

CORRUPTION, PERSONAL IMMUNITY OF HEADS OF STATE AND POLITICS: THE CASES OF MALAWI AND ZAMBIA

BY

JEAN PHILLIPO


DOCTORAL RESEARCHER, THE UNIVERSITY OF THE
WESTERN CAPE

SOUTH AFRICAN-GERMAN CENTRE FOR CRIMINAL JUSTICE

INTRODUCTION

- Former heads of state answering criminal charges-Muluzi and Chiluba
- **Question: Why prosecute after presidency?**

HEADS OF STATE AS PEPS

- Heads of state as Politically Exposed Persons (PEPs)
 - High corruption and money laundering risk
 - Enhanced due diligence by financial institutions
 - Filing of STRs-two challenges:
 - Independence of FIU's and other relevant LEAs
 - Immunity of heads of state
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PRESIDENTIAL IMMUNITY-MALAWI

- Only immune while in office
 - Expiry of presidential term
 - Impeachment
- Impeachment grounds:
 - Serious violation of the constitution
 - Serious breach of the written laws-commission of an offence e.g. corruption
- Immunity does not apply to investigations

PRESIDENTIAL IMMUNITY-ZAMBIA

- Immune even after presidency
- Immunity to be lifted by parliament
- Not immune from investigation
- Draft Constitution: more complex
 - Removal of immunity on specific charges
 - Reinstatement of immunity on acquittal
 - President to move parliament

POLITICS

- Mwanawasa succeeded Chiluba.
 - Political tension followed by criminal charges
- Mutharika succeeded Muluzi
 - Political tension followed by criminal charges
- Politics
 - Undermine legitimacy of criminal proceedings
 - Interference with the independence of LEAs

INDEPENDENCE OF LEAS

- Security of tenure of heads of LEAs
- Operational independence
 - Malawi-ACB, DPP
 - Zambia-AMLIU

WAY FORWARD

- Emulate South African example?
 - Independent institutions e.g. Public Protector
 - Zuma's Nkandla residence investigation
 - No immunity of both incumbent and former presidents?
- Zambia-Civil recovery of assets stolen by former president to avoid immunity question? e.g. Chiluba-UK case

CONCLUSION

- The combating of grand corruption committed by heads of state is challenging but necessary
 - Need to ensure the independence of LEAs
 - Need to remove immunity of heads of state
 - Pursue civil proceedings if immunity hinders prosecution
 - Politics play a critical role in the whole process
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