

Annex 1 [Note verbale reference: CU 2023/225/DTA/CEB/CSS]

“Links between corruption and other forms of crime”

States parties are invited to provide relevant information in line with paragraph 22 of resolution 9/1¹, in which the Conference:

*Encourage[d] States parties to further explore and enhance their knowledge of the **links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering, including during times of emergencies and crisis response and recovery**, to better strengthen integrity, transparency and accountability, and invite[d] the secretariat, within existing resources, to compile a report in this regard on the voluntary information provided by States parties and submit it to the Conference at its tenth session [emphasis added].*

States parties may wish to take a broad view of “other forms of crime” when responding to this questionnaire, which may include all forms of organized crime and economic crime, as well as other crime, among others.

Contact Information

Please provide contact details for potential follow-up questions. Contact details will be treated confidentially.

Country: Malawi
Government Agency: Anti Corruption Bureau
Department: n/a

[REDACTED]

[REDACTED]

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¹ In July 2022, the secretariat sent out note verbale CU 2022/264(A)/DTA/CEB/CSS inviting States parties to provide information on good practices and challenges concerning international cooperation to further prevent, identify, investigate and prosecute corruption during times of emergencies and crisis response and recovery, in line with paragraphs 22 and 23 of resolution 9/1 entitled “Sharm el-Sheikh declaration on strengthening international cooperation in the prevention of and fight against corruption during times of emergencies and crisis response and recovery”. As at 11 October 2022, the secretariat had received responses from 23 States parties, which were analysed in a note prepared by the secretariat, entitled “Best practices and challenges concerning international cooperation in combating corruption during times of emergencies and crisis response and recovery, and efforts to further explore and enhance knowledge of the links between corruption and other forms of crime” [CAC/COSP/EG.1/2022/CRP.1]. Responses were received from the following States parties: Australia, Bahrain, Belarus, Brazil, Bulgaria, Chad, Chile, Egypt, El Salvador, European Union, France, Georgia, Italy, Mexico, Myanmar, Panama, Portugal, Republic of Moldova, Romania, Saudi Arabia, Spain, Türkiye and the United States of America.

Questionnaire

Corruption may contribute to impunity for other types of crime by providing the leverage to facilitate and execute them, and to make them invisible, and often exacerbates those crimes through the involvement of powerful elites and individuals. Corrupt behaviour (such as violating duties, accepting or transferring bribes, and facilitating transactions, as well as ignoring or failing to follow-up on information that a crime may be taking place) may serve an enabler of other crimes by allowing for the enrichment of criminals and incentivizing individuals in the public and private sector to facilitate their operation. Other crimes can therefore flourish and in turn provide a basis for a wide range of corrupt behaviour.

This questionnaire is structured into two parts: Part 1 considers steps taken to understand the links between corruption and other forms of crime, while Part 2 focuses on the measures aimed at responding to corruption linked with other forms of crime.

I. Understanding the links between corruption and other forms of crime

1. Has your country undertaken any analyses or assessments to better understand the interlinkages between corruption and other forms of crime, including typologies of crime and how corruption may be used to facilitate and enable organized crime, economic and other crime, and vice versa? **YES.**
 - a. If **YES**, was such analysis carried out through formal risk assessments or other methods? Please describe.

Formal Risk Assessment (2018) National Risk Assessment (2023)

2. Please list the main typologies of other crime that have interlinkages with corruption in your country.
 - ✓ Drug trafficking
 - ✓ Money-laundering
 - ✓ Human trafficking
 - ✓ Migrant smuggling
 - ✓ Firearms trafficking
 - ✓ Crimes that affect the environment
 - Trafficking in cultural property
 - ✓ Cybercrime
 - ✓ Terrorism
 - ✓ Other forms of economic crime, organized crime or other crime with links to corruption (**please list**)

Illegal Wildlife Trade

3. Please provide examples of corruption linked to these other crimes.

Please elaborate if you have or had any cases of the following in your country:

A. Corruption as an enabler of crime

- a. Cases of public officials abusing their office to facilitate criminal activity or to protect certain criminal individuals and entities – or to gain support from them – for example, by providing funding or protection or to gain and control public resources?
- b. Cases of corruption being used to facilitate other types of crime, such as trafficking in persons, illicit trade or smuggling of drugs across borders? For example, have any cases involved the following:
 - the issuance of permits, licenses, visas or documents for border crossings
 - the purchasing of firearms
 - bribery of border agents
 - falsification of data in public registries
 - other
- c. Cases of corruption in public procurement to advance the interests of public officials and their associates? Cases of officials giving preferred access to contracts and tenders to their associates in cases involving other crimes?

R v Gerald Viola and Crispin Chingola Criminal Case no. 1082 of 2020, before Principal Resident Magistrate Court Sitting at Lilongwe. The 2nd Convict, Crispin Chingola, a businessperson trading as Missies Trading wanted to raise capital for his business from business entities both within Malawi and in South Africa. He approached Gerald Viola, Deputy Chief Executive Officer for the National Food Reserve Agency (NFRA), to give him a copy of NFRA Local Purchase Order so that he could use it to source funding from potential funders on the pretext that he had a contract with NFRA to supply 10,000 metric tonnes of maize

- d. Cases of the protection of victims of crime and corruption being impeded by corruption involving public officials or persons in the private sector?

N/A

B. Corruption and crime linked to political patronage

- a. Criminal individuals and entities attempting to use corruption to obtain access to political leadership or to gain power and influence, such as through:
 - political party financing
 - trading in influence
 - other
- b. Cases of crime and corruption being used to attempt to influence or disrupt elections?

R v Thompson Mpinganjira Criminal Case no 7 of 2020 (High Court Principal Registry) – The convict, a businessman, was convicted of 2 counts of offering unspecified amounts of money to Judges who were presiding over the case of

Dr. Saulos Klaus Chilima and Dr. Lazarus McCarthy Chakwera v Professor Arthur Peter Mutharika and Electoral Commission Constitutional Reference Number 1 of 2019 (High Court – Lilongwe District Registry) to influence the outcome of the case

- c. Cases of criminal involvement, including through the use of corruption, to attempt to influence appointments of public officials to build dependency?

R v Francisca Masamba Criminal Case no 108 of 2021 – The accused person, a member of Parliament and the Public Appointments Committee of Parliament solicited money in the sum of 2 million Malawi Kwacha (equivalent to \$2,000.00) from Mr. Michael Chiusiwa, who was appointed as the Director of the Office of the Director for Public Officers Declarations and was to appear before the committee for confirmation by Parliament. The matter is not yet concluded.

C. Corruption to make organized and other crime invisible

- a. Cases of criminals and their associates using proceeds of crime and corruption for personal enrichment and to conceal the origin of the crimes and for money-laundering? In particular, cases of concealment of ownership being used to facilitate corruption and other forms of crime?

R v Leonard Karonga Criminal Case no 68 of 2014, R v Oswald Lutepo Criminal Case no 2 of 2014 [2015] MWHC 491. The cases involved the misappropriation of government funds through the transfer of funds from the government bank account to private companies in disguise for payments of goods and services (infamously called cash gate cases) .

- b. Cases of corruption being used to impede investigations, prosecutions and adjudications of organized and other crime, such as through bribery or allocation of political and other favors to law enforcement and judicial officers? Are there cases of corruption linked to organized and other crime not being pursued by the authorities ('blind eye')?

- i. ***R v David Kadwa – a Chief Resident Magistrate was found guilty and convicted on three counts of corruption after he had corruptly solicited and obtained money from an accused person for promising to procure him an acquittal in a criminal trial before a fellow magistrate.***

- ii. ***Investigations into the alleged bribery case against Mr. Zuneth Sattar, a British National, and some public officers in Malawi to award Mr. Sattar's companies public procurement contracts***

- c. Cases of individuals and entities using corruption and other crimes to generate the funds needed to buy protection from the police? Cases of corruption in law enforcement authorities used to shield organized crime?

N/A

- d. Cases of law enforcement being impeded due to a lack of information and data, as well as reporting of crimes related to corruption?

Mostly cases are impeded due to delays in getting information through Mutual Legal Assistance

4. Has your country collected data or statistics to track and/or analyze trends related to the links between corruption and the types of crime outlined in Question 2 above? **YES**
 - a. Are these data analysed and used systematically, such as in prevention and investigations or prosecutions? **YES**.
 - b. Please describe any methodologies used for strengthening measurement and terminological clarity, and achieving a deeper understanding of the different contexts (e.g. in times of peace or in emergencies or conflict situations) and sectors (e.g. law enforcement, border crossing, immigration, intelligence and security, procurement), as well as any corruption or organized crime threat assessments that take into account the interlinkages between corruption and other forms of crime.

Typologies by the Financial Intelligence Authority including description by sectors.

5. Has your country collected data or statistics to track and/or analyse trends concerning international cooperation in this regard? **YES**.
 - a. Please elaborate and share any findings with regard to the good practices and challenges in international cooperation with regard to countering corruption as it relates to other forms of crime.

An issue of Financial Intelligence Authority and DCE of Zambia on cooperation of corruption matters.

The notable challenge is that formal requests take time to get assistance from the requested State.

6. Has your country taken any steps at national, regional or local levels to better understand and study the linkages between corruption and other crimes, such as criminological research, training or awareness raising? **YES**.
 - a. If **YES**, please elaborate, providing examples.

Governance and Corruption Survey (i.e a survey at Department of Immigration and Department of Road Traffic Safety and Service).

7. Which aspects of corruption as it relates to other forms of crime do you consider require further research, and what are the gaps in knowledge or understanding that, if addressed, could facilitate countering these crimes?

II. Measures aimed at responding to corruption linked with other forms of crime

8. Has your government adopted or utilized any measures at national, regional or local levels aimed at **preventing** corruption linked with other forms of crime? YES/NO.
 - a. If **YES**, please elaborate. *Measures may include:*

- ✓ safeguards in specific sectors (e.g. law enforcement, border crossing, immigration, intelligence and security, procurement, local officials)
- ✓ development of targeted strategies, policies, action plans at national or sectoral level specifically addressing the links between corruption and other crime *i.e development and implementation of National Anti-Corruption Strategy (NACS II)*
- ✓ establishment of dedicated institutional frameworks
i.e establishment of Institutional Integrity Committees (IIC's) in all Government Ministries, Department and Agencies. Development of the Vetting Policy for Public Procurements
- ✓ specific rules, codes of conduct, or standards of transparency and integrity for public officials who are most exposed to the risk of being involved in crime and corruption
i.e Public Service Code, Gift Policy, Conflict of interest guidelines
- ✓ systems for the disclosure of assets and private interests
- control mechanisms, such as internal approval systems to avoid having one-to-one meetings
- ✓ controls on issuances of visas, work permits, firearms licenses
- the use of information and communication technology (ICT) based tools to prevent (or detect) such crimes
- ✓ awareness raising and prevention measures for public officials that are vulnerable to corruption and other forms of crime
- other

9. Has your government adopted or utilized any measures aimed at **detecting, investigating and prosecuting** corruption linked with other forms of crime? **YES.**

a. If **YES**, please elaborate. *Measures may include:*

- ✓ legislation criminalizing all forms of corruption related to other types of crime
- ✓ legislation providing for the liability of legal persons for their role in corruption linked to other forms of crime
- ✓ measures to identify beneficial owners of legal persons
- ✓ specialized investigative techniques
- ✓ strengthened institutional frameworks, including the establishment of dedicated bodies (such as those mandated to identify links between corruption and other crime), task forces or coordination mechanisms between authorities responsible for corruption and other crime
- ✓ capacity-building, including targeted training and peer-learning for relevant authorities
- ✓ measures to enable the identification, confiscation, tracing or seizure (and, where relevant, return) of assets that are proceeds of corruption-related crimes
- ✓ mechanisms to address the role of professional gatekeepers (*i.e.* financial, legal, accounting or other relevant professionals) in the transfer of proceeds of corruption and other crime
- ✓ measures aimed at encouraging the protection or participation of actors outside the public sector, including:
 - ✓ reporting mechanisms, legal protections and incentives aimed at encouraging persons to report corruption and other crimes
 - ✓ measures to protect victims, witnesses, and cooperating offenders

- measures aimed at ensuring the investigation and prosecution of acts of violence committed against journalists and civil society actors whose professional activity relates to corruption linked with other crimes
- other

10. Has your government adopted or utilized any measures aimed at facilitating **international cooperation** and the rapid exchange of information for cases that have interlinkages between corruption and other forms of crime? **YES**.

a. If **YES**, please elaborate. *Measures may include:*

- the implementation of mutual legal assistance through digital means
- measures aimed at enhancing the efficiency of extradition mechanisms
- the use of electronic communication channels or networks
- the use of joint or parallel investigations or the bilateral sharing of capacity and expertise on investigating and prosecuting corruption offences linked with other forms of crime
- cooperation with other countries or multilateral, international or regional bodies to address corruption linked with other forms of crime
- accession to bilateral, regional or multilateral treaties and agreements.
- other