

DETECTION, INVESTIGATION, PROSECUTION AND ADJUDICATION OF HIGH-PROFILE CORRUPTION

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I. INTRODUCTION

Zimbabwe is a small developing country in the southern part of Africa, with a population of 16.58 million people and land area of 390,800 square kilometres. We are known for our diverse wildlife, beautiful land scape and famous tourist resorts like the great Victoria Falls. Like any other developing country, the scourge of corruption has not spared us. The Afro Barometer ranks Zimbabwe at 160 out of 175 of the least corrupt countries. We have ratified the United Nations Convention Against Corruption (UNCAC) and are signatories to the African Union Convention on Preventing and Combating Corruption and the Southern African Development Community (SADC) Protocol against Corruption. The United Nations Convention's guidelines require that state parties put in place preventative policies and establish anti-corruption bodies, and Zimbabwe has tried to do that. We have also put in place substantially good laws to combat corruption.

II. INSTITUTIONS IN THE FIGHT AGAINST CORRUPTION

The Zimbabwean Constitution Amendment (No. 20) Act of 2013 provides for the establishment of the Zimbabwe Anti-Corruption Commission (hereinafter referred to as "the Commission") whose functions in terms of section 255, among others, include: to investigate and expose cases of corruption in the public and private sectors, combat corruption, theft, misappropriation, abuse of power, and other improper conduct in the public and private sectors, receive and consider complaints from the public and take such action in regard to the complaints as it considers appropriate, direct the Commissioner-General of Police to investigate cases of suspected corruption and report to the Commission on the results of any such investigation, refer matters to the National Prosecuting Authority for prosecution, and make recommendations to the government and other persons on measures to enhance integrity and accountability and prevent improper conduct in the public and private sectors. In addition, to the above functions, the Commission has arresting powers in terms of Statutory Instrument 143 of 2019. The Zimbabwe Anti-Corruption Commission Act [*Chapter 9:22*] provides for the administrative structure of the Commission. This Commission is currently being chaired by a judge of the High Court who was appointed in May of 2019 together with seven commissioners. Upon her appointment, the Commission had a total of two hundred cases that it is currently investigating. The number of reports has since increased after it received eleven high profile corruption cases in July of 2019 and has recently made two high profile arrests of a Minister and a senior director in government.

While the Commission does a lot of the investigation of high profile corruption cases, it is not the only institution that is mandated to investigate corruption as the Police Service Commission can also investigate such offences either independently or in conjunction with the Commission. After any independent investigation, the Police Service Commission has the option of handing over the docket to the Commission or the National Prosecuting Authority for prosecution. The Commission's own investigative team is made up of former police officers as well as police officers from the Police Service Commission who are attached to the Commission. The Police Service Commission itself is created in terms of section 219 of the Constitution, its establishment, organization and the control of the force and its functions and conditions of service of the force are provided for in the Police Act [*Chapter 11:10*].

The prosecution of all criminal offences is the domain of the National Prosecuting Authority (hereinafter referred to as "the Authority"), which is established in terms of section 258 of the Constitution. The Authority is headed by the Prosecutor-General, and to hold such a position, the person has to be qualified for appointment as a judge of the Supreme Court as provided in terms of section 178 of the Constitution. The National

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Prosecuting Authority is an independent body whose independence is enshrined in section 260 of the Constitution and is not subject to the control or direction of anyone, and so after all the investigations are done, it has the power to decide whether to prosecute or not.

Other than the Special Anti-Corruption Unit, the Zimbabwean government has also recently set up Special Anti-Corruption Units of specially selected magistrates, police investigators and prosecutors who specifically handle high profile corruption cases only. The prosecutors of the Special Anti-Corruption Unit were selected for their experience and commitment to the fight against corruption. The Special Anti-Corruption Prosecutor's Unit is made up of six lawyers in private practice and lawyers that are working in government who have been seconded to this Unit. The Unit was set up with a view to complement the efforts of the National Prosecuting Authority in the fight against corruption and reports to the Prosecutor-General.

III. REPORTING CORRUPTION

A. Reporting Corruption Generally

There is a concerted effort to fight corruption in Zimbabwe, so other than reports made to the Commission and the police, some of the corruption cases are detected after being exposed in the press through journalists who would have been tipped off by members of the public. Currently all police stations in Zimbabwe provide suggestion boxes where individuals can privately report a matter of concern to them. This is one of the ways through which high profile corruption is detected. In the private sector, for example, some banks are also assisting in the fight against corruption to the extent that they encourage whistle-blowers to report the corrupt activities of their employees by offering financial rewards. The Zimbabwe Revenue Authority also makes use of whistle-blowers to report corruption against their own officers and has made sure that their service desks are monitored by security cameras.

In March of 2016, the Judicial Service Commission of Zimbabwe put in place a system of reporting corruption within the Justice Delivery Sector and brought together all stakeholders within the sector under "ACT", which stands for Against Corruption Together. The stakeholders include the Law Society of Zimbabwe, the National Prosecuting Authority, the Zimbabwe Police Service, the Zimbabwe Anti-Corruption Commission, the Attorney General's Office, Zimbabwe Prisons and Correctional Service and the Ministry of Justice, Legal and Parliamentary Affairs. As a result of ACT each stakeholder has an officer responsible for receiving reports of corruption within the courts from witnesses, accused persons, lawyers and members of the public. Earlier this year, the Auditor General's Report exposed massive fraud and corruption at the National Social Security Authority where more than 95 million dollars in pensions is alleged to have been stolen by the then Minister of Environment and Tourism who is alleged to have committed the offences during her term in office as the Minister for Public Service, Labour and Social Welfare. The Minister has since been arrested and removed from office. Many other organizations have their own mechanisms of reporting corruption.

B. Reporting High-Profile Corruption

Zimbabwe is coming from an era where the arrest and prosecution of persons accused of high-profile corruption was a rare occurrence, and so from experience, very few Zimbabweans who experience or witness high-profile corruption will report the incidents to the authorities because they do not expect anything to be done about it or believe the authorities themselves are corrupt. While journalists will investigate cases of corruption, very few would publish a case involving high-profile individuals who have the power to victimize them, especially if the individual is wealthy and well-connected both socially and politically. Apart from the fear of reporting corruption, Zimbabwean citizens are not willing to give evidence in court due to fear of being victimized by the powerful accused persons. We are, however, fighting to change this perception as the new government is committed to fighting corruption at all levels. We are currently in the process of drafting the Whistle Blower's Bill, which will put in place laws to protect and encourage whistle-blowing in cases involving corruption, money-laundering and other serious offences. This Bill will go a long way in ensuring protection of witnesses and also ensuring that evidence is given against high-profile individuals.

IV. THE OFFENCES AND TRENDS

Zimbabwe has put in place good laws in order to curb corruption, in line with the guidelines of the United Nations Convention Against Corruption. Chapter 9 of the Constitution provides for the Principles of Public Administration and Leadership, and of note among other provisions is section 196(3), which provides:

- “(3) Public officers in leadership positions must abide by the following principles of leadership—
- (a) Objectivity and impartiality in decision making;
 - (b) Honesty in the execution of public duties;
 - (c) Accountability to the public for decisions and actions; and
 - (d) Discipline and commitment in the service of the people.”

However, this has not stopped public officials from engaging in corrupt activities as most corruption cases that our Unit is currently prosecuting are offences committed by public officials, that is, cabinet ministers, high-ranking government officials and senior executives of statutory bodies, local authorities or other *quasi* government entities. The charges against these officials include fraud, bribery, corruptly concealing from a principal a personal interest in a transaction, and the most popular is criminal abuse of duty as a public officer, defined in section 174 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*], which provides as follows:

- “(1) If a public Officer in the exercise of his or her functions as such, intentionally—
- (a) does anything that is contrary to or inconsistent with his or her duty as a public officer; or
 - (b) omits to do anything which it is his or her duty as a public officer to do;
- For the purposes of showing favour or disfavour to any person, he or she shall be guilty of criminal abuse of duty as a public officer ….”

Most high-profile accused persons have ignored the prescribed tender proceedings, awarded tenders to companies in which they have an interest or companies that do not meet the prescribed standards, this despite existing laws. After committing such offences, the corruptly gained wealth is laundered, and is used in what appear to be legitimate business enterprises. Some of the funds are transferred into offshore accounts and are used to invest in property.

V. PROSECUTION OF HIGH-PROFILE CORRUPTION

Despite all the laws that we have in place, it has been very difficult to prosecute these high-profile accused persons, as some resort to their political connections or use their high office in an attempt to avoid criminal charges. Those that have been successfully charged and brought before the court will use their lawyers to try by any means to avoid trial. They make use of the laws in place to make various applications which tend to delay the commencement of trial. While it is within their rights to make such applications, it tends to frustrate witnesses who sometimes end up not appearing in court to give evidence. Although such witnesses can legally be compelled to attend court and give evidence, they become hostile to the prosecution. On other occasions when delaying tactics fail, the accused persons will attempt to intimidate witnesses into not attending court. As a last resort most of these high-profile accused persons end up skipping bail if they are out on bail. They escape to those countries where they have invested their corruptly acquired funds. Currently, Zimbabwe has four former cabinet ministers and several chief executive officers of statutory bodies who are fugitives from justice living in neighbouring countries. This is, despite the fact that we are a member of Interpol and have a Mutual Legal Assistance Agreement with South Africa, a Criminal Matters (Mutual Legal Assistance) Act [*Chapter 9:06*] and an Extradition Act [*Chapter 9:08*]. The following are examples of such case.

VI. CASE STUDY

Mr. X is the former Minister of Higher and Tertiary Education; he was facing the following charges:

- (1) criminal abuse of office;
- (2) fraud;
- (3) corruptly concealing from principal a personal interest in a transaction; and
- (4) obstruction of the course of justice.

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The allegation was that he and his co-accused, who was his deputy and the Chief Executive Office of the Zimbabwe Manpower Development Fund (hereinafter referred to as "the Fund"), a statutory body in the Ministry of Higher and Tertiary Education, had defrauded the Fund of 270 000 United States Dollars. The objective of the Fund is the development of skilled manpower.

The offence was alleged to have been committed in 2015 but only came to the attention of the Zimbabwe Anti-Corruption Commission's investigation department in 2016, after they had received information from a whistle-blower. Mr X was asked to come in for questioning; he refused and gave excuses that he was attending to government business. During that time, he twitted that he had taken the money as he was "Robin Hood," taking from the rich and giving to the poor. His Deputy and the Chief Executive Officer were arrested but not without him attempting to interfere with the arrest.

He eventually agreed to attend an interview with the investigators, where in the presence of his lawyers, he was informed of his arrest. He was, however, released into the custody of his lawyers on the understanding that he would appear in the Magistrate's Court the following day to answer to his charges. Mr. X did not attend court but instead made a constitutional application on an urgent basis to the Constitutional Court. In that case he challenged the lawfulness of his arrest, arguing that the arresting officer had no reasonable suspicion of his having committed the offences alleged and as a result of the arrest he alleged a violation to his right to liberty. The Application was dismissed on the basis that there was no proper legal basis for him to have approached the Constitutional Court as there was no matter to attract the exercise of jurisdiction of the apex court.

Mr. X never presented himself to the Magistrates' Court but fled the country in November of 2017 and although a warrant of arrest was issued against him, he remains safely in the comfort of a neighbouring African country.

VII. CASE STUDY

Mr. Biggy is a socialite and business person with strong political connections and is alleged to have defrauded the Zimbabwe M Company of five million United States dollars in 2015 which he received on the pretext that he would construct a Power Plant in Town Z, a small town in the south of the country. He was awarded the contract without going to tender by the then Minister of Energy and Power Development who has since been convicted of criminal abuse of duty for violating procurement laws.

Mr. Biggy was arrested at the airport as he attempted to flee the country in 2018, following widespread publication of the allegations in the national and other newspapers. He appeared in the Magistrate court and was charged. On the trial date he made an application through his lawyers seeking further particulars in terms of the Criminal and Procedure and Evidence Act [*Chapter 9:07*]; this application was dismissed. He pleaded not guilty to the charges and again made an application excepting to the charges arguing that they did not reveal an offence, and when this application was dismissed, he sought a review of the proceedings in the High Court and also sought permanent stay of the proceedings in the Magistrates' Court pending the hearing of the application for review. The application for permanent stay was dismissed and trial proceedings were resumed in the Magistrates' Court. The review application was then heard and was granted. The State appealed, and the State's application for appeal is before the Supreme Court. Mr Biggy is still fighting in the courts.

VIII. CONCLUSION

The President of the Republic of Zimbabwe has spoken against corruption and as a result of this stance, the Special Anti-Corruption Units were created, and we have recently witnessed the arrest of very powerful people. This shows that in a way, we have made progress with regard to the fight against corruption. In conclusion, what is required is the political will and a commitment to fight corruption and once that is established the ordinary people will have the confidence to speak about corruption and fight it. There is also need for greater cooperation between states in ensuring that they assist each other in the facilitation of international or cross boarder investigations and extraditions.