

Zambia – Civil Society Report

By Transparency International Zambia

An input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a Transparency International Zambia report¹ that reviews Zambia's implementation and enforcement of selected articles in the UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Zambia covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

Zambia is a State Party to the UNCAC, as well as to the Southern African Development Community (SADC) Protocol against Corruption² and African Union (AU) Convention on Preventing and Combating Corruption.³

Zambia has enacted some new legislation in the recent past to strengthen its anti-corruption legal regime. However, our analysis of the laws indicates that the country has not completely adhered to some provisions of the UNCAC.

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Zambia.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	Yes
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Unknown

Although some CSO were invited to provide input, many stakeholders were excluded from the review process in Zambia.

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Francis JK Mwale and Goodwell J Lungu, Transparency International Zambia. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

² Zambia signed the SADC Protocol against Corruption on 14 August 2001 and ratified it on 8 July 2003.

³ Zambia signed the AU Convention on 3 August 2005, ratified it on 30 March 2007 and deposited the instrument of ratification on 26 April 2007.

Availability of information

Zambia has no freedom of or access to information law in place. As such, all the requests that were made in the context of preparing this report could not be said to have been legally binding on the state. Requests for certain information made to the Anti-Corruption Commission (ACC) and the Director of Public Prosecutions Office yielded either negative responses or no response at all. The main obstacles to obtaining the necessary information related to lack of government data collection and legal barriers. But some information is available but only to government authorities, judiciary and enforcement agencies. There was an apparent unwillingness on the part of government to allow access to available information required. Further, some provisions of the State Security Act, Chapter 111 of the Laws of Zambia, run contrary to the spirit of access to information.

Findings on implementation and enforcement of the UNCAC

The government has made some attempt to strengthen the anti-corruption legal framework and there is some good practice regarding criminalisation of bribery, foreign bribery and money laundering; protection of whistleblowers; and mutual legal assistance. For example, the main anti-corruption law was revised through promulgation of the Anti-Corruption Act No. 38 of 2010 and another law enacted to comply with the UNCAC is the Forfeiture of Proceeds of Crime Act No. 19 of 2010, which creates mechanisms for complying with chapter V of the UNCAC on asset recovery.

However, there are some genuine issues of concern which the new the Anti-Corruption Act No. 38 of 2010 has failed to address. The Act, while progressive and a good attempt at strengthening the anti-corruption legislation, leaves out completely or waters down two corruption offences: the abuse of office and illicit enrichment. Another area of concern is that the Zambian president by law has the power to singlehandedly appoint the Commissioners of the Anti-Corruption Commission (ACC), its Director General and the Deputy.

In terms of enforcement, it is clear that while some efforts have been made to enforce the new laws enacted in 2010, these have not been fully enforced. Zambian law enforcement agencies appear to lack sufficient skills and training to completely investigate corruption cases. In addition, lack of adequate resources has always been a challenge in the fight against corruption in Zambia. Indeed, there was a time in 2010 when the ACC had no resources for its operations as it was not provided with its monthly allocations. In addition, despite the passage of the new Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 the protection of whistleblowers that it calls for has not so far been implemented in practice⁴.

Recommendations for priority actions

- Reform the judiciary system as a whole to ensure its independence and efficiency
- Introduce the offenses of embezzlement, illicit enrichment and abuse of office
- Improve the capacity of law enforcement agencies for the effective implementation and enforcement of existing laws.
- Develop a law on access to information and enforce it to promote greater transparency and accountability.
- Promptly enact a law effectively providing for the protection of witnesses, victims and whistleblowers.

⁴ Section 59 of the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010 provides that "The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act", however, the regulations have not been made yet.

- Ensure systematic follow up of corruption allegations, particularly those highlighted by the Office of the Auditor General in its annual reports.
- Collect and publish statistics and other information on corruption cases.
- Improve the relationship between government and civil society when it comes to information sharing and revise the Non-Governmental Organisations' Act No. 16 of 2009.
- Provide for effective and efficient training of officials involved in anti-corruption activities.

The full Transparency International Zambia review report can be found at
<http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>