



The University of Edinburgh

Law enforcement and corruption in Malawi: Narratives of impunity and punishment

**Gerhard Anders
University of Edinburgh**

Queen Mary University of London
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Conceptual underpinnings

- We can learn a lot about government institutions when we listen closely to narratives about corruption by government officials and citizens who try to make sense of the state.
- Anthropological scholarship shows that alternative popular theories of and about the state contradicting the official state idea of a sovereign government exercising legitimate authority highlight everyday experiences and informal arrangements co-existing with official rules and regulations.

Background

My presentation draws on two research projects:

1. Study of everyday practices, informality and practical, social norms in government health facilities in Malawi funded by DfID. The term 'practical norms' coined by Olivier de Sardan denotes informal, social norms governing behaviour at the shop floor level that supplement or sometimes override official regulations.
2. Ongoing research study examining law enforcement efforts against high-level (grand) corruption in Nigeria and Malawi funded by FCDO (part of the Global Integrity Anti-Corruption Evidence Research Programme). In the context of this project pathways to impact working closely with Ministry of Justice and anti-corruption agencies in Nigeria and Malawi. As part of this research, we collected narratives among government officials about the impact of the law enforcement response to the 2013 Cashgate scandal.

Narratives of impunity and punishment

- Drawing on findings from these two projects, my presentation examines narratives of petty corruption and grand corruption emphasising how the health sector features in these narratives.
- Broadly speaking, narratives about corruption in circles of government officials fall in two categories: Narratives of impunity and narratives of punishment.
- These two narratives are in fact two sides of the same coin as they are employed by people to make sense of social order and the role of the state.

Focus on two specific issues

1. Narratives concerning efforts to curb petty corruption in the health sector, especially the pilfering of drugs.
2. Narratives about the law enforcement response to 2013 Cashgate scandal, massive corruption scandal in 2013 involving the theft of tens of millions from government account no. 1.

Both have been partly donor-driven, both happened at the same time, both are about theft, both have featured prosecutions and convictions and both have spawned narratives of impunity and punishment.

The context

1. Drugs theft:

Since 2011, there had been growing awareness of significant leakage of drugs in the government health system. Research in 2015 found that more than 80% of leakage of drugs happened at the ward level in hospitals and health centres. Only 15% of the leakage happened at the central warehouse level. However, it should be noted that more than 80% of the drugs reached patients.

Recommendation to strengthen inventory management procedures and improve training of staff and monitoring of supply chain. The measures adopted also included stronger policing and establishment of Drug Theft Investigation Unit. This led to the arrest of several low-level employees in government district health offices who were prosecuted for drugs theft and received long prison sentences.

The context

2. Cashgate

At least GBP 20 million stolen within a period of only six months in 2013. This was met by a public outcry and heavy pressure by Malawi's development partners that suspended direct budget support.

This triggered unprecedented law enforcement efforts. So far, several perpetrators including officials and businesspeople have been convicted for money laundering and theft. More than a dozen officials and businesspeople have been convicted while other cases have been dragging on in court.

Striking is the wide variety of sentences ranging from less than three years to eleven years for the theft of millions of pounds.

Drugs theft

1. Narratives of impunity:

The cynics: Corruption is widespread in the health sector. Drugs are stolen from health centres and sold at private pharmacies.

The apologetics: Nurses and health workers do pilfer drugs but they redistribute most of it to family and neighbours. At ward levels, drugs are not stolen but they are given to patients without following proper procedures.

The realists: 'We have laws but we also have by-laws'. Informal practical norms override official rules. Sometimes used to help patients (see above) but often they are simply a cover for corruption. Government resources are seen as free public goods (*zaboma* and *zaulere, katangale*)

2. Narratives of punishment:

Law and order topos: 'Prosecute individuals and groups found to be stealing drugs, applying full penalties as a deterrent.' 'At every point where drugs are stored and dispensed, health staff are able to request of and receive from those in control the drugs they want. ... such uncontrolled dispensing leaves the door wide open to theft and onward selling.'

The disappointed: Civil servants always try to steal what belongs to the government and they need to be punished. For example, direct accusations on Whatsapp.

The cynics: The campaign against drugs theft has focused on junior health workers. Officials at the Ministry of Health and senior managers at the District level usually go scot-free. Only the small fry is being sentenced to long prison sentences.

The apologetics: Nurses and health workers should not be punished for trying to do their jobs under difficult circumstances. Punishment is the wrong answer.

Cashgate

1. Narratives of impunity:

The cynics: The theft of millions by government officials and political leaders has been going since 2009 at least, possibly going as far back as the late 1990s. Despite the arrest of a few scape goats it continues albeit possibly at a lower level since 2013.

The moralists: In 2013, everything was upside down on Capital Hill. The corrupt officials were confident and showed off luxurious cars and clothes. Maybe they were deceived. They thought their bosses would protect them, it was pure self-interest, greed, to get the posh lifestyle.' They made a show of donating money in Church (link to prosperity gospel by Catholics).

2. Narratives of punishment:

The optimists: 'Yes, it has had a deterrent effect, there have been a lot of arrests. When you hear about cases and you see them being sent to prison, you see the difference: Gentlemen, let's not get rich through crooked means, don't get rich by stealing. We discuss such things. It makes people think twice, it really makes you think.'

The pessimists: 'The punishment of a few individuals has not stopped the rot in government'. Lenient sentences fail to deter likely perpetrators. Selective justice: 'Civil servants who are affiliated with the political authorities know that they will be protected as long as they keep placating the gods – sharing the benefits of fraud with their political masters.'

The law enforcement officials: There is very little encouragement for insiders to testify against their co-conspirators. No whistle-blowers have come forward. Leaking information at most as response by some officials.

The judges:

- Justice Kamanga in Senzani's sentencing judgment (2014):
'As a result of aid withdrawal by donors the government budget on essential drugs in the government hospitals was severely affected. And the government continues to struggle to provide essential drugs to patients in hospitals. This has heavily affected the poor people who cannot afford the drugs and services from private pharmacies and hospitals.'
- Justice Kapindu in Lutepo's sentencing judgment (2015):
'What this case has shown, as have the several other concluded related cases before it, is that in collaboration and in systematic fashion, these unscrupulous people embezzled State funds – tax payers' money – with reckless abandon. They had no regard for the exceptional hardship that reaping-off such huge sums of money from the public purse would cause on the ordinary people of Malawi, particularly the poorest among us.'

Conclusions

- There is a fair degree of cynicism expressed in stories of impunity and selective justice.
- Lack of trust in government and pessimism in the capability of government to deliver effective public services. Lack of resources, essential drugs and widespread corruption.
- But also high expectations in the potential of the state to achieve better compliance through exemplary punishment, handing down long prison sentences.
- People refuse to give up the idea of the state upholding the law and delivering public services despite haphazard law enforcement, overwhelmed government departments and widespread corruption.
- The narratives of impunity and punishment lend little support to the idea that informality and so-called champions will contribute to behavioural change.

- What broader conclusions can I draw from the research I have been conducting for the past 20 years in Malawi including the two studies I drew on for this presentation?
- On the one hand, I am pessimistic or rather realistic. Malawi's law enforcement agencies and public services, especially the health service as well as the rule of law in general will not transform miraculously into more effective institutions by some intervention.
- It will remain messy, haphazard, unfocused, passive 'Ad hocism' (Kanyongolo). Law enforcement is likely to happen in fits and uncoordinated spurts of action with frequent setbacks and followed by long periods of apathy or complacency.
- Sustained implementation of public policy based on decision-making by proactive democratic institutions is unlikely.
- Neither law enforcement nor preventive measures such as better management, accounting and auditing will be sustained. In the health sector reactive measures with temporary effect that are quickly undone when momentum fizzles out.
- But: Law enforcement and provision of public services are important symbolically for government officials and citizens.