

COUNTRY REPORT: ZIMBABWE

*Samson Mangoma**

I. INTRODUCTION

The Land Reform Programme adopted by the Zimbabwe Government in the year 2000 and the subsequent smart sanctions imposed by the Western Countries has resulted in the mushrooming of various forms of serious economic crime. The inflation rate stands at 600% and this is a good breeding ground for economic crime. The most notable forms of economic crime manifest themselves in corruption, market manipulation by multinational corporations, insider trading, externalisation of foreign currency, and embezzlement of funds both in private and public sectors and a thriving parallel market. This paper shall enlighten you on the current situation in the country, problems and countermeasures in the investigation and trial of economic crime, prevention of economic crime and ways of strengthening the legal framework for the punishment of economic crime.

II. THE CURRENT SITUATION AND THE PROBLEMS OF SERIOUS ECONOMIC CRIME IN ZIMBABWE

As alluded to earlier, the Land Reform Programme brought both positive and negative aspects to the country. The Zimbabwean economy is agro-based and thus the Land Reform Programme affected the growth of the economy.

The few whites who owned the land and who were supported by masters of industry and multinational companies were not supportive of the reform. As a result, they worked in cahoots to derail the reform and at the same time involved themselves in various forms of economic plunder as pointed out earlier. Thus today, Zimbabwe is in a very serious economic problem of high inflation and high unemployment rates. This scenario tends to promote economic crime. The statistics shown in Appendix A portray the situation for the year 2002/2003.

As can be seen from the statistics, serious economic crime was on the increase in 2002 while in 2003 it has been on the decrease. This is attributable to the measures put in place to combat economic crime. The Police as an organisation have also put various strategies into effect to fight economic crime such as -

- i) Crime awareness campaigns
- ii) Seminars with the stake holders on prevention of economic crime
- iii) Beat and patrols, etc.
- iv) Surveillance
- v) Effective use of informers
- vi) Lobbying the courts to pass stiffer sentences on the would be criminals
- vii) Lobbying the courts to remand such people in custody

Most of the perpetrators who commit serious economic crimes are leaving the country for Botswana, South Africa, Britain, Australia, Canada, and the United States of America. When these criminals leave the country heading to Western countries, they falsely claim political asylum and their extradition to face trial becomes difficult. Since these criminals are enjoying this protection and proceeds of the crime, more and more people are getting involved, as there is no fear of arrest and prosecution.

A. Drought

In Southern Africa, there have been successive years of drought. The drought has worsened the economic situation forcing law-abiding citizens to engage in criminal activities to make ends meet. Donor agencies have come forward to assist by providing food aid. However, people entrusted with the distribution of the aid are corruptly enriching themselves at the expense of the intended beneficiaries.

B. Urbanisation

In Zimbabwe many people have migrated from rural set ups for major cities in search of jobs mainly due to the persistent droughts that have affected the whole of southern Africa. However, the people find it is difficult to secure jobs since some companies are closing down due to the reasons mentioned above, and

* Chief Superintendent of Zimbabwe Republic Police, Zimbabwe.

thus, they are forced to commit crime in order to make ends meet.

The following are the economic crimes mostly committed in Zimbabwe under Common Law:

- i) Fraud
- ii) Theft by false pretences
- iii) Theft by conversion
- iv) Extortion
- vi) Forgery and uttering
- vii) Receiving stolen property

For definitions and essential elements see Appendix B

As mentioned earlier on, the following are just a sample of the serious economic crimes under the statute laws of Zimbabwe:

- i) Corruption
- ii) Smuggling
- iii) Money laundering
- iv) Externalisation of foreign currency
- v) Trading in foreign currency
- vi) Insider trading
- vii) Flouting tender procedures, etc.

III. PROBLEMS AND COUNTERMEASURES IN REGARD TO THE INVESTIGATION AND TRIAL OF ECONOMIC CRIME

In Zimbabwe, the police are constitutionally mandated to investigate all criminal matters and bring the matters before the Courts for judicial investigation, and prosecution. The police and the prosecutors operate independently although there is some co-operation, which exists. The Police complete investigations and compile their criminal dockets which they hand over to the prosecutors who scrutinises them. If they are happy with the evidence, they take the matter for prosecution and if they are not happy with the evidence, they indicate this and return the dockets to the police for further investigation. However, economic crimes are difficult to prosecute let alone to investigate and some specialised training is required for both the prosecutors and the police investigators. A number of the cases take a long time to be finalised at court and the main reasons are lack of manpower at the courts and also that sometimes the prosecutors do not possess the capabilities to deal with such matters. Sometimes, the relationship of the prosecutors and police is affected by these delays as there is mistrust between the two departments. The other problem we have is on investigations and extraterritorial connotations, as some of the member countries are not ready to assist or to respond to requests. This contributes to the delay in the completion of our cases.

The following are the types of Courts found in Zimbabwe:

- i) Magistrate Court
- ii) Provincial Magistrate Court
- iii) Regional Magistrate Court
- iv) High Court
- v) Supreme Court

1. Magistrate Court

This type of court is presided over by a junior magistrate and is for minor offences. Also juveniles and young persons are tried in this court.

2. Provincial Court

This court is presided over by Provincial Magistrates who may sentence someone for up to twelve months imprisonment or two thousand dollars fine.

3. Regional Court

This court is presided over by Regional Magistrates for offences of a serious nature and may punish someone with up to seven years imprisonment or twelve thousand dollars.

4. High Court

Judges preside over this Court which deals with cases of an extremely serious nature like murder and they may impose the death penalty or life imprisonment.

5. Supreme Court

This is the highest court of appeal in Zimbabwe which also deals with matters involving the constitution. Ordinarily the Regional and the high Courts mostly deal with serious economic crimes in the country. These institutions play an important part in the fight against economic crime by imposing stiffer sentences on the accused persons in order to deter them from committing such crimes.

IV. INVESTIGATIVE APPARATUS

The Zimbabwe Republic Police is an establishment of the Zimbabwe Constitution and is mandated to maintain Law and Order in the country. The Police organisation is further given powers by various Acts of Parliament notably the Criminal Procedure and Evidence Act Chapter 9:07. Thus, the police have all the investigative powers in the country though the President of the country can establish a commission to carry out investigations if it is deemed necessary. The police are independent of any other body when carrying out investigations.

The Fraud Squad has been set up to deal with all serious forms of economic crimes nationally and has set up their offices in the two major cities of Harare and Bulawayo. The office in Harare is headed by an Assistant Commissioner and deputised by a Chief Superintendent whilst the Bulawayo Office is headed by a Chief Superintendent and deputised by a Superintendent. Where expertise that cannot be found within the police is required, such experts can be hired to carry out tasks like auditing, accounting, etc. The organisation is aware of the challenges brought about by technology and has constantly been providing on the job and off the job training to keep the officers abreast of new trends in criminal activities. However, resources have not been adequately supplied to meet the required levels. Computerisation of the Fraud Squad is still to be fully implemented to meet operational requirements. This is to keep the branch abreast with the new technology in order to fight the criminals of today who have become technologically advanced. The Bulawayo office is yet to be computerised.

Organisations Involved In the Fight against Serious Economic Crimes:

- i) Police
- ii) Courts
- iii) National Economic Conduct Inspectorate
- iv) Anti Corruption Unit
- v) Bankers Security Unit
- vi) Customs Investigations Unit
- vii) Reserve Bank of Zimbabwe Investigation Unit
- viii) Controller and Auditor General
- xi) Attorney General's Office

As mentioned earlier on, the Police have all the powers to investigate crimes in Zimbabwe. However, the above organisations marked iii) to viii) assist the police by way of gathering evidence and hand it over to the police for further investigations whilst the courts prosecute accused persons involved in serious economic crimes.

V. COLLECTION OF INFORMATION IN ORDER TO INITIATE THE INVESTIGATIONS

A. Information

In offences committed in the public sector, co-operation is very high, as the authorities are forthcoming in supplying all relevant information that is relevant to the commission of the offence. However, in the private sector, if the management is involved, there is a tendency to conceal evidential information.

The police as an organisation have set up various means of collecting or receiving information, which include:

- (i) Suggestion Boxes
- (ii) Hotlines

- (iii) Informers
- (iv) Community based policing practises such as:
 - (a) Neighbourhood Watch Committees
 - (b) Home Officer Schemes
 - (c) Police Junior Call

The community-based approach has yielded very pleasing results as members of the public come forward to give tip-offs.

When crimes are committed against the corporate sector, they are forthcoming in lodging formal complaints to the police. This has always been the traditional means of alerting the police of crime.

Criminals, themselves sometimes give information of other criminals. Syndicates usually are aware of what other groups are doing and if approached are sometimes helpful in supplying useful information in order to fix their criminal counterparts.

B. Protection of Whistle-Blowers

The prevention of Corruption Act Chapter 9:16, provides for the prevention of victimisation of whistle-blowers. Section 14 (2) provides that: -

- Any person who without lawful excuse;
- (a) Prevents any other person from giving any information concerning any corrupt practice or
- (b) Threatens or does any other thing calculated or likely to deter any other person from giving any information or
- (c) Does anything calculated or likely to prejudice any other person because the other person has given any information shall be guilty of an offence.

The Police Act Chapter 11:10 also provides for protection of informers. The police are not compelled to disclose the source of their information.

C. Collection of Evidence and Securing an Appropriate Adjudication

The collection of evidence and securing an appropriate adjudication is covered by the Criminal Procedure and Evidence Act Chapter 9:07.

D. Search and Seizure

Section 48 of the Criminal Procedure and Evidence Act deals with search and seizure of articles, documents, or substances with or without a warrant. The Act empowers a police officer to search any person or container or premises for the purpose of seizing any article. These powers conferred upon the police enables police officers to collect and secure articles that can be produced as evidence before the courts. The Police can search premises without warrant if they believe that the delay in obtaining the warrant may defeat the course of justice and that the warrant may be obtained latter. They can also enter any premises for the purposes of interviewing and obtaining names and addresses of a person, who on reasonable grounds, is suspected of having committed an offence.

E. Acquiring Banking Transaction Records and Protecting their Confidentiality

This is covered under sections 286-289 of the Criminal procedure and Evidence Act chapter 9:07. Section 286(2) provides that: Any banker's documents shall be admissible as *prima-facie* evidence of the matters of transactions recorded therein or endorsed thereon on proof of being given by the affidavit of any director, manager or officer of the branch concerned or by other evidence that such documents: -

- (a) have been received or executed and kept by the bank in the usual and ordinary course of business; or
- (b) are in or come immediately from the custody or control of the bank.

The issue of confidentiality is provided for by section 288, which provides that a bank shall not be compelled to produce its banker's books or any banker's documents in any criminal proceedings unless the court specially orders that such banker's books or banker's documents shall be produced.

The Banking Act Chapter 24:20 also provides for the preservation of secrecy under section 76 of the Act. However, at times, the banks take a long time to avail the requested evidential information required by the Police in their investigations and this causes unnecessary delays in the finalisation of cases.

F. Questioning of Suspects and Witnesses

Questioning of suspects is dealt with under the Criminal Procedure and Evidence Act Chapter 9:07. Suspects who are accomplices are provided for under section 267 of the Criminal Penal Code. The Act clearly spells out guidelines on how suspects should be questioned and how statements should be obtained i.e., a suspect has the right to remain silent, the right to legal representation and the right to have his family informed of his arrest.

Witnesses are dealt with under sections 229-237 of the Criminal Procedure and Evidence Act. The provisions of the Act adequately cover the securing of witnesses to attend court and further provides for their punishment when they default. Granting of immunity and plea-bargaining is dealt with under accomplice evidence. Sections 290 to 293 of the Code deal with the privileges that are accorded to a witness. Measures have been put in place to provide effective protection from potential retaliation or intimidation in criminal proceedings.

VI. PREVENTION OF ECONOMIC CRIME

In Zimbabwe, the law enforcement agencies' main priority is the prevention of crime; however, economic crime is difficult to prevent unlike other crimes where the presence of a Police Officer serves as a deterrent to the would be criminals. A number of programmes have thus been put in place as a means to prevent economic crime. The most effective strategy are the Public awareness campaigns as for the other strategies see page one of this report. For the success of these strategies, the co-operation of the public is necessary.

A. Regulation of Economic Activities

There are a number of regulations in place to control economic activities. These are:

- (i) Companies Act Chapter 24:05
- (ii) Exchange Control Act Chapter 22:05
- (iii) Banking Act Chapter 24:01
- (iv) Building Societies Act Chapter 24:02
- (v) Insurance Act Chapter 24:07
- (vi) Corruption Act Chapter 9:16
- (vi) Gold Trade Act Chapter 21:03
- (vii) Mines & Minerals Act Chapter 21:05
- (viii) Criminal Procedure in Evidence Act Chapter 9:07
- (ix) Reserve Bank Act Chapter 22:15
- (x) Copper Control Act
- (xi) Extradition Act Chapter 9:08
- (xii) Rates of Exchange & Money Laundering Act
- (xiii) Postal & Telecommunications Services Act Chapter 12:02
- (xiv) Sales Tax Act Chapter 23:08
- (xv) Estate Agents Act Chapter 27:05
- (xvi) Audit & Exchequer Act Chapter 22:03
- (xvii) Companies Act Chapter 24:03
- (xviii) Public Accountants & Auditors Building Societies Act Chapter 27:03

These Acts are effective, though sometimes criminals circumvent the provisions in order to enhance their criminal activities.

To compliment these economic activities the Police have put in place a number of strategies to fight economic crime.

B. Corporate Governance

In Zimbabwe Corporate Governance is viewed as an effective tool in strengthening the foundation for sustained performance by corporations. It also helps fight (inter-alia) corruption, corporate scandals, poverty and ensures that managers of corporations avoid serving their own interest. Actually it encourages fairness, responsibility, accountability and transparency in the way the affairs of the corporations are run.

Measures have therefore been put in place through the above mentioned legislation such as:

- (i) Independent Risk Management Departments
- (ii) Independent Internal Audit Departments
- (iii) Composition of Executive Directors

The legislation encourages financial institutions to have the above critical areas addressed. The National Reserve Bank is responsible for monitoring and ensuring compliance of the regulations.

C. Establishment and Implementation of a Corporate “Compliance Programme”

As pointed out above, monitoring and compliance is the responsibility of the Reserve Bank of Zimbabwe. Banks are encouraged to set up compliance departments to ensure that the particular institutions adhere to the statutes. The Reserve Bank reserves the right to withdraw the Banking Licence. Inspectorate Units to monitor activities of the Banks are in place.

- (i) Banks are compelled to submit monthly returns
- (ii) Control banking activities
- (iii) Require certain information from Banks

D. Establishment of a System to Monitor Economic Activities

The National Reserve Bank has, through various regulations, established a system to monitor economic activities such as:

- (i) Control of Banks, Building Societies, Discount Houses and Financial Houses
- (ii) Submission of Financial Statements by corporate companies
- (iii) Implementation of the Stock Exchange Act
- (iv) Monitoring the importation and exportation of goods, etc.

All these measures are calculated to serve as preventive steps in curbing economic crime.

VII. STRENGTHENING THE LEGAL FRAMEWORK FOR THE PUNISHMENT OF ECONOMIC CRIME

The continuing rise of economic crime and their harmful effects, especially on an emerging economy, has resulted in the legislature coming up with new laws to criminalize new types of harmful economic activities. In Zimbabwe, the following laws and bills have been put in place.

- (i) Serious Offences (Confiscation of Profits) Act Chapter 9:17, an Act to provide for confiscation of profits of crime, and to provide for matter connected therein or incidental thereto.
- (ii) Bank Use Promotion and Anti-Money Laundering Bill, 2003, to provide for the encouragement of the use of the banking system for major money transactions while at the same time discouraging the use of the financial system to launder the proceeds of serious crime.
- (iii) Anti-Corruption Commission Bill, 2003, to provide for the establishment for an independent, powerful and high profile body to spearhead the battle against corruption and provide mechanisms to investigate corruption at all levels and in all sectors.
- (iv) SADC Protocol against corruption - to foster the development and harmonisation of policies and domestic legislation of the state parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors.

VIII. RATIFICATION AND UTILISATION OF INTERNATIONAL STANDARDS

Zimbabwe is not merely involved in International Conventions but is actively participating in the Southern African Development Community (SADC) to fight crime. Various protocols, including the SADC protocol against corruption, have been signed and ratified.

Zimbabwe is moving towards meeting the United Nations Conventions against Transnational organised crime, which is intended to promote co-operation to prevent and combat Transnational Crime. A few examples of articles of the UN Convention against Transnational organised crime are: -

- | | | |
|-----------------|---|--|
| (i) Article 7 | - | Measures to combat laundering |
| (ii) Article 8 | - | Criminalisation of corruption |
| (iii) Article 9 | - | Measures against corruption |
| (iv) Article 11 | - | Prosecution, adjudication, and sanctions |
| (v) Article 18 | - | Mutual legal assistance. |

Under the FATF, 40 recommendations, the critical problems faced by Zimbabwe are measures to detect or monitor the physical cross-border and transportation of cash and bearer negotiable instruments. In 2003, Zimbabwe faced a critical shortage of banknotes after they had been exported to neighbouring countries resulting in chaos in the banking industry. The situation was only alleviated by the introduction of negotiable Bearer Cheques with expiry dates.

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However, most of the recommendations have been put in place. As pointed out earlier. Money laundering has been criminalised and it is an offence in Zimbabwe to obstruct the due process of law either by physical force, threats, or intimidation.

IX. REPATRIATION OF CONFISCATED PROPERTY

In Zimbabwe, confiscated or seized property is dealt with under section 58-63 of the Criminal Procedure and Evidence Act Chapter 9:07. Articles involved in offences committed outside Zimbabwe are, on the order of the court, delivered to a member of the police force established in such country who may remove it from Zimbabwe. This is further strengthened by Civil Matters (Mutual Assistance) Act Chapter 8:02, which provides for the enforcement in Zimbabwe of Civil judgements given in foreign countries.

X. CORPORATE SANCTIONS

The Criminal Procedure and Evidence Act Chapter 9:07, Section 385(6) provides that, when an offence has been committed, whether by the performance of any act or by the failure to perform any act for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or employee of the corporate body, shall be deemed to be guilty of the offence, unless it is proved that he did not take part in the commission of the offence and shall be liable to prosecution therefore, either jointly with the corporate body or apart therefrom, and shall upon conviction be personally liable to punishment therefor.

Administrative sanctions are dealt with by Section 385(7)(b), which provides that any document, memorandum, book or record, which was drawn up, entered up or kept in the ordinary course of that corporate body's business or which was at that time in the custody or under the control of any director, employee or agent, shall be *prima facie* evidence of its contents.

XI. CONCLUSION

Concerted efforts to put mechanisms in place to control serious economic crime are being made by Zimbabwe. National Policies, Regional Protocols, and International Conventions have been entered into by Zimbabwe. In this global village, both regional and international co-operation is required to control all forms of crime. Results of the efforts are pleasing though remarkable results could have been achieved had it not been for the inadequate resources provided for in the fight against crime. As has been pointed out earlier, the economy is not doing well; thus, resources are not easy to come by.

APPENDIX A

MONTHLY CRIME STATISTICS: JANUARY - NOVEMBER 2002 AND JANUARY - NOVEMBER 2003

OFFENCE	JAN		FEB		MAR		APR		MAY		JUN		JUL		AUG		SEP		OCT		NOV		TOTALS	
	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003	2002	2003
FRAUD	74	50	82	61	43	69	68	58	75	65	90	68	114	72	75	73	76	81	81	99	70	94	848	760
THEFT BY FALSE PRETENCES	60	30	38	25	24	20	38	22	55	23	60	34	42	30	36	14	31	22	39	20	24	30	447	270
THEFT BY CONVERSION	18	16	19	6	9	7	7	8	15	9	31	8	16	3	10	8	15	9	19	20	12	6	171	100
PREVENTION OF CORRUPTION ACT	1	6	1	2	1	3	1	0	5	5	11	5	0	1	0	3	3	0	2	0	26	28		
EXCHANGE CONTROL ACT	1	4	0	3	0	2	0	3	3	5	2	2	10	1	0	1	1	2	1	2	0	2	18	27
TOTALS	154	106	140	95	77	101	114	94	139	101	188	117	193	111	121	97	124	117	142	141	108	132	1510	1185

APPENDIX B

DEFINITIONS AND ESSENTIAL ELEMENTS

A. Fraud

It consists in unlawfully making, with intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

1. Essential elements

- i) Unlawfully
- ii) Making a misrepresentation
- iii) Causing
- iv) Prejudice

2. Other forms of frauds

- Cheque fraud
- Transit Fraud
- Charity Fraud
- Master Card Fraud
- Insurance Fraud

B. Theft by False Pretences

Consists in unlawfully making with intent to steal, a misrepresentation which effects a *contractatio* of property capable of being stolen.

Essential Elements

- i) Unlawfully
- ii) Making a misrepresentation
- iii) Intent to steal
- iv) Property capable of being stolen
- v) Contractatio
- vi) Effecting

C. Extortion

Consists of taking from another some advantage by intentionally and unlawfully subjecting him/her to pressure which induces him/her to submit to the taking.

Essential Elements

- i) Some advantage
- ii) Intention
- iii) Pressure
- iv) Unlawfulness
- v) Inducement

D. Forgery

It consists of unlawfully making, with intent to defraud a false document which causes actual prejudice or which is potentially prejudicial to another

Essential Elements

- i) A document
- ii) Which is false
- iii) Making the document false
- iv) Intent to defraud
- v) Causing
- vi) Prejudice
- vii) Unlawfulness

E. Uttering

It consists in putting off, unlawfully and with intent to defraud, a false document which causes actual prejudice or which is potentially prejudicial to another.

Essential Elements

- i) A document
- ii) Which is false
- iii) Unlawfulness
- iv) Intent to defraud
- v) Causing
- vi) Prejudice

F. Receiving Stolen Property Knowing It to Have Been Stolen

It consists in unlawfully receiving possession of stolen property knowing it to have been stolen.

Essential Elements

- i) Unlawfully
- ii) Stolen property
- iii) Receiving possession
- iv) Mens Rea

G. Theft by Conversion

This depends on the circumstances in which the conversion is done but this occurs where someone is entrusted with goods or money on behalf of a company or organisation. Instead of honouring his/her obligation, he/she converts such goods or money to his/her own use.