

COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES, INTERNATIONAL COOPERATION AND ENGAGEMENT OF CIVIL SOCIETY: THE ZIMBABWEAN PERSPECTIVE

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I. INTRODUCTION

Zimbabwe is affected by corruption just like any other country in the world over. Corruption has debilitating effects and affects the most vulnerable citizens, the women, the children and the elderly at most. Zimbabwe signed the United Nation Convention against Corruption (UNCAC) on 20 February 2004 and ratified it on 8 March 2007, the Convention entered into force for Zimbabwe on 7 April 2007. Zimbabwe is a signatory to the African Union on Preventing and Combating Corruption (AUCPCC) which was adopted at the Second Ordinary Session of the Assembly of the Union, held in Maputo, Mozambique on 11 July 2003. It entered into force for Zimbabwe on 5 August 2006. To date thirty-four countries are members and State parties to the regional Convention including Zimbabwe.

In 2004, Zimbabwe signed the Southern Africa Development Community Protocol on Corruption (hereinafter the SADC Protocol) in response to a regional call for leaders to pledge their commitment in the fight against corruption. Thereafter, Zimbabwe amended its Constitution¹ and a provision for the establishment of an anti-corruption body was included. The Anti-Corruption Commission Act² was enacted in 2004 and the Commission was established in 2005. The Zimbabwe Anti-Corruption Commission (ZACC) is an independent body established by the Constitution and mandated to investigate and expose cases of corruption, combat corruption, theft, abuse of power and other improprieties in the public and private sectors³. Since then Zimbabwe has not looked back on the fight against corruption as it continues to make efforts to strengthen its capacity and legal framework on corruption.

For the past two decades the Zimbabwean economy has been on the meltdown and one of the major causes has been corruption. Although the Government showed its political will by ensuring the establishment of a national anti-corruption body there are so many challenges which came about. The Commission is a body that is funded solely by the Consolidated Revenue Fund and since its inception it has budgetary constraints which hamper most of the efforts to capacitate the Commission to enhance the fight against corruption. ZACC requires capacity-building to enhance and strengthen its capacity to investigate corruption at the national level. There are positive developments which have been ushered by the new dispensation led by His Excellency, E. D Mnangagwa which will see the decentralization of the ZACC to all provinces. This is in line with the mantra “zero tolerance to corruption”.

II. CRIMINAL JUSTICE SYSTEM IN ZIMBABWE

The Zimbabwean legal system is based on the concept of separation of powers. There are three arms which are the executive, the legislature and the judiciary. The legislature is responsible for making the laws in Zimbabwe and these laws are enforced and implemented by institutions that are part of the executive. The judiciary is a separate arm that should ensure the rule of law is upheld and it should remain independent. The law enforcement agents are seized with the powers of investigating crime. The Zimbabwe Anti-Corruption Commission is one of the law enforcement agencies which is seized with investigating all forms of corruption in Zimbabwe. The corruption offences are outlined in the Criminal Law Codification and Reform Act⁴ and some of the offences are bribery, criminal abuse of office as a public officer, fraud involving corruption, money

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¹ Amendment No. 18.

² Chapter 9:22.

³ Section 255 (1) of the Constitution of Zimbabwe Amendment (No. 20).

⁴ Chapter 9:23.

laundering among other offences. In terms of the Constitution of Zimbabwe⁵ the Commission is mandated to investigate corruption cases and recommend the arrest of suspected persons⁶. The interpretation of the law in this instance has been that the Commission can only investigate and not arrest persons suspected of corruption, and it remains a grey area of the law to an extent where there has been a constitutional challenge in the Constitutional Court whether or not the Commission has powers of arrest. This legal lacuna has posed challenges in the execution of the Commission's mandate.

The Commission after completing its investigations recommends the arrest of suspected persons to the Commissioner General of Police. The police should scrutinize the investigation and formulate a reasonable suspicion in order to effect arrest on a person suspected of having committed an offence. Thereafter, that is when the matter can be referred to the National Prosecuting Authority (hereinafter the 'NPA'). The NPA has to prove beyond reasonable doubt in each and every case, that a particular suspect has committed an offence. The NPA is supposed to prosecute its cases before the court which is adjudicated by the judiciary.

A. Structure of the Courts

There are three main criminal courts in Zimbabwe, namely, the Magistrates Court, the High Court and the Supreme Court. The Magistrate Court is the lowest criminal court in Zimbabwe. Two pieces of legislation govern its operations. These are the Magistrates Court Act⁷ and the Criminal Procedure and Evidence Act⁸. This is the court where all cases of corruption are initially prosecuted. A corruption case can be referred to the High Court depending on the threshold of the financial misappropriation or the seriousness of the offence. The High Court is the next court of first instance and appeal in terms of criminal offences and it is governed by the Constitution and the High Court Act⁹. The highest court which can adjudicate criminal cases is the Supreme Court which is governed by the Constitution and Supreme Court Act¹⁰.

B. Offences Relating to Corruption in Zimbabwe

The offences relating to corruption in Zimbabwe are stipulated in the Criminal Law Codification and Reform Act¹¹ from sections 170 to section 174. Bribery is the first offence outlined and involves the receipt or giving of a bribe for any consideration, corruptly using a false document, corruptly concealing a document from a principal, corruptly concealing a transaction from a principal and criminal abuse of duty as a public officer are the principal offences.

III. LEGISLATIVE FRAMEWORK ON CORRUPTION

Zimbabwe boasts of a relatively good legislative framework with regard to corruption. There are a good number of pieces of legislation which relate to corruption. The supreme law of the land which is the Constitution of Zimbabwe has in its Chapter 13 made provisions for institutions which are responsible for combating corruption which are the Zimbabwe Anti-Corruption Commission and the National Prosecuting Authority, respectively. However, these key institutions have been buffered by the enactment of various legislation some of which are the Money-Laundering and Proceeds of Crime Act¹², Prevention of Corruption Act¹³, Public Entities and Corporate Governance Act¹⁴, Criminal Procedure and Evidence Act, and this is not an exhaustive list.

The latest response was the enactment of the Money- Laundering and Proceeds of Crime Amendment Act where the legislature addressed shortcomings of the anti-money laundering regime in terms of the requirements of the Financial Action Task-Force¹⁵ recommendations and United Nations Convention against Corruption. The legislature has also enacted the Public Entities Corporate Governance Act after realizing

⁵ Amendment No. 20 (2013).

⁶ Section 255(3).

⁷ Chapter 7:10.

⁸ Madhuku L *An Introduction to Zimbabwean Law* page 61.

⁹ Chapter 7:06.

¹⁰ Chapter 7:13.

¹¹ Chapter 9:23.

¹² Chapter 9:24.

¹³ Chapter 9:16.

¹⁴ Chapter 10:31.

¹⁵ Hereinafter FATF.

that corruption in the public sector has become rampant and needed to be abated.

IV. STRATEGIC PARTNERSHIPS

Undoubtedly, corruption remains the most daunting challenge to good governance, sustainable economic growth, peace, stability and development in Zimbabwe. In many corruption perception surveys, Zimbabwe is perceived as one of the countries with high levels of corruption in Africa. Hence, addressing the problem of corruption in a strategic and comprehensive way is of paramount importance as a development priority for Zimbabwe.

Zimbabwe has joined the world in the latest trends on investigating illicit financial flows. The Mbeki report on Illicit Financial Flows highlights how corruption and weak transparency mechanisms allow tax avoidance, trade mis-invoicing, abusive transfer pricing, and many other ways used to deny Africa to reap its resources dividend. The 50 billion dollars Africa loses annually through illicit financial flows are resources that could be used to create jobs for the youth who are now forced into illegal migration seeking greener pastures¹⁶.

Corruption can be combated more successfully if a multi-stakeholder, comprehensive approach is chosen. This approach will be successful if a mechanism can be provided where the relevant stakeholders, namely the FIUs and the specialized agencies which investigate corruption can exchange relevant data in a trusted way. In Zimbabwe the multi-stakeholder approach has been used to fight corruption. In 2016, the relevant stakeholders in the criminal justice system collaborated and launched a campaign named 'Against Corruption Together' (ACT). This noble initiative was spearheaded by the Judicial Service Commission and the other stakeholders were the Zimbabwe Anti-Corruption Commission, the National Prosecuting Authority, the Ministry of Justice. The ACT campaign was launched to raise awareness on corruption in the justice delivery system. It was necessitated by the public outcry that the level of corruption in justice delivery had risen to alarming levels. The objective of the ACT campaign was to create anti-corruption desks in all relevant stakeholder institutions, where reports would be received. The major targets were corruption related to the judicial system. This campaign strengthened the capacity of institutions in the criminal justice system and it also allowed for more effective dissemination of information when dealing with cases involving corruption.

Civil society organizations play a key role in addressing the scourge of corruption particularly through advocacy and monitoring the efforts of the country and intergovernmental organizations, but there still is a need for a more unified and strategic approach to anti-corruption in Zimbabwe. The integration of information between the public institutions mandated to combat crime and the civic organizations is still a major challenge. There is an element of mistrust which eventually results in some very important corruption cases not receiving due attention. The civil society's role in formulating and implementing anti-corruption policies is important for the success of institutions mandated to curb corruption. Zimbabwe has multiple anti-corruption initiatives which have achieved limited success in alleviating corruption.

V. ZIMBABWE'S EFFORTS TO FIGHT CORRUPTION

In light of the rampant levels of corruption, the Zimbabwean Government continues to make efforts to curb it. In the wake of 2018, the legislature enacted the Public Entities Corporate Governance Act¹⁷, whose objective is to provide for the governance of public entities in compliance with Chapter 9 of the Constitution and to provide a uniform mechanism for regulating the conditions of service of members of public entities and their senior employees.

A. Establishment of Anti-Corruption Courts

Against this backdrop, the Judicial Service Commission established and launched specialized Anti-Corruption courts to tackle cases of corruption and will deal with all forms of corruption. The specialized courts have been buttressed by the enactment of the amended Money Laundering and Proceeds of Crime Act whose provisions place reliance on a combination of civil and criminal procedures to combat financial

¹⁶ M. Begoto African Union Advisory Board on Corruption Concept Note 2017 "Winning the Fight Against Corruption: A Sustainable Path to Africa's Transformation" page 3.

¹⁷ Chapter 10:31.

crimes though targeting the seizure and forfeiture of all tainted and illicit proceeds of crime. The judicial officers and prosecutors are currently undergoing training on corruption matters. The establishment of the specialized courts has seen the prosecution of five former Ministers and two of them have been successfully convicted and are currently serving their terms of imprisonment.

B. Repatriation of Externalized Funds

Since the new dispensation of Government in 2017, the Zimbabwean government made an amnesty call for the repatriation of externalized funds by Zimbabwean citizens and local and foreign companies which were operating in the country. This strategy was part of the initiatives of a massive anti-corruption campaign by the new President, His Excellency E. D Mnangagwa. A list of individuals and companies who are alleged to have ignored the directive to return all externalized funds amounting to billions of dollars has been made public and investigations have been launched in an effort to recover any proceeds which were externalized illegally. This move was to curb rampant corruption, in order to register significant growth in the economy. With the view to advancing the work on strengthening the recovery and return of stolen assets and in order to develop good practices on asset recovery in line with the United Nations Conventions against Corruption, Zimbabwe has implemented the good practice of asset forfeiture/parallel financial investigations through the Money Laundering and Proceeds of Crime Act. This initiative supports international efforts to end “Safe Havens for Corrupt Funds”. The anti-corruption exercise saw the return of \$300 million dollars to the country, and there are 1166 cases of externalization of funds which are under investigation.

C. Corporate Governance Framework in Zimbabwe

Zimbabwe enacted the developed and launched a Corporate Governance Code and which signified a new dawn in the corporate culture of Zimbabwe, given the background of company failures mainly due to corporate governance deficiencies, mechanisms for creating trust between shareholders, boards of directors and management performance measurement standard, accountability, sustainability and ethical conduct of directors. These areas which are extensively covered in the code are expected to result in corporate culture of the highest standard which ensures the sustainability of business and ultimately will benefit Zimbabwe as a whole. In addition, Zimbabwe has introduced the Public Entities Corporate Governance Bill, which will provide for corporate governance of public entities. Zimbabwe is also developing the National Integrity Plan and the National Anti-Corruption Policy for use by public and private institutions as tools of corruption prevention so as to enhance principles of effective public administration and corporate governance.

D. Legislation on Unexplained Wealth Orders

Zimbabwe recently passed legislation on unexplained wealth orders or illicit enrichment. The law now requires that an enforcement authority can make a civil application to the High Court citing that they have reasonable suspicion that any person, natural or juristic, has unexplained wealth. The court if satisfied with the application can grant an unexplained wealth order restraining or freezing the property and requiring the Respondent to provide evidence to the contrary. This piece of legislation has enhanced the fight against corruption where many persons have acquired wealth illicitly and are laundering the funds into the legitimate system.

VI. CHALLENGES IN THE FIGHT AGAINST CORRUPTION

Zimbabwe is faced with the many challenges in fighting the scourge of corruption which are similar to other jurisdictions.

A. Gaps in Legislation to Fight Corruption

Although the Constitution of Zimbabwe, which is the supreme law of the land, had dedicated Chapter 13 to establish institutions to combat corruption, there are pieces of legislation which need to be enacted to strengthen the anti-corruption legislation. Zimbabwe is yet to enact legislation in line with the provisions of Article 32 of the UNCAC which provides for witness protection for witnesses, experts and victims of corruption. The absence of such legislation hampers investigations and prosecution of corruption. In most instances the identity of witnesses is known and eventually they fear to come and testify in court because there is a risk of intimidation, loss of employment and harassment afterwards. The relevant institutions like the Zimbabwe Anti-Corruption Commission and civic organisations continue to lobby and advocate the law-makers to consider the enactment of such important pieces of legislation.

B. International Cooperation

The challenges faced when it comes to cross-border investigations cannot be overemphasized. International cooperation is a major challenge for corruption investigations. Although, information sharing platforms have been established through organizations like the Asset Recovery Inter-Agency of Southern Africa (ARINSA) and International Police (INTERPOL) challenges occur in other jurisdictions where there is delay or no response to enquiries on criminal offenders in extradition matters or enquiries on financial investigations. This problem is not only peculiar to Zimbabwe but the world at large. Proceeds of crime are kept in certain jurisdictions and efforts between countries to repatriate such proceeds are often frustrated by different legal systems across borders. However, Zimbabwe continues to engage its counterparts and equally assists when requests are received across borders for mutual legal assistance and extradition of offenders.

C. Strengthening Capacity of Institutions in the Criminal Justice System

In the 2012 UNODC executive summary of the Zimbabwe report it was observed that the lack of resources to raise awareness and provide adequate training to enhance staff capacity contributed to a perception of mistrust in some criminal justice institutions. Continuous awareness campaigns on corruption are centralized in major cities leaving the populace in small towns and rural areas unaware of the dangers of corruption. There has been intensive technical training for prosecutors which has been facilitated by the UNODC and ARINSA. Prosecutors are posted to South Africa on an exchange programme in order for them to grasp the skills required when prosecuting corruption cases with substantial financial crime. It is, however, important for these skills to be attained by all the officers in the value chain of the criminal justice system.

VII. CONCLUSION

Zimbabwe, being a developing country, is making headway in its anti-corruption efforts, although the challenges faced sometimes outweigh the progress. In its attempt to continue being relevant in the anti-corruption regime, Zimbabwe continues to strengthen its collaborations with national, regional and international partners. Zimbabwe has undergone a National Risk Assessment under the Eastern and Southern Anti-Money Laundering Group, and it is continuously making progress on the deficiencies noted in its anti-money laundering and counter-financing of terrorism (AML/CFT) regime. Currently, Zimbabwe is undergoing review by the UNODC on its compliance with Chapter II of UNCAC on preventive measures.

Ultimately, the Government is desirous of improving the integrity of the country's financial system and reducing the scope of illicit transactions in the economy through an adequate and effective implementation of the AML/CFT system. It is Zimbabwe's hope to continue to have its institutions strengthened through capacity-building and strong partnerships.