malawi is a major concern and in 2019, Malawi successfully applied to include Mulanje Cedar (*Widdringtonia whytei*) and African Mukula (*Pterocarpus tinctorius*) on Appendix II of CITES to provide additional protection to these species that are threatened by trade. The current trade in edible endemic orchids is also poorly understood and monitored; illegal harvesting and trade to Zambia may represent a threat to several species.

The demand for wood fuels now outstrips sustainable supply and the charcoal trade is becoming increasingly organised to satisfy urban demand. The direct impacts of this forest habitat loss are devastating and go far beyond the current 'energy crisis' to decreased soil fertility, declining agricultural productivity, and decreased resilience to the climate shocks and extreme events that will continue to become more frequent because of global climate change.

A new focus on prosecuting illegal charcoal producers and traders is already paying dividends, with several recent convictions. In February 2021, the first ever custodial sentence in Malawi for charcoal production was handed down by a magistrate in Dowa to two offenders found producing charcoal in Kongwe Forest Reserve. The damage caused was estimated at MK 760, 000 (approx. USD \$976.00) and in handing down the 2.5-year sentence to each offender, the magistrate stated that he hoped that the sentence would be a deterrent to would-be offenders.³¹

²⁹ UNODC World Wildlife Crime Report. Trafficking in protected species, 2020. Pg 13.
https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf .

³⁰ Mauambeta, D.; Chitedze, D.; Mumba, R. Status of Forests and Tree Management in Malawi; Coordination Union for Rehabilitation of the Environment (CURE): Lilongwe, Malawi, 2010. Cited by Ngwira, S. and Watanabe, T. (2019). *An Analysis of the Causes of Deforestation in Malawi: A Case of Mwazisi*. Pg 1: Forest cover in Malawi reduced from 47% in 1975 to 36% in 2005. This is the highest deforestation rate in the Southern African Development Community, representing a net loss of 30,000 to 40,000 ha/yr.

³¹ Nyasa Times <https://allafrica.com/stories/202012090358.html>.

Case study 2: the Lengwe loggers

In May 2017, 35 men – including 2 Chinese, 22 Mozambican and 1 Mozambican-Portuguese national were convicted in Malawi's largest ever illegal logging case and each sentenced to up to 18 months in prison. Sentencing was based on combined charges of illegally entering a protected area, illegally possessing and using prohibited weapons, and illegally disturbing protected species in a National Park.

An estimated 2,000 hectares of woodland around Lengwe National Park, Chikwwa, southern Malawi – equivalent to 2,440 football fields – had been deforested in 2016 alone, according to satellite imagery analysis. Roads and paths had been cleared up to 5km from the Mozambican border to extract the wood from deep inside the park, causing substantial ecological damage. Equipment confiscated following the arrests, included six tractors, a forklift truck, a bulldozer, a 30-tonne truck, a Land Cruiser, a Toyota Hilux, four motor bikes and a chain saw, reflecting the scale of the operation.

The syndicate focused on large, high value Mopane trees; however, the associated disturbance also destroyed the surrounding habitat of an important catchment area of the Shire River, including the loss of up to one million trees. The roads had subsequently opened up the protected area to further degradation and extraction from illegal charcoal burners and poachers.

Some of those convicted appealed the sentence, but the appeal was rejected by the High Court, which instead doubled the prison sentences to up to 36 months. The forfeiture of the vehicles and logging equipment to the Malawi Government, valued at approximately USD \$500,000, was also upheld.

A further appeal in the Supreme Court included a bail application, which was granted. The accused currently remain at large and completed approximately half of the sentence imposed by the High Court.

This was a sophisticated crime and it resulted in clearly visible and large-scale destruction of forest in a National Park using heavy machinery over a sustained length of time, which would seem to be impossible without the involvement of corrupt officials.



Left: Aerial view of the site set up to process the illegally felled trees.
Right: One of the confiscated vehicles used by the syndicate. © DNPW, Malawi

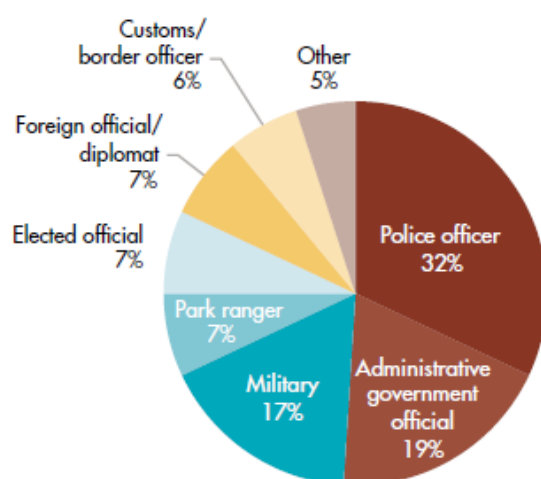
Actors involved in wildlife and forest crime

Wildlife crime requires organised networks of actors acting illegally; it also requires a governance system open to exploitation and public officials in place along the supply chain to issue access rights and permits. Often, the infrastructure necessary to support corrupt public officials “hides behind a veil of a functioning bureaucracy, where rules and regulations are in place but rendered ineffective at the same time”.³²

As Box 2 lists various acts that constitute corruption, there is an equally broad range of actors involved. They can include the following:

- Wildlife and forestry department staff (field level law enforcement and anti-poaching officers as well as ‘headquarters’ technical and admin staff)
- High-level public officials (e.g., politicians and members of the judiciary)
- Customs and police officers
- Military personnel
- Private hunting firms and hunters,
- Local elites
- Poachers, traders
- Farmers and pastoralists
- Conservation organisations
- Private companies (e.g., banks, international money transfer companies, handling agents and couriers, airlines)

The World Wildlife Crime Report 2020³³ presents data collated by the OECD³⁴ on the Government agency or role of actors found to be corrupt in available court cases, included below. Police officers and administrative officials make up over half of all recorded incidences of corruption in this data set.



³² Basel Institute, Wildlife Trafficking in Uganda, Working Paper, October 2020, Pg. 26.

³³ UNODC World Wildlife Crime Report. Trafficking in protected species, 2020. Pg. 13.

https://www.unodc.org/documents/data-and-analysis/wildlife/2020/World_Wildlife_Report_2020_9July.pdf

³⁴ Organisation for Economic Co-operation and Development (OECD), ‘Strengthening Governance and Reducing Corruption Risks to Tackle Illegal Wildlife Trade: Lessons from East and Southern Africa’, *Illicit Trade*, 2018.

Illicit actors rely on collusive relationships with public officials in informal governance networks with relevant access and authority at local and central levels.³⁵ Additionally, “companies and economic elites with vested interests in access to land or resources may finance political networks and engage in *quid pro quo* arrangements with politicians at various levels in order to manipulate access and permitting processes”.³⁶

In a fair system with legitimate governance, trade and harvest of natural resources, like forest products, should adhere to government regulations including those on sustainability, legality and disease risk, so exploitation of wildlife can be transparently tracked and monitored.³⁷ Corruption in the wildlife sector undermines regulations that promote sustainability and legality and can divert revenue, which should have been invested in public services and conservation.³⁸ The COVID-19 global pandemic has highlighted the role of the wildlife trade in the catastrophic spread of a zoonotic disease. Corruption which facilitates illegal trade e.g., through provision of false permits also increases the risk of zoonotic diseases since governments are unable to effectively monitor the domestic and international wildlife trade.



Pangolins are the most trafficked mammal in the world, and are threatened with extinction as a result. Arrests for pangolin trafficking tripled for the past two consecutive years in Malawi. © LWT

³⁵ Basel Institute, Wildlife Trafficking in Uganda, Working Paper, October 2020, p. 26.

³⁶ World Wildlife Fund, Topic Brief, Accessing, harvesting and trading in wildlife: Corruption in the use of permits and allocation of access rights, October 2020.

³⁷ *Ibid.*

³⁸ *Ibid.*

CORRUPTION: WHY IT'S A PROBLEM

Corruption is an inappropriate abuse of authority among government officials or members of private organisations in exchange for benefits for themselves or others. Bribery is perhaps the most well recognised form of corrupt behaviour but abuse of power can take many forms including fraud, forgery, turning a blind eye to crimes, extortion, coercion, making decisions that favour friends or relatives, nepotism, trading in influence, embezzlement and laundering of the proceeds of crime.³⁹

The effects of corruption have a devastating impact on developing and transition countries, with estimates of \$20 billion to \$40 billion per year stolen by public officials, a figure equivalent to 20 to 40 percent of official development assistance flows.⁴⁰ While some countries have been able to carry out significant reductions in corruption, the perception of corruption remains high throughout much of the world.

According to Transparency International's (TI) Corruption Perceptions Index (CPI) 2020, on a scale from 0 - 100, zero being highly corrupt and 100 very clean, sub-Saharan Africa is the lowest scoring region with an average of 32/100, with Malawi scoring 30.⁴¹ Malawi therefore ranked 129/180 countries, the average global score being 43/100 with 2/3rds of countries scoring below 50/100.⁴² As the NACS-II points out, a low CPI score deters foreign direct investment because of the association between corruption and the cost/ease of doing business in deciding where to invest.⁴³

Legitimate foreign businesses could be at a disadvantage when operating in economies where they are in competition with corrupt actors who can circumvent licensing and certification requirements designed to regulate trade. In other words, to increase investment and development, Malawi should work to ensure "recipients of access rights and permits should be confident that they will be awarded, inspected and accepted fairly, and they should understand the criteria upon which decisions are based".⁴⁴

Corruption causes other "corrosive effects on societies: it undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.⁴⁵ It destabilizes government agencies' ability to manage resources and infrastructure and enforce laws. Further, "corruption inhibits the ability of honest public officials to fulfil their mandates, whether those be managing and protecting wildlife resources, protecting borders, or managing and regulating markets for wildlife products".⁴⁶

A high perception of corruption is synonymous with a strong lack of trust in the government and its enforcement agencies, which can lead to individuals finding it

³⁹ TRAFFIC, Wildlife Crime Initiative, Strategies for Fighting Corruption Wildlife Conservation, 2015

⁴⁰ See <https://star.worldbank.org/publication/few-and-far-hard-facts-stolen-asset-recovery>

⁴¹ Transparency International (2020) Corruption Perceptions Index
<https://www.transparency.org/en/cpi/2020/index/mwi>

⁴² *Ibid.*

⁴³ Malawi National Anti-Corruption Strategy II, 2019-2024, p. 7.

⁴⁴ World Wildlife Fund, Topic Brief, Accessing, harvesting and trading in wildlife: Corruption in the use of permits and allocation of access rights, October 2020.

⁴⁵ UNODC, *United Nations Convention against Corruption* (2004), Foreword.

⁴⁶ UNODC World Wildlife Crime Report. Trafficking in protected species (2020).

acceptable to circumvent laws to benefit themselves or their families or communities. This is particularly true when the potential profit of engaging in corruption outweighs the risks, i.e., the State's ability to monitor and punish any corrupt actor for their corrupt behaviour.

Perceptions and drivers of corruption in Malawi

Economic, political, administrative, social and cultural factors foster underlying structural drivers that facilitate corruption in different ways throughout the supply chain. Corruption is often an indicator of ineffective governance dynamics and is likely to thrive in conditions where accountability is weak, and those in authoritative positions have too much unchecked discretion.

A 2017 study titled *Corruption and Law Enforcement in Malawi* authored by the University of Edinburgh's Centre of African Studies (the Edinburgh Study), established that over 90% of all officials surveyed agreed on the top three factors facilitating corruption: a lack of transparency between government and citizens, delays in corruption detection, and bias in the system as to who is investigated for corruption.⁴⁷

The Edinburgh study also found that, in the relatively small but growing number of cases where there have been some successes in the broader fight against corruption, swiftness and certainty have greater deterrent effect than the severity of punishment.⁴⁸ The study presented evidence on perceptions of selective justice, motivations of corrupt officials in the context of Cashgate and whistle-blowing and found that it was the speed of justice and the levels of certainty that came from it, thus raising the risk of being caught and sent to prison, that provided the greater deterrent effect than merely the severity of punishment.

Most perceptions of corruption are centred on allegations of falsifying receipts for procurement of input and services required for administering public services, e.g., for a training workshop, diverting government revenue and funds, and stealing government goods.⁴⁹



Protests over Cashgate © MANA

⁴⁷ The Edinburgh Study – Impact Assessment of the Law Enforcement Response to Cashgate - University of Edinburgh's Centre of African Studies School of Social and Political Science (2017) Gerhard Anders et al.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

CASHGATE

Many donors and international observers look to the 2013 'Cashgate' scandal, as it has become known, as a reference for corrupt practices in Malawi.

There was an absence of forensic digital data recovery and analysis skills prior to ACB involvement which hindered gathering intelligence of communications from phone, email or messaging which would later, in other cases, prove critical in establishing criminal association. There was no forensic financial investigation or auditing experience and a lack of general preparation and coordination. The competitiveness amongst the law enforcement agencies, the ACB and the Police's Fiscal and Fraud unit added to the obstacles of undertaking effective investigation and prosecution of complex fraud and corruption. Added to this environment of under resourced units' inexperience and confusion was the competing statutory measures that existed in the law, leading to insufficient planning for and use of means to restrain, preserve and confiscate criminal benefit.

Malawi has increasingly built upon its anti-corruption efforts, particularly since the 2013 Cashgate Scandal, most recently through NACS-II, but also through its current development agenda – Malawi Growth and Development Strategy III that emphasises eradicating corruption.

The conviction in the Nova Technologies case, which was an investigation and prosecution into fraud and corruption arising from the manipulation of the government's Integrated Financial Management Information System (IFMIS) system in 2011⁵⁰ saw the conviction in 2019 of 10 individuals for offences of theft, money laundering and abuse of office. This is an important part of the dialogue in the story of recent corruption in Malawi, exposing the undeniable collusive links between the public and private sectors, and underpins an oft held view that the 2013 Cashgate scandal was a more refined version (involving large scale abuses of IFMIS) of the attacks that occurred in 2011, and with very little done to address weaknesses in the IFMIS system that were known in the intervening period.

Prevalence of corruption in wildlife and forest crime in Malawi

Corruption is a critical enabler of wildlife and forest crime. Corrupt public officials and private sector actors and their accomplices facilitate the criminality throughout the chain from sourcing (poaching, illegal logging and fishing), through to consolidation of stocks to processing, transit and export, followed by sale and laundering of the proceeds. Further, corruption can occur during apprehension or arrest, prosecution and judicial decisions and sentencing and detainment. It can be ad hoc, involving small amounts of money paid to lower-level officials, or systemic, pre-planned

⁵⁰ <https://www.nyasatimes.com/high-court-sends-10-convicts-to-prison-for-2011-cashgate/>

collusion involving larger sums with higher-level officials across multiple agencies, even those dedicated to wildlife, forest and natural resource protection.⁵¹

As the UNODC Executive Director Yury Fedotov noted: "Corruption is multifaceted and can occur at every stage of the wildlife, forestry and fisheries value chain.⁵² It can include bribes for information on the movement of animals or patrols, or to obtain rights and quotas, or grease the wheels of shipments, to ensure that they are not inspected or seized."⁵³

Arguably, the easiest commission of corruption is when criminals can pay bribes, often in small amounts, to public officials to ease the passage of illicit goods through borders, road patrols or airports. Bribes can help criminals secure information on the movement of wildlife patrols, obtain licenses or fraudulent origin permits necessary for transit, ensure that shipments containing illegal wildlife or forest products are not inspected or seized, or win logging concessions because of political or familial influence. "By bribing and co-opting public officials in their networks, traffickers are able to undermine the system and remove threats and bottlenecks to their operations".⁵⁴

Active organised criminal networks operating regionally assess the low-risk and growing opportunities and margins to be made in wildlife crime. The OECD refers to this occurrence as the "crime convergence", i.e., "where there is wildlife crime there are often other forms of organised crime and vice versa".⁵⁵ The reality of this correlation leaves little room for resistance from government and wildlife management authorities to address the illicit wildlife trade with as much support and force as other sectors.

Corrupt acts, particularly with the wildlife and forest trade, are more often committed by actors that are desensitised from the product and view it as a source of income. For example, many actors who participate in wildlife trafficking may perceive their role in the crime to be "victimless", to not have serious consequences [sic] or be morally problematic" likely because "much corruption involved in wildlife crime takes place far from the place where the harm is inflicted".⁵⁶ For example, only those few people involved in killing a rhino actually have a hands-on involvement with the live animal and witness the brutality of its death. When the rhino horn is passed to the runner/intermediary, and subsequently to many other actors in the chain, the horn is merely a commodity. The actions taken to procure the horn and the consequences of a declining rhino population may be largely unknown by those facilitating the trade, and/or disregarded as inconsequential.

Other common examples of corruption facilitating wildlife crime include public officials issuing false permits (export, import, etc.), rangers and law enforcement

⁵¹ UNODC World Wildlife Crime Report. Trafficking in protected species (2020).

⁵² A value chain is a set of activities by which an operation, or set of linked operations, add value to a product. It is used to analyse legitimate businesses but is equally applicable when analysing illegal activities. UNODC Scaling Back Corruption 2020 pg 15

⁵³ <https://www.unodc.org/unodc/en/press/releases/2017/November/links-between-corruption-and-wildlife-crime-highlighted-at-un-anti-corruption-conference.html>

⁵⁴ Basel Institute, Wildlife Trafficking in Uganda, Working Paper, October 2020, pg 26

⁵⁵ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020.

⁵⁶ TRAFFIC, Wildlife Crime Initiative, Strategies for Fighting Corruption Wildlife Conservation, 2015

officials collaborating with poachers, embezzlement of resources for wildlife conservation like theft of national park revenues and prevention of prosecution of suspected wildlife criminals including destruction of court records.⁵⁷

The majority of wildlife and forestry officials are honest and execute their duties diligently. However, the environment in which they operate (e.g., field officers working remotely) combined with often low salaries, a lack of standard operating procedures and corruption reporting or detection mechanisms along with coercion from higher-ranking officials can create vulnerabilities in the system and opportunities for corruption to occur.

Haunstein et al (2019)⁵⁸ showed that wildlife crime is particularly prevalent in countries where levels of poverty and corruption are also high. They therefore suggested that although further investment in law enforcement could reduce poaching, it is 'unlikely to succeed without action that simultaneously reduces ivory demand and tackles corruption and poverty'.

In regions of conflict, wildlife poaching funds a wide range of destabilizing actors across Africa, with significant implications for human conflict.⁵⁹ For example, the illicit ivory trade today is a multi-million-dollar criminal enterprise spanning continents – it contributes to the degradation not only of natural environments, but also of African communities, the rule of law, and security in some of Africa's most fragile states. Meanwhile, it also amounts to a massive illicit financial transfer out of the poorest communities in Africa towards some of the most destabilizing and destructive actors on the planet, including: international organised crime syndicates, warlords, corrupt politicians, extremists, insurgents and terrorists.⁶⁰



Elephants are poached to order and their ivory tusks removed before being sold on to trafficking syndicates. © EIA.

⁵⁷ World Wildlife Fund, TRAFFIC, U4, Wildlife Crime & Corruption, Options for Moving Forward, 2018, p. 3.

⁵⁸ Hauenstein, S et al (2019). African elephant poaching rates correlate with local poverty, national corruption and global ivory price. *Nature Communications* volume 10, Article number: 2242.

⁵⁹ United Nations Office on Drugs and Crime (UNODC). (2011). *Organised Crime and Instability in Central Africa – A Threat Assessment*. Technical Report by UNODC.

http://www.unodc.org/documents/data-and-analysis/Studies/Central_Africa_Report_2011_web.pdf

⁶⁰ Varun, V & Ewing, T. (2014). *Ivory's Curse – The Militarization and Professionalization of Poaching in Africa*. Report by Born Free USA and C4ADS <http://www.bornfreeusa.org/downloads/pdf/Ivorys-Curse-2014.pdf>.

Case Study 3: the Zalewa Charcoal Sting⁶¹

On 2nd February 2021, the Nation Newspaper published an expose on a syndicate trafficking charcoal between Zalewa in the Southern district of Neno to markets in Blantyre City. Over four months, the undercover journalist collected evidence on the complicity of officials from the Malawi Police Service, the Malawi Revenue Authority, the Directorate of Road Traffic and Safety Services, and the Department of Forestry. In a single night, an estimated 2,100 bags were trafficked by a convoy of 12 vehicles, with an estimated MK1.2 million (USD \$1,560) spent in bribes to corrupt officers. The amount of charcoal trafficked that night is estimated to equate to around 500 mature trees, or seven hectares (ha) of forest cover.

At the time of writing, in response to the article, the DoF committed to engage the ACB in conducting an investigation and the MPCC called upon all agencies to conduct internal enquiries as a matter of urgency to bring the perpetrators to justice.

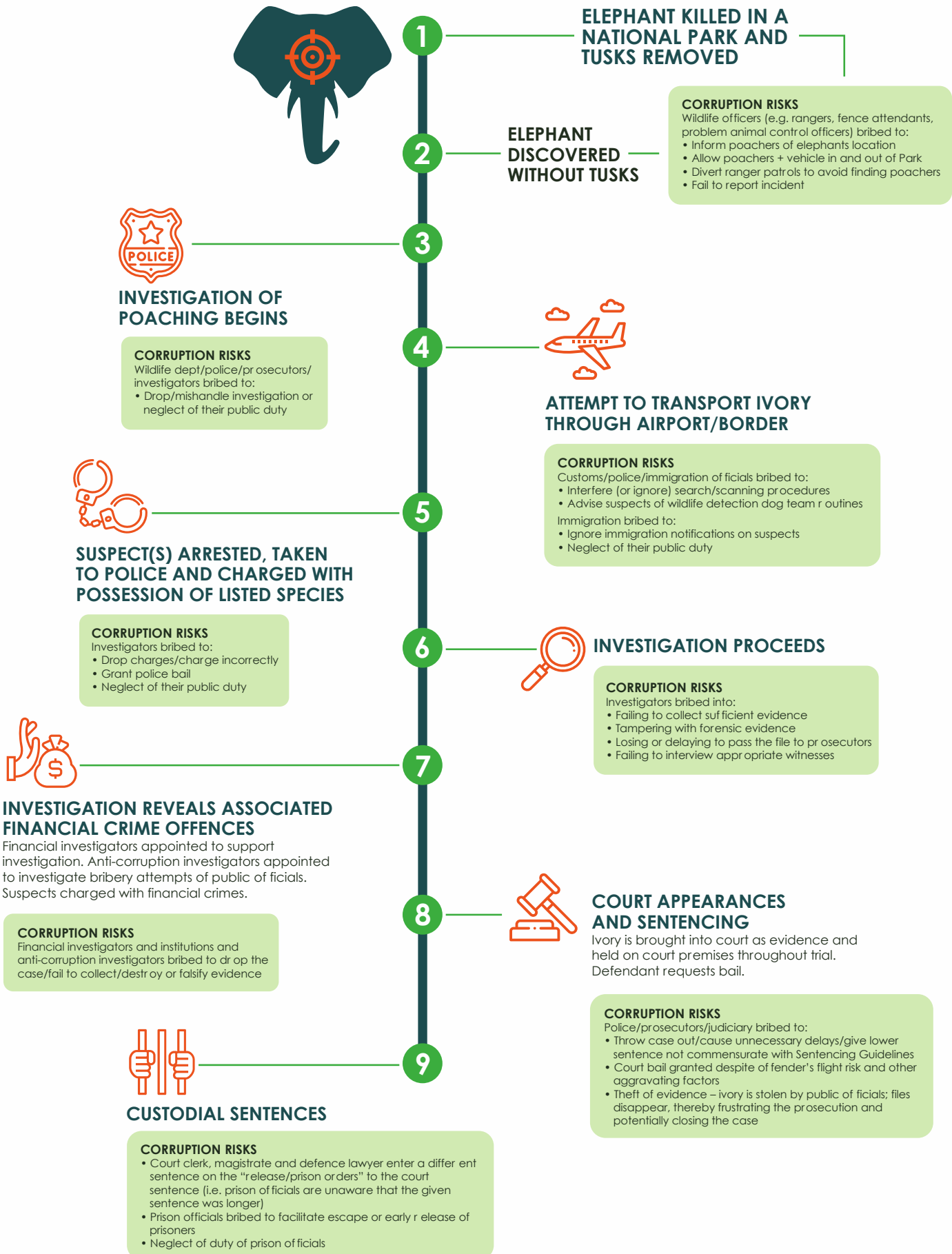
The Lin-Zhang and Lengwe cases and the recent charcoal sting operation illustrate that despite major improvements in investigations, prosecutions and increased penalties through new laws, organised criminal syndicates continue to operate in Malawi.



⁶¹ Read the full account at www.mwnation.com/forest-police-cash-in-on-charcoal-business/

CORRUPTION RISKS IN A POACHING AND IVORY CASE

This infographic illustrates the multiple corruption risks along the chain from the poaching of an elephant through an investigation, prosecution, sentencing and serving custodial sentences. Whilst these examples are for illustrative purposes only and are not exhaustive, they are common to both wildlife and forest crime cases in Malawi.



POSSIBLE CASE OUTCOMES

When corruption was prevented or reported and investigated:



- Investigation and prosecution proceeded; suspects prosecuted and charged with killing an elephant, possession of ivory, financial crimes. Court gave commensurate custodial sentences in line with the Sentencing Guidelines and offenders served their full sentence.
- Elephants in Malawi and the region are better protected as prosecutions act as deterrents.
- Corruption risks across agencies identified and mitigated, attempts were correctly reported and investigated, public officials prosecuted as appropriate. All whistle-blowers were well protected.
- Public officials and their institutions uphold the rule of law and build trust with the public.

With corruption occurring at any point in this chain:



- Offender(s) not arrested/jump bail or prosecution does not proceed or lenient sentence granted or early release/escape from jail so there is no deterrent to other offenders.
- Ivory was exported, fuelling the international illegal ivory market.
- Elephants continue to be poached in Malawi, and Malawi continues to be used as a transit point for wildlife crime.
- On-going high levels of wildlife crime affect the security of communities around National Parks, and can lead to the loss of economic opportunities through tourism and development.
- Criminal syndicates involved in wildlife crime profit from serious financial crime and are often also involved in e.g. drugs, arms, people trafficking; a failed prosecution for wildlife crime is also a failed opportunity to prevent other associated crimes.
- Public officials perpetuate institutional corruption, which increases public distrust in these institutions and leads to a miscarriage of justice and lost revenue to the state.

Undue influence by politicians at any stage of this chain is an offence under the Corrupt Practices Act and can result in the case failing and criminal syndicates continuing to exploit Malawi.

Benefits of addressing corruption linked to wildlife and forest crime

There are significant benefits to addressing corruption in wildlife and forest crime, as detailed in UNODC's 2020 report 'Scaling back Corruption', summarised and adapted below:

- Improved sustainability and reputation of the wildlife sector: Efforts to tackle corruption and increase transparency are likely to decrease opportunities for poaching and other forms of wildlife crime. This can benefit protected wildlife, increase environmental sustainability and improve the regulation of the country's wildlife sector, and in turn generate more income and economic growth.
- Increased transparency and efficiency of systems: Corruption risk assessments enable wildlife management authorities to identify and address systemic weaknesses, to build integrity controls into their processes and regulatory frameworks and to increase the transparency of processes and decision making. This often leads to increased organisational efficiency and accountability, enables the provision of better public services and enhances the confidence that stakeholders have in the authority.
- More resources: If the integrity of wildlife management authorities is compromised, providing opportunities for corruption to occur, it can result in significant loss of revenue (e.g., from park entrance fees), opportunity costs, depletion of natural assets and the permanent loss of ecosystem services and functions.
- Less crime: If action is taken to minimise the likelihood of corrupt practices, then opportunities to engage in wildlife crime should also diminish.
- More prosecutions and convictions: Some facilitators of wildlife crime may primarily have done so by committing a corruption offence (rather than committing a wildlife offence as such). Investigating wildlife and corruption offences together, or in parallel, can often be the only way to hold these supporting actors accountable. This increased range of entry points to prosecute illegal conduct, can lead to a larger number of cases being prosecuted. Many types of corruption linked to the wildlife sector leave a paper and money trail that can be reconstructed by investigators and prosecutors. Stronger evidence of corruption can increase the number of prosecutions that result in convictions.
- Prosecutions as a deterrent: Prosecuting high-profile public officials for corruption can also act as a powerful deterrent to other officials. To date, the prosecution of public officials involved in wildlife crime in Malawi has been challenging. The recent prosecutions of court clerks, DNPW and MPS officers on charges of abuse of public office in relation to wildlife crime is notable. Investigation, and where necessary prosecution, of public officials on corruption charges as part of wildlife crime cases is a recommendation of this report.
- Increased staff morale: The perception that some colleagues receive personal benefit from corrupt practices and 'get away with it' may lower staff morale and shape the individual decision on whether to engage in corruption.

Case Study 4: abalone poachers sentenced to 244 years in jail.⁶²

In February 2021, a South African man was convicted of abalone poaching and bribery and sentenced to 244 years in jail (served concurrently, he will likely serve 18 years imprisonment). The case put a spotlight on the prevalence of corruption in the wildlife trade among environmental officials in South Africa's Department of Agriculture, Forestry and Fisheries (DAFF). Solomon Sauls was convicted of "participating in an enterprise, on 16 counts of corruption, two counts of money laundering, 12 counts of contravening S44(2) of the Marine Living Resources Act and 10 counts of contravening the Marine Living Resources Act of Reg 36(1)(b)". The court found that he would pay officials tens of thousands of rands to prevent them from confiscating the abalone.

Importantly, the officials Sauls engaged with have been arrested and are currently facing charges of corruption and abalone poaching. The State advocate from the National Prosecuting Authority remarked that: "the type of offence is of a very serious nature as it involves corrupting government officials into not doing their official duties to protect natural resources. He paid DAFF officials not to arrest and seize abalone [sic]. His actions weakened law enforcement efforts to protect abalone which is mostly for commercial purposes and exportation."

Cases like this set a regional precedent for authorities to take corruption and wildlife and forest crime seriously. It shows how a commitment to curbing poaching and the illegal trade and wildlife and forest products and can be a regional unifier.



Confiscated abalones, South Africa © Maverick

⁶² The South African, 16 February 2021, *Abalone poacher sentences to 244 years after admitting to bribery* <https://www.thesouthafrican.com/news/abalone-poacher-sentenced-to-244-years-after-admitting-to-bribery/>

**PART II STRATEGIES &
RECOMMENDATIONS TO
COMBAT CORRUPTION IN
WILDLIFE AND FOREST CRIME
IN MALAWI**

Malawi has taken important steps towards reducing corruption and wildlife and forest crime. The following analysis presents strategies to further support these efforts, based on international law and best practices and provides an update on Malawi's current progress and recommendations for further actions.

1 Develop national and departmental level strategies to address corruption within wildlife and forest crime.

International law and best practices

UNCAC calls for States to develop and implement effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs, integrity and transparency and accountability⁶³.

UNCAC asserts that States shall periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. Bodies responsible for corruption prevention should be afforded necessary independence to carry out their functions free from undue influence⁶⁴.

The **SADC Protocols** note that the Treaty which established the SADC directs Member States to cooperate in all areas necessary for regional development, integration and cooperation and further recognises that corruption is a serious international problem that causes adverse and destabilising effects on culture, economic, social and political foundations of society⁶⁵.

The **SADC Protocol Against Corruption** aims to promote and strengthen the development, within each Member State, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector. The Protocol further seeks to facilitate and regulate cooperation in matters of corruption amongst Member States and foster development and harmonisation of policies and domestic legislation related to corruption. The Protocol clearly defines 'acts of corruption' preventative measures, jurisdiction of Member States as well as extradition. Institutional arrangements for the implementation of this Protocol have been outlined within the document⁶⁶.

Current situation in Malawi

NACS-II. The recently adopted NACS-II (2019-2024) is dedicated to ensuring that "resources meant to spur economic growth and development are not diverted for the selfish gain of a few corrupt individuals"; this language opens the door for discussion of wildlife and forests as valuable resources requiring protection.⁶⁷ It aims to provide a holistic approach to the fight against corruption, with a strong focus on a

⁶³ UNODC, *United Nations Convention against Corruption* (2004), Article 5.

⁶⁴ UNODC, *United Nations Convention against Corruption* (2004), Article 5 and 6.

⁶⁵ SADC Protocol Against Corruption, 2001, Preamble.

⁶⁶ <https://www.sadc.int/documents-publications/show/>

⁶⁷ Malawi National Anti-Corruption Strategy II, 2019-2024, Preface - <https://acbmw.org/wp-content/uploads/2020/03/NACS-II-1.pdf>.

unified multi-stakeholder approach and addressing gaps in Malawi's legal framework through international best practices, with a particular focus on complying with UNCAC, the SADC Protocol Against Corruption (SADC Protocol) and the African Union's Convention on Preventing and Combatting Corruption (AU Convention).⁶⁸ Recognising that corruption affects all sectors of government, NACS-II calls for every sector to integrate the tenants of its strategy into their work plans and processes.

NACS-II – National Integrity Committee (NIC). The NACS-II consolidates multi-sectoral efforts to fight and prevent corruption in Malawi through the NIC; and supports the goals outlined in the Malawi Growth and Development Strategy and the UN Sustainable Development Goals. The NACS-II prioritised three concrete goals in line with UNCAC – to enhance the rule of law, improve service delivery to the public and promote a culture of integrity. The 12 Pillars have committed to implement these goals. At the time of this report, neither DNPW nor DoF have completed sector-specific work plans that embed anticorruption principles.

ACB/IACCWC. The ACB is mandated to spearhead the fight against corruption and will provide technical guidance to the NIC and the IACCWC. The ACB has helped deliver training for law enforcement agencies, and together, the ACB and IACCWC have proposed an anti-corruption code of conduct for DNPW officers. ACB support entails ensuring all key stakeholders are sensitised on the contents of the NACS-II to help them incorporate its principles into their initiatives and workplans.

The IACCWC promotes communication and collaboration between all law enforcement agencies to improve investigations and prosecutions for wildlife and forest crime.

Recommendations

1.1 Embed Malawi's NACS-II polices into the work plans of DNPW and DoF.

Relevant agencies, particularly DNPW and the DoF, should ensure that appropriate anti-corruption work plans as they specifically pertain to tackling wildlife and forest crime are drawn up and implemented in line with NACS-II recommendations. NACS II⁶⁹ recommendations include Ministries, Departments or Agencies allocating a minimum of 1% of their budget to their Institutional Integrity Committee for the implementation of NACS II activities.

If not yet fully active, Institutional Integrity Committees should be formed within the departments, which can include relevant donors that may be able to help fund the work. The committees should coordinate with ACB who can provide training for members and facilitate development of their sector-specific corruption plans, implementation and M&E. The separate committees could engage together for initial discussions on how corruption enables wildlife and forest crime, then work separately during the drafting process.

⁶⁸ *Ibid.*

⁶⁹ Malawi National Anti-Corruption Strategy II, 2019-2024 - <https://acbmw.org/wp-content/uploads/2020/03/NACS-II-1.pdf> .

It will be crucial for the ACB and NIC to recognise that the ability of DNPW and the DoF to work towards preventing or investigating cases of corruption in wildlife and forest crime is hugely dependant on the capacity, skills and willingness of other agencies, principally the MPS and Customs authorities. The mainstreaming of the NACS-II into operational practice across all agencies involved in tackling wildlife and forest crime (with the guidance of ACB) is therefore a priority if corruption in this sector is to be addressed. A sector wide implementation approach for NACS-II, which could then be cascaded to each of the agencies that are in the frontline of combating wildlife and forest crime would ensure better coordination and integration for mutual benefit.

The sector-wide approach should also include departmental-level specific Anti-Corruption Policies.

1.2 Develop National Action Plans under the SADC Regional Strategy for Combating Transnational Organised Crime and the SADC Law Enforcement and Anti-Poaching (LEAP) Strategy and ensure these include measures to prevent and manage corrupt practices.

The **SADC** is currently developing a Regional Strategy for Combating Transnational Organised Crime, which is expected to be adopted sometime in 2021. Once adopted, Member States including Malawi, should develop National Action Plans, which include tackling corruption as an enabler of transnational organised crime and wildlife and forest crime.

SADC LEAP can also serve as a regional tool implemented at the national level in Malawi via an action plan. The current LEAP ends this year and the revised one will be adopted in 2021 or 2022. There are opportunities for DNPW to become involved in the review process, which will involve SADC Member States as well as the implementation process of revising their current national LEAP action plan to include more provisions tying in corruption and wildlife and forest crime prevention strategies. The DNPW and DoF should ensure that implementation and reporting requirements stipulated in regional protocols and action plans are strictly adhered to.

1.3 Inter-Agency Committee on Combating Wildlife Crime (IACCWC) should take a leading role in co-ordinating M&E of the NACS-II for wildlife and forest crime.

Considering the breadth of the 12 pillars listed in NACS-II and the associated sectors, the NIC will need support to carry out effective M&E of sectoral workplans and reports to the IIC.

IACCWC should engage with wildlife and forest sectors to ensure that their workplans are aligned and work with the NACS-II monitoring and evaluation teams (NIC/ACB) to establish an effective system of indicators and reporting from sectors on their efforts to curb wildlife and forest crime.

The DNPW, as Secretariat of IACCWC should work with the ACB and MPCC to ensure there is adequate funding for wildlife and forest related IIC's that report to the multi-sectoral NIC. The IACCWC should support the NIC and ACB in collecting IIC reports and helping with M&E for wildlife and forest departments through their expertise.

2. Legislation and Policy Developments

International law and best practices

Under **UNCAC**, States should adopt, maintain and strengthen systems for recruitment, hiring, retention, promotion and retirement of public officials based on efficiency, transparency and objective criteria which include adequate training for positions especially vulnerable to corruption. States should also include measures and systems to facilitate reporting by public officials of acts of corruption with actionable penalties.⁷⁰

The UNODC Scaling Back Corruption report notes that: “transparency not only reduces the opportunities for corruption within wildlife management authorities, but also allows for open discussion, participation and cooperation regarding the corruption risks that do arise. The more information that is available to more people, the more likely it is that the processes and decision-making practices will be more transparent. Similarly, the more mechanisms there are in place to hold officials accountable, the more dissuasive the environment for corrupt officials to operate”.⁷¹

The UNODC Scaling Back Corruption report also points out that increasing budget transparency can ensure resources are equitably allocated within the functions of an authority. Failure to do so may result in funds being allocated inefficiently or underfunding of key wildlife or forest protection agencies leading to insufficient capacity. Increasing budget transparency can promote integrity and accountability and increase public trust in the authority, or when strengthening anti-corruption policies⁷².

UNCAC calls for States to implement the widest range of predicate offences. A predicate offence includes any offence as a result of which proceeds have been generated that can be linked to crimes where the conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property to evade the legal consequences of their actions or the concealment or disguise of the true nature, source, location disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.

The UNODC Scaling Back Corruption report notes that while small-scale corruption, such as the bribery of low-level officials, may be hidden behind closed doors, many types of corruption linked to the wildlife sector leave a paper and money trail that

⁷⁰ UNODC, *United Nations Convention against Corruption* (2004), Article 7.

⁷¹ UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020, p. 44.

⁷² UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020, p. 47.

can be reconstructed by investigators and prosecutors. This provides them with the concrete proof of criminal activity necessary for securing convictions. Stronger evidence of corruption can increase the number of prosecutions that result in convictions.⁷³

Furthermore, in many jurisdictions, the penalties for corruption are higher than those for poaching or wildlife trafficking. By prosecuting these corruption cases, tougher sanctions can be secured and in turn can act as deterrents for potential future criminal behaviour. In addition, prosecuting high-profile officials for corruption rather than lower penalty crimes can also act as a powerful deterrent to other officials.⁷⁴

States should ensure that domestic legislation and procedures allow the use of alternate offences to pursue wildlife crimes, such as money-laundering, corruption, fraud, etc. and enable wildlife crime to be considered a predicate offence for such crimes, to enable use of the various tools to address these.⁷⁵ Internationally, such changes could be achieved through the adoption of a global agreement on wildlife crime. A new international instrument on wildlife crime would also ensure that the illicit trafficking in protected species of wild fauna and flora, including timber, is finally embedded in the international criminal law framework .

In reference to fighting corruption and related offences in the public service, the **AU Convention** calls for States to create an internal committee or a similar body mandated to establish and train public officials on matters of ethics and develop disciplinary measures and investigation procedures in corruption related offences.

Current situation in Malawi

NACS-II. Transparency is one of the seven guiding principles of NACS-II. Further, in pursuit of its six objectives, NACS-II utilises strategies based on the demand for accountability by increasing transparency and access to information. Therefore, increasing transparency should be a cornerstone of all pillars and sectoral strategies and workplans especially in relation to actions of public officials.

Malawi Public Finance Management Act. The NACS-II notes that corruption in public finance management persists despite the existence of the Public Finance Management Act. Weak controls in the execution of budgets lead to the misuse of public resources and maladaptive practices such as embezzlement.

Malawi Penal Code. The principal instrument for addressing allegations of corruption against public officials lies in the Penal Code, and in particular Chapter X, 'Corruption and the Abuse of Office'. The presence of legal provisions and sanctions that cover low or absent ethical standards in the public service, including conduct that amounts to unprofessional, negligent, dishonest or criminal behaviour, is not in question, but implementation needs to be improved.

DNPW's WCIU. DNPW has a specialised Wildlife Crime Investigation Unit (WCIU) (including seconded police officers) and has made over 150 wildlife trade related

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ UNODC World Wildlife Crime Report. Trafficking in protected species (2020).

arrests since 2016. The WCIU works closely with Malawi Police Service's (MPS) Crime Investigation Unit (CIU), and other agencies as appropriate such as ACB, the Director of Public Prosecutions (DPP) and the Financial Intelligence Authority (FIA).

New wildlife and forestry laws. The **National Park and Wildlife (Amendment) Act 2017** provides for significantly higher penalties for wildlife crime, up to 30 years with no option of a fine for the most serious offences. This higher sentence provision also ensures that Malawi now categorises wildlife crime as a serious crime. The **Forestry (Amendment) Act 2019** is now gazetted and is a crucial piece of legislation that provides a range of greater protections for Malawi's disappearing forests, increasing penalties and fines, strengthening regulation of charcoal, and creating greater support for forestry officers to carry out their enforcement duties.

IACCWC. Malawi was an early adopter of the multi-agency approach for tackling wildlife crime when it established the IACCWC in 2014. The IACCWC helped push for the serious crime categorisation within each law enforcement agency. Part of their mandate is to advocate for the use of multiple laws in prosecution of wildlife crime cases.

Malawi Constitution. Section 13 of Malawi's Constitution committed the country to "introduce 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".

ACB. The ACB is mandated to investigate the conduct of any public officer which, in the opinion of the Bureau, may be connected with, or conducive to, corruption and to report thereon to the appropriate authority. The ACB should also investigate any offence under any written law disclosed in the course of investigating any alleged or suspected corrupt practice or offence and take necessary measures for the prevention of corruption in public and private bodies.

Improving Permitting System. As discussed in more detail below, Malawi is working to digitise its wildlife and forest permitting system to reduce discretionary power of individuals or smaller groups in granting permits. This will reduce opportunities for public officials to act in their interests without impunity.

Recommendations

2.1 Increase internal transparency and accountability of wildlife and forest management authorities.

Addressing systemic weaknesses and building integrity into processes and regulatory frameworks can increase transparency, organisational efficiency and accountability, which enables the provision of better services⁷⁶.

⁷⁶ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020, p. 27.

A commonly held belief in Malawi is that individuals suspected of involvement in fraud or corruption in public service are often simply removed from the existing office into other posts within public service, sometimes even into other positions of influence. Dismissing a public servant is seen as a last resort, even where credible evidence exists of wrongdoing or an investigation could serve to establish that truth.

Considering this, improving transparency and accountability among wildlife and forest management authorities can be a highly effective preventative measure for mitigating corruption risks. Committees, rather than individuals, should be responsible for licensing and concession decisions and that relevant information should be made public⁷⁷. Creating clear and transparent recruitment and hiring procedures for public office instead of appointments and promotions through favouritism or personal connections can reduce the “status quo” of corrupt actions. Further, “individuals may be less willing to engage in corruption if they believe it will harm their job security and long-term prospects. Government employees found to be engaging in corruption should face repercussions brought in a timely fashion and appropriate to the seriousness of their violation, from being fired or blacklisted from applying for other government jobs, to being subject to civil or criminal charges”.⁷⁸

2.2 Ensure all incidences of corrupt practices by public officials are investigated as part of wildlife and forest crime cases.

Most wildlife and forest products must be concealed in some manner during the illicit supply chain from source to end product. There have been recent cases in Malawi that include smuggling of illegal wildlife products that clearly reveal a presumption of corrupt practices during the facilitation of said crimes, but where no corruption charges were pursued during prosecution. This can limit conviction rates and sentencing that are necessary deterrents for future criminal offences.

Some facilitators of wildlife crime may primarily have done so by committing a corruption offence. Investigating wildlife and corruption offences together, or in parallel, can often be the only way to hold actors accountable and achieve adequate legal results.

This increased range of entry points to prosecute illegal conduct, can also lead to a larger number of cases being prosecuted, which can increase the public trust in government agencies (investigative and prosecutorial) and in the judiciary's ability to deliver justice – both acting as deterrents.

2.3 Review closed cases of high-level wildlife and forest crime to determine potential corruption offences that were not investigated and develop lessons learnt.

⁷⁷ World Wildlife Fund, TRAFFIC, U4, Wildlife Crime and Corruption, Options for Moving Forward, 2018.

⁷⁸ World Wildlife Fund, Topic Brief, Accessing, harvesting and trading in wildlife: Corruption in the use of permits and allocation of access rights, October 2020, p. 9.

With the support of the IACCWC, the ACB, DNPW and DoF, together with law enforcement agencies, should assess closed wildlife and forest crime cases that had a corruption dimension, but which did not include any charge of corruption during prosecution. Following the assessment, areas of concern could be targeted for improvement; for example, addressing a potential lack of coordination between the DNPW/police and ACB in investigating wildlife crimes where corruption is involved.

An assessment of wildlife crime cases prosecuted within the SADC region, which included corruption charges should also be reviewed by DNPW/DoF and ACB to shed light on regional anti-corruption legislation as well as prosecutorial practices. These two assessments should inform Malawi on potential areas for amendment to the Corrupt Practices Act and other relevant legislation and/or ways to increase application of multiple charges in investigative and prosecution techniques in on-going and future cases.

2.4 Increased reporting of corruption in court processes.

Increased transparency and reporting of corruption or suspicious activities/patterns in the courts is also paramount and should be prioritised for investigation where necessary. This may include scrutinising e.g., lenient bail terms, sentences that don't conform to the Sentencing Guidelines, cases thrown out on spurious technicalities and other issues. State and private prosecutors, court monitors and members of the public and media should report such incidences to law enforcement agencies, DNPW, DoF and the IACCWC; DNPW and DoF should support these investigations of corruption. Court monitoring of all serious wildlife crime cases has been used in several countries in the region, including Malawi, as a useful tool to promote increased transparency.

2.5 Enforce standard procedures and ensure full transparency in land gazetting, forestry concessions and other revenue generating activities within the Department of Forestry

There is a prevalence of land issues (boundary issues) around Forest Reserves which, in a number of recent cases, have resulted in gazetted land being “unofficially/seemingly officially” de-gazetted and converted to private land. Standard and transparent gazetting procedures must be enforced to address corruption in the Department of Forestry which may be tied to political influence (both from politicians and from Traditional Leaders).

For production forests/plantations, the lack of transparency in agreements, concessions, licensing, revenue collection and reporting is open to corruption. Procedures must follow anti-corruption protocols and ensure appropriate levels of transparency in all decisions.

3 Review current whistleblowing protections and ensure use and enforcement.

Whistleblowing can be a useful tool to support investigations into corruption. Legislative provisions and standard operating procedures within law enforcement agencies must provide informers with protections and incentives to come forward (e.g., financial incentives where appropriate, witness protection, anonymity via video testimony etc).

Whistleblowers and informants need special protections because of the potential repercussions they may face in coming forward. For whistleblowers, this can include discrimination or disciplinary action being taken against them by their employer or supervisor. Both whistleblowers and informants can face serious threats to their safety and even their lives. Further, they may themselves be a victim of a crime, in which cases their status as a victim should be recognised.

International law and best practices

UNCAC declares that States should have legal measures to provide effective protection from retaliation or intimidation for witnesses who give testimony. Measures include establishing procedures for physical protection, relocation, providing evidentiary rules to permit witnesses to testify safely and entering into agreements with other States for witness relocation. Informers who are not testifying shall be protected against unjustified treatment for reporting in good faith and on reasonable grounds to relevant authorities for corrupt offences.

UNODC points out that safeguarding whistle-blower protection is essential for the identification of corruption risks and the reporting of corrupt officials as most incidences of corruption go unreported and undetected. If protections are increased and well enforced, then people who witness corruption, are confident in the report mechanisms and protection from retaliation (political and social) and will be more inclined to report it⁷⁹.

The **AU Convention** directs States to adopt legislative measures to protect informants and witnesses in corruption and related offences, including protection of their identities and to ensure citizens report instances of corruption without fear of reprisals⁸⁰. The **SADC Protocol** distinguishes protections for "good faith" informants and witnesses and includes a provision on laws that punish those who make false and malicious reports against innocent persons⁸¹.

Current situation in Malawi

Corrupt Practices Act. Article 51 under Part VIII on "protection of whistle-blowers and other informers" stipulates that any information provided by a whistle-blower or informant to the ACB or police regarding an offence under the Act shall not be admitted into evidence and no witness shall be obliged or permitted to disclose the name or address or any information which may lead to the individual's discovery. Any person who takes actions to punish or victimise a whistle-blower or informer may be liable to a fine or imprisonment.

⁷⁹ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020, p. 48.

⁸⁰ African Union Convention on Preventing and Combatting Corruption, 2003, Article 5.

⁸¹ SADC Protocol Against Corruption, 2001, Article 1.

Courts Act and Criminal Procedure & Evidence Code. Both section 60 of the Courts Act, and section 71 of the Criminal Procedure and Evidence Code require all court proceedings to be carried on in an open court, with an exception for the court to hear proceedings or part thereof in a closed court and in the absence of certain persons if satisfied that it is “expedient in the interest of justice or propriety or for other sufficient reason so to do.”

Recommendations

3.1 Review current provisions in the Corrupt Practices Act and other relevant legislation and, where necessary, revise these to ensure appropriate protections are in place for informers.

Review, and where necessary, amend current legislative provision to ensure it reflects the stipulations by UNCAC and regional agreements, and ensure recruitment and management of informers does not impede investigations into corruption within wildlife crime.

The ACB and IACCWC should be engaged to provide insight as to how whistle-blowers and/or informants may experience different reservations in coming forward in the wildlife and forest crime context. An institutional framework for the effective protection of witnesses and informers should encompass their physical protection.

4 Conduct parallel financial investigations alongside corruption and wildlife and forest crime investigations.

The prosecution of organised wildlife crime necessitates investigations into financial crimes such as on money-laundering and the use of additional legal powers such as freezing bank accounts and seizing assets. As the 2020 FATF report states, ‘both small-scale and large-scale criminals involved in IWT often use shells and front companies to conceal payments and launder the proceeds of their illicit activities’. Additionally, the report finds that financial institutions can play an important role in detecting suspicious activity e.g., placing and layering funds through cash deposits (under the guise of loans or payments), e-banking platforms (e.g., electronic payment services that are tied to a credit card or bank account), licensed money value transfer systems, and third-party wire transfers through banks.⁸²

As Malawi moves from a focus on lower-level offenders to prosecuting organised crime syndicates, it will be imperative to use the broadest range of intel and partnership working to successfully prosecute the financial crimes, and associated corruption, within private institutions as well as public officials.

International law and best practices

⁸² Financial Action Task Force, Money Laundering and the Illegal Wildlife Trade, 2020 p. 17. <http://www.fatf-gafi.org/media/fatf/documents/Money-laundering-and-illegal-wildlife-trade.pdf>

UNCAC calls for the establishment of collaborative arrangements to facilitate investigation and prosecution of corruption. This could include:

- Information on how to set up checks and balances for integrated team at policy level, potentially via an MoU.
- Parties could investigate:
 - Domestic corruption, above a certain value threshold
 - Organised crime (including types of wildlife crime)
 - Cross-border corruption, wildlife and forest crime
 - Complex economic crime
 - Money laundering of the proceeds of these offences

Further, **UNCAC** calls for State Parties to institute a regulatory and supervisory regime to deter and detect all forms of money-laundering and to ensure that administrative, regulatory, law enforcement and other authorities dedicated to combatting money-laundering cooperate and exchange information at national and international levels.

UNCAC suggests establishing a financial intelligence unit for the collection, analysis and dissemination of information regarding potential money-laundering⁸³. **UNTOC** declares that State Parties should apply money-laundering regulations to the widest range of predicate offences⁸⁴.

The 2020 **FATF** report⁸⁵ provides a suite of recommendations for financial crime investigations in parallel with wildlife and forest crime investigations including:

- Relevant financial institutions and non-financial institutions should be required to identify and assess their exposure to money laundering risks relating to wildlife crime and take appropriate mitigating measures, as part of a broader risk-based approach.
- Countries should ensure reporting entities are aware of the risks of new technologies being exploited by wildlife crime syndicates to launder the proceeds of crime and any relevant regional trends or typologies. Outreach by governmental authorities to the private sector should emphasise the need to report to financial intelligence units if there is suspicion of activity and disclose specific, operational information as permitted by domestic law and regulation.
- Countries should consider how they can promote public-private collaboration and information exchange, to effectively identify and address money-laundering linked to wildlife crime. Given the importance of both financial and environmental expertise, it is important to consider how this collaboration can include a broad range of organisations, including from the NPO sector.

Current situation in Malawi

The **Financial Crimes Act, 2016 (FCA)** regulates financial and related crimes through enforcing better prevention and investigation techniques. The **FIA** was established under the FCA and is the principal national agency responsible for preventing and

⁸³ UNODC, *United Nations Convention against Corruption* (2004), Article 14.

⁸⁴ UNODC, *UN Convention Against Transnational Organized Crime*, 2000, Article 6.

⁸⁵ FATF, *Money Laundering and the Illegal Wildlife Trade*, 2020.

combating financial crimes. Part of their mandate is to submit reports to relevant law enforcement agencies or supervisory authorities based on financial intelligence analysis.

The **IACCWC** represents an operational inter-agency collaboration between the wildlife and more traditional law enforcement sectors. ACB and FIA are active members of the IACCWC (FIA currently Chair the Committee), which may prove a valuable vehicle for engagement with the key law enforcement agencies at regional and international levels and also private institutions such as banks.

Recommendations

There is an urgent need for a trans-disciplinary approach that ties together law enforcement, wildlife management authorities and other relevant authorities such as financial intelligence units, public health and safety agencies, administrative and local authorities and also private institutions⁸⁶.

Varying agencies are inherently involved when focusing on the long chain of criminality between the original site where a plant or animal was illegally harvested or killed and its final destination⁸⁷.

4.1 Review the recommendations within the FATF (2020) report on Money Laundering and the Illegal Wildlife Trade as they apply to Malawi.

DNPW, FIA and the Fiscal and Fraud Unit in Malawi Police Services should review the recommendations within the FATF report and consider legislative, policy and operational changes to improve financial crime investigations associated with wildlife and forest crime. They should ensure that wildlife and forest crime is treated as a predicate offence for money laundering and that financial offences are considered at the outset of any wildlife and forest crime.

In particular, refer to Annex A. Indicators of laundering the proceeds of the Illegal wildlife trade in the FATF (2020) report on Money Laundering and the Illegal Wildlife Trade to determine how this risk profiling can be fully deployed to assist financial institutions (and regulators) to identify potential suspicious transactions and behaviour patterns that could be indicative of money laundering linked to the illegal wildlife trade. As well as formal financial institutions, the use of more informal international money transfers should also be considered. Financial investigations into other private institutions such as freight agents and their officials should be included where illegal shipments are suspected.

An MoU between agencies is required prior to the FIA and Fiscal and Fraud Unit in MPS releasing sensitive information. The IACCWC should work with the FIA to ensure that all wildlife and forest management authorities have clear MoUs with the FIA and that they are included in sharing compatible criminal records databases as already exist between the MPS, ACB and FIA.

⁸⁶ UNODC World Wildlife Crime Report. Trafficking in protected species (2020), p. 23.

⁸⁷ *Ibid.*

5 Improve accountability and transparency through improved public access to information, and capacity building of the media.

International law and best practices

Under **UNCAC**, each State Party shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption⁸⁸.

The **AU Convention** calls for State Parties to create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs. States should ensure that the media is given access to information in cases of corruption and related offences so long as it does not adversely affect the investigation process and the right to a fair trial⁸⁹.

Current situation in Malawi

The **IACCWC** is mandated to facilitate awareness campaigns to the general public and other stakeholders. More regularly, **DNPW** and wildlife and environmental NGOs work together to deliver public awareness campaigns, however these have so far not included corruption prevention.

Recommendations

5.1 Improve transparency of information to the public from wildlife and forestry (and fisheries) sectors.

The wildlife and forest sectors should mainstream public outreach campaigns in their NACS-II workplans and strategies. This should also include confidential mechanisms for the general public to report wildlife and forest crime incidences (see also Section 3 on Whistleblowing).

The UNODC Scaling Back Corruption Report lists a number of crucial steps States can take to increase public engagement:

- **Improving access to information legislation.** When citizens can access key information and understand decisions made by government agencies, Government's become more accountable and it is more difficult to hide abuse of power and other illegal activities associated with corruption.

⁸⁸ UNODC, *United Nations Convention against Corruption* (2004), Article 13.

⁸⁹ African Union Convention on Preventing and Combatting Corruption, 2003, Article 12.

- **Publicising fees clearly.** Implement systems to clearly communicate fees for park or game reserve entry, and/or fees for licences, permits and other services offered by wildlife and forest authorities.
- **Increasing transparency related to quotas and licencing.** Publicising eligibility criteria for quotas and licences so the public has a clear understanding what is required and thus be able to identify instances where someone who should not have been issued a license received one⁹⁰.

5.2 Support media engagement in wildlife and forestry crime cases.

Encourage law enforcement agencies (particularly DNPW and DoF) to proactively provide information to journalists on wildlife and forest crime cases to raise public awareness and keep the issue under the spotlight. This could include stronger collaboration with the Centre for Investigative Journalism Malawi (<https://www.investigative-malawi.org>) and the Association of Environmental Journalists in Malawi (<http://www.aejmalawi.org>).

5.3 Build capacity and awareness amongst investigative journalists on corruption within the associated sectors.

Investigative journalists can raise awareness of corruption cases, expose incidences where corruption has not been addressed, publicise a lack of accountability or poor sentencing to encourage the public to call for improved anti-corruption practices. The recent The Nation expose of the corruption across multiple government agencies within the illegal charcoal sector is a good example of the media facilitating a call to action from high-level officials.

6 Improve processes within CITES Scientific Authority (SA) and Management Authority (MA) to a) increase transparency and limit discretionary power, b) reduce opportunities for fraudulent permitting, and c) automate revenues.

International law and best practices

CITES directs Parties to designate SA's independent from MA's⁹¹. Because SA's advice on any possible detrimental effect the import or export of a wildlife specimen may have on a species, and because they can take into account multiple factors requiring specialist knowledge, they have a high degree of discretion. Periodic reviews of decisions, or a double-blind decision-making process could facilitate an increase in

⁹⁰ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020, p. 45.

⁹¹ CITES Resolution Conf 10.3.

integrity and transparency within the SA's. Similar discretionary decision-making is possible of the MA's.⁹²

To help make information available consistently, States can implement a fully electronic CITES e-permitting process, or an electronic payment system that can assist authorities in tracking payments. The more people with access to information such as registers of licences and permits, the lower the opportunity for corruption. As more and more electronic databases become available, corruption risks can be increasingly mitigated by cross-referencing these databases. For example, automation of CITES processes (for instance the eCITES system) may help enforce regulations, increase transparency and reduce opportunities for corruption and the use of fraudulent documents.⁹³

UNODC advises that, for Governments to know how their trading partners are implementing their obligations under CITES and for citizens to hold Governments accountable, they need to know which rules apply, who is responsible for applying them, and receive sufficient information on the role of the CITES Management Authorities. This is important for increased transparency and can be addressed through the publication of the national laws and regulations related to CITES processes. Information on the domestic authorities that administer the process (CITES MA and SA) and how they can be contacted, public notifications of any new or changed national measures in this regard, and regular reporting of the work of the MA and SA's is also important to increase transparency in the CITES permit process⁹⁴.

Automation of revenue management systems can reduce corruption risks related to the misappropriation of park or game reserve revenues. These risks include officers issuing counterfeit revenue receipts to park visitors, not issuing receipts at all, or not accounting for funds received by recording them according to the designated process. Automation of processes can also support the segregation of duties, as the approving officer does not necessarily need to be in the same location as the officer processing the transaction. This can reduce the risks of corruption inherent in processes that lack segregation of duties (in which one officer has responsibility for initiating, processing, approving and recording transactions).⁹⁵

Current situation in Malawi

Although Malawi is listed as having Category 1 Model legislation by CITES, Malawi is still not fully compliant with all CITES model recommendations as DNPW currently fulfils the role of both CITES SA and MA.

The CITES MA in Malawi is currently working with LWT to develop an e-permitting system for CITES import/export, which will mean that permits are digitised and electronically stored, reducing the risk of fraudulent use of paper permits.

⁹² UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020, p. 46.

⁹³ *Ibid.*

⁹⁴ UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020, p. 45.

⁹⁵ UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020, p. 46.

Recommendations

6.1 Separate Malawi's CITES SA and MA

Separation of the SA and MA will ensure independence of the two, as recommended by CITES. This will also likely lead to a broader number of experts involved in the work of the SA on making recommendations on CITES permits (rather than only the Deputy Director, DNPW currently), which will reduce corruption opportunities within agencies where currently a single public official is stretched across both authorities. The Minister has recently agreed to de-link the two Authorities and DNPW has decided to appoint an Expert Advisory Group; the next step is to agree a revised structure for the CITES SA.

6.2 Digitise the permit system for import/export of CITES species.

Ensure completion of a phased development of the CITES e-permitting project currently in process in partnership with LWT.

Work with regional SADC States to ensure they develop systems in parallel that will increase coordination for specimens taken across borders.

6.3 Automate sources of DNPW revenues e.g., park fees and permits.

Automation of revenue management systems can reduce corruption risks related to the misappropriation of park or game reserve revenues. These risks include officers issuing counterfeit revenue receipts to park visitors, not issuing receipts at all, or not accounting for funds received by recording them according to the designated process. Automation of processes can also support the segregation of duties, as the approving officer does not necessarily need to be in the same location as the officer processing the transaction. This can reduce the risks of corruption inherent in processes that lack segregation of duties (in which one officer has responsibility for initiating, processing, approving and recording transactions).⁹⁶ DNPW, with support of the Malawi Watershed Services Improvement Project (MWASIP) with a grant from World Bank and IDA will be installing software for management of its revenue.

7 Ensure that the WCIU complies with best practice on investigating corruption within wildlife and forest crime investigations.

Law enforcement teams deploy technical expertise to mitigate challenges that arise during investigations. However, legal practices need to be mainstreamed into all operations of bodies like WCIU through policy guidance.

⁹⁶ UNODC, Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities, 2020, p. 46.

International law and best practices

The **SADC LEAP** strategy includes a number of best practices for intelligence gathering and investigative units:

- a) Operations responding to analyses of good intelligence and information by effective and well-trained intelligence staff;
- b) Functional well managed good informant networks in place, but separate from conservation LEAP units;
- c) Inter-agency collaboration and trust established in sharing of intelligence information;
- d) Systems developed for verifying or analysing intelligence information;
- e) Informant reward mechanisms ensuring anonymity are established and in place; and
- f) Confidential mechanisms for the general public to report wildlife crime incidences are developed and in place.

UNODC points out that the responsibility for the investigation and prosecution of corruption cases involving wildlife is unlikely to be part of a wildlife management authority's mandate. However, where considered appropriate, multi-agency teams in which wildlife management authorities are represented can be established to address corruption related to wildlife⁹⁷.

Improved inter-agency coordination can be achieved by establishing working relationships with those national agencies responsible for the investigation and prosecution of incidents of corruption (i.e., ACB and the MPS). Experience from enforcement responses to other crime types shows that there are different models that can be used to improve coordination between the authorities and to ensure that the acts of corruption and economic crimes are investigated and prosecuted alongside other types of crime. These models include:

- The establishment of an inter-agency coordination mechanism to, among other objectives, facilitate the sharing of intelligence and technical expertise, and the referral of cases between investigative agencies;
- The creation of ad-hoc, multi-agency task teams to investigate and prosecute specific cases; and
- The formation of a permanent multi-agency task force mandated to focus on corruption and economic crime linked to the wildlife sector⁹⁸.

UNCAC lists various ways States can improve training programmes for personnel responsible for preventing and combatting corruption. UNCAC suggests training on effective measures to control corruption through evidence-gathering and investigative methods.

⁹⁷ UNODC, *Scaling Back Corruption. A Guide on Addressing Corruption for Wildlife Management Authorities*, 2020, p. 58.

⁹⁸ *Ibid.*

Current situation in Malawi

The **NACS-II** calls for strengthening of anti-corruption institutions through adequate funding, coordination mechanisms and legal instruments for the effective investigation, prosecution and adjudication of cases involving crimes of corruption.

The **ACB** is mandated to carry out investigations of corruption and prosecution of the same. It has been involved in cases of corruption that have a money-laundering dimension. When this occurred, the ACB relied on anti-money laundering legislation to freeze assets to compensate for provisions in the Corrupt Practices Act which may not be strong enough.

Recommendations

7.1 Review legal options for wildlife and forest crime corruption investigations.

Review the current procedures for corruption investigations through DNPW/DoF/WCIU/ACB when targeting high-level wildlife/forest crime offenders with the aim of reducing the risk of misconducted investigative techniques that may preclude important evidence during prosecution.

The review/audit would also look at instances where weaknesses in particular legislation may be compensated by the strength of another associated legislation and ways in which these reinforcing legal provisions can be best utilised and inter-agency cooperation can maximise efforts.

The review would provide guidance for development of a legal framework for wildlife and forest crime investigations where corrupt acts are present. Further, the results may enable management to establish factors such as: areas of high corruption risk; effectiveness of reporting channels; effectiveness of investigations; and effectiveness of corruption prevention strategies.

The review could help pinpoint areas to include in trainings on related laws, e.g., the Corrupt Practices Act. For example, it may be determined that all WCIU staff (as well as DNPW and DoF staff) should receive comprehensive training on the Corrupt Practices Act and the Penal Code (sections on Corruption and Abuse of Public Office). In consultation with ACB, this could include a training manual with guidance for first responders to ascertain whether elements of corruption exist and how to handle varying circumstances. It could include protocols on e.g., when investigators should trigger the involvement of ACB, i.e., at the earliest stage of a case including potential corruption offences to ensure appropriate action is taken.

7.2 Utilise the UNODC Wildlife and Forest Crime Analytic Toolkit.

Consider application of the UNODC Wildlife and Forest Crime Analytic Toolkit to analyse preventive and criminal justice responses to corruption within wildlife and forest offences. The Toolkit is designed mainly to assist government officials in wildlife

and forestry administration, Customs and other relevant enforcement agencies. It can facilitate a comprehensive analysis of possible corruption risks and means and measures to protect wildlife and forests and monitor their use and thus, to identify technical assistance needs. In this sense, the Toolkit may also be used as training material for law enforcers⁹⁹.

Another tool to measure corruption risk that could be utilised is the recently launched UNODC guidance on conducting corruption risk assessments for public organisations, the 'State of Integrity: A guide on conducting corruption risk assessments in public organisations'.¹⁰⁰

8 Promote multi-agency cooperation.

No single agency is equipped to cope with the many onerous challenges presented by serious, organised crime. Multi-agency or multi-disciplinary teams need to form, coordinate and work in partnership if serious and organised crime is to be confronted vigorously and offenders swiftly convicted and stripped of their criminal benefits.

International law and best practices

State parties to **UNCAC** should take measures to encourage, in accordance with domestic law, cooperation between authorities responsible for investigating and prosecuting criminal offences¹⁰¹.

Members of **SADC LEAP** should ensure there is a unit whose primary role is to coordinate natural resources related law enforcement and monitoring illegal harvesting of resources.

Current situation in Malawi

The **IACCWC** was established in 2014 to bring together law enforcement agencies, prosecutors, judiciary, wildlife and forestry experts, FIA and ACB and other relevant government departments to advise on and coordinate efforts to combat wildlife and forest crime in Malawi. The regular meetings of IACCWC have facilitated increased awareness and co-operation between agencies, resulting in the regular involvement of e.g., FIA in investigating financial crimes associated with wildlife crime.

⁹⁹ UNDOC Wildlife and Forest Crime Analytic Toolkit,
https://www.unodc.org/documents/Wildlife/Toolkit_e.pdf.

¹⁰⁰ UNDOC State of Integrity; A guide on conducting corruption risk assessments in public organizations
https://www.unodc.org/documents/corruption/Publications/2020/State_of_Integrity_EN.pdf.

¹⁰¹ UNODC, *United Nations Convention against Corruption* (2004), Article 38.

Recommendations

8.1 Review the achievements and effectiveness of the IACCWC to date and propose recommendations where necessary to improve multi-agency working.

The IACCWC was established in 2014, and no formal review of its progress or effectiveness has yet taken place. A comprehensive review to assess its effectiveness, limitations and areas for improvement should be organised by the DNPW as Secretariat. The review should also include current membership and whether any additional institutions should be invited to join, as well as the status of all current MoUs in place between members.

An MoU between DNPW and NIS is underway to be signed; thus NIS will be given a mandate to share intelligence with DNPW, which so far has not been the case. With a change in government this process has stalled.

The review should also learn from applicable regional models such as South Africa's National Anti-Corruption Task Force, which is a high-level structure that draws membership from the various agencies that are involved in fighting corruption to coordinate their work and enhance collaboration. While its focus is purely on corruption, there are lessons that can be learnt on how it is structured and functions that can be applied to IACCWC. For example, even though IACCWC has a work plan and TORs, it is still a loose alliance and more needs to be done to enhance IACCW in terms of its structure and operations so that it can be more effective, including on a joint response to tackling corruption within the wildlife and forestry sectors.

Inclusion of anti-corruption measures in IACCWC's TORs and work plan and the establishment of an ACB and DNPW sub-committee (including MPS where necessary) to investigate corruption charges within live cases and to discuss broader corruption prevention strategies should be considered.

9 Enhance regional cooperation.

"If crime crosses borders, so must law enforcement." UNTOC Foreword

As a transit country, Malawi should fully exploit the mechanism of joint investigations, in particular with neighbouring regional jurisdictions when it will mitigate problems in receiving intelligence and investigative cooperation, and at an international level through mutual legal assistance (MLA) procedures.

International law and best practices

Under **UNTOC**, State Parties shall enter into bilateral or multilateral arrangements on direct cooperation between their law enforcement agencies and international or

regional organisations to enhance cooperation and consistency¹⁰². Such agreements could establish joint investigative bodies.

State Parties to **UNTOC** should afford one another the widest measure of mutual legal assistance (MLA) in investigations, prosecutions and judicial proceedings. States shall reciprocally extend to one another similar assistance when requested for UNTOC listed offences and ones that are transnational in nature, including that victims, witnesses, proceeds and instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organised criminal group¹⁰³.

Outside the **UNTOC**, States could use bi-lateral or regional mechanisms/agreements to exchange information and facilitate international cooperation on criminal matters, including through the networks and information-sharing platforms such as those noted above¹⁰⁴.

The **AU Convention** seeks to coordinate and harmonise the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent¹⁰⁵.

UNCAC stipulates that State Parties should enter into bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

UNCAC asserts that States should cooperate in criminal matters and assist each other in investigations related to corruption. Further, State Parties should develop and share through international and regional organisations statistics, analytical expertise concerning corruption and information with a view to developing common definitions, standards and methodologies as well as information on best practices to prevent and combat corruption¹⁰⁶. The assumption is that Member States will have enacted laws to enable them to provide assistance to foreign jurisdictions and increasingly have resorted to treaties or agreements on MLA in criminal matters.

The **SADC** Protocol encourages use of MLA and lists offences that would trigger the applicability of MLA. They include criminal matters related to transnational organised crime, corruption, taxation, custom duties and foreign exchange control.

Current situation in Malawi

Joint investigations. In this case, joint investigation generally refers to communication with regional counterparts at the pre-arrest stage. Communication usually occurs between the DNPW, DoF, and DPP, as addressed in UNTOC Article 27 (2) as above.

¹⁰² UNODC, UN Convention Against Transnational Organized Crime, 2000, Article 27(2).

¹⁰³ UNODC, UN Convention Against Transnational Organized Crime, 2000, Article 18.

¹⁰⁴ UNODC World Wildlife Crime Report. Trafficking in protected species (2020), p. 23.

¹⁰⁵ African Union Convention on Preventing and Combatting Corruption, 2003, Article 2, Objectives.

¹⁰⁶ UNODC, *United Nations Convention against Corruption* (2004), Articles 43, 61.

When investigations require cooperation, but do not rise to the level of necessitating an MLA request, Malawi has, and should continue to informally reach out to neighbours for assistance. It is difficult to quantify to what level this occurs as it is an informal cooperation and not generally recorded; it may be something that should be better referenced in the MLA Guidelines.

MLA Guidelines. LWT helped develop Malawi-specific MLA guidelines which outline an achievable four-part process for completing an MLA request for seeking assistance in gathering evidence for criminal prosecution. It includes MLA requirements for several important source countries for wildlife products that are transited through Malawi. The DPP is responsible for issuing MLA requests on behalf of department heads, like DNPW.

Regional Meetings. Representatives from the Malawi's DNPW, MPS and the DPP participated in workshops, hosted by LWT, with counterparts from Tanzania and Zambia – including NGO representatives from Wildlife Crime Prevention for example) to discuss rules around prosecution and MLA requirements. Primarily, attendees discussed the legal basis for MLA requests, but they also built relationships that can help support informal joint investigations.

ACB. Investigations in Malawi are uncovering multiple layers of criminal activity, which extend beyond the boundaries of the country. The ACB has been involved in international enquiries that stretch beyond Europe, Asia, the Middle East and neighbouring African countries. In the past, Malawi has had issues gathering critical intelligence in cases and imperfect requests for MLA have been rejected.

Recommendations

9.1. Increased communication among regional joint investigations units

IACCWC should help the DNPW, DoF, WCIU, etc. to connect with their regional counterparts and facilitate communication where informal joint investigative practices are the better option. This could include simply establishing a regional database of contact information and creating a list serve.

9.2 Improve prosecutorial use of Mutual Legal Assistance

As any country could be a source, transit, or destination country along the trade route, it is essential for law enforcement and judicial authorities to collaborate across borders and assist each other in an effective manner in investigations, prosecutions and judicial processes.

Treaties or agreements usually list the kind of assistance to be provided, the requirements that need to be met for affording assistance, the obligations of the cooperation States, the rights of alleged offenders and the procedures to be followed for submitting and executing the relevant requests. If a State Party's current legal

framework on mutual legal assistance is not broad enough to cover all the offences covered by the Convention, amending legislation may be necessary.

Given the technical nature of this area of work, and the incredible value of access to the informal channels of intelligence sharing such as the Egmont Group of Financial Intelligence Units across the world, INTERPOL, the ARINSA network in southern African states and a number of others it would be advisable for the wildlife law enforcement teams to try to lock into such networks through traditional law enforcement and even technical advisers.

Guidance on developing MLA requests has been developed for Malawi¹⁰⁷ but, despite multiple transnational wildlife crime cases involving Malawi being investigated, the use of MLA has so far not been optimised by Malawian prosecutors. In cases where MLA could provide access to vital intel in transnational cases, MLA requests should be submitted, and any additional technical assistance in drafting such requests should be provided to DPP as appropriate.

9.3 Support the adoption of a Fourth Protocol under the UNTOC against the illicit trafficking in species of wild fauna and flora.

Wildlife crime poses a serious threat to human and animal health, is driving countless species towards extinction, degrading ecosystems and their ability to sequester carbon, depriving governments of much needed revenue, and is exacerbating corruption, insecurity, and poverty. The World Bank estimates the value of wildlife trafficking at a staggering \$1-2 trillion a year. The dramatic and sudden loss of revenue from wildlife tourism in 2020 decimated jobs and livelihoods, which in turn led to a decrease in funding for conservation efforts, making wildlife more vulnerable to poaching.

Yet, despite the deadly consequences of illicit trafficking in wildlife, there is no global agreement to address it. In order to meet global commitments to tackle biodiversity loss and climate change, and emerging efforts to prevent future wildlife-related pandemics, then countries must treat wildlife crime as a serious and highly destructive crime on an international level. One such intervention would be a Fourth Protocol under the UNTOC against the illicit trafficking in species of wild fauna and flora, as called for by the Presidents of Costa Rica and Gabon on 17 May 2021.

¹⁰⁷ Requesting Mutual Legal Assistance: A guide for gathering evidence and legal assistance from foreign jurisdictions - <https://www.lilongwewildlife.org/wp-content/uploads/LWT19-MLA-Report-print-ready.pdf>.

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The full 60-page report is available online at www.icon.mw/corruptionreview.