



Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to such restrictions as shall only be such as are provided for

CIVIL SOCIETY REPORT

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN ZIMBABWE

by the Anti-Corruption Trust of Southern Africa

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of December 2020.

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The Anti-Corruption Trust of Southern Africa (ACT-SA) is a regional civil society organisation leading the fight against corruption in Southern Africa. In collaboration with its National Focal Points in Botswana, Comoros, DRC, Tanzania, Namibia, and South Africa and with partners in business, civil society and communities, ACT-SA raises awareness on the damaging effects of corruption on development and works to develop and implement effective measures to combat it. In addition, ACT-SA carries out anti-corruption research, collects evidence on what works and what does not work in fighting corruption, coordinates civil society collective action and leads on regional advocacy against corruption in Southern Africa.

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List of Acronyms

ACA	Anti-Corruption Agency
ACT-SA	Anti-Corruption Trust of Southern Africa
AML	Anti-Money Laundering
AFU	Assets Forfeiture Unit
ARIANSA	Asset Recovery Inter-Agency Network for Southern Africa
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
CFT	Combating the Financing of Terrorism
CSOs	Civil Society Organizations
CIO	Central Intelligence Office
ConCourt	Constitutional Court
DRC	Democratic Republic of Congo
FIU	Financial Intelligence Unit
FTLRP	Fast Track Land Reform Programme
INTERPOL	International Criminal Police Organization
ICJ	International Committee of Jurists
IRG	Implementation Review Group
JSC	Judicial Service Commission
ML	Money Laundering
NANGO	National Association of Non-Governmental Organisations
NECF	National Economic Consultative Forum
Nat Pharm	National Pharmaceutical Company
NPA	National Prosecuting Authority
NSSA	National Social Security Authority
OPC	Office of the President and Cabinet
PACU	Police Anti-Corruption Unit
PSC	Public Service Commission
PRAZ	Procurement Regulatory Authority of Zimbabwe
PG	Prosecutor General
PEPs	Politically Exposed Persons
PCCD	Police Commercial Crimes Division
RBZ	Reserve Bank of Zimbabwe
SACU	Special Anti-Corruption Unit
SADC	Southern African Development Community
SPAC	SADC Protocol against Corruption
SALC	Southern Africa Litigation Centre
TAB	Training Advisory Board
TF	Terrorist Financing
TI-Z	Transparency International- Zimbabwe
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
VIP	Very Important Person
ZACC	Zimbabwe Anti-Corruption Commission
ZIFA	Zimbabwe Football Association
ZIMDEF	Zimbabwe Manpower Development Fund
ZIMLII	Zimbabwe Legal Information Institute
ZIMRA	Zimbabwe Revenue Authority
ZRP	Zimbabwe Republic Police

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Please note that government entities were not responsive when they were asked to give inputs for this report.

I. Introduction

Zimbabwe signed the United Nations Convention against Corruption (UNCAC) on 20 February 2004 and ratified it on 8 March 2007. This report reviews Zimbabwe's implementation of selected articles of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process covering these chapters. Zimbabwe was selected by the UNCAC Implementation Review Group (IRG) by a drawing of lots for review in the second year of the first cycle. In May 2019, a six-member delegation from the United Nations, Angola and Cape Verde was in the country to review mechanisms and measures taken by Zimbabwe as part of efforts to implement Chapter II and V of the UNCAC. Since then, the complete country report has been finalised, but only the executive summary has been published on the UNODC country profiles page.¹

Scope

The UNCAC articles and topics that receive particular attention in this report under Chapter II are:

- Article 5: Preventive Anti-corruption Policies and Practices,
- Article 6: Preventive Anti-corruption Bodies,
- Article 7.1: Public Sector Employment,
- Article 7.3: Political Financing,
- Articles 7, 8 and 12: Codes of Conduct, Conflicts of Interest and Asset Declarations,
- Articles 8.4 and 13.2: Reporting Mechanisms and Whistleblower Protection,
- Article 9: The Management of Public Finances,
- Article 9.1: Public Procurement,
- Articles 10 and 13.1: Access to Information and the Participation of Society,
- Article 11: Judiciary and Prosecution Service,
- Article 12: Private Sector Transparency, and
- Article 14: Measures to Prevent Money Laundering.

Furthermore, this report covers articles and topics under Chapter V of the UNCAC, including:

- Articles 52 and 58: Anti-money Laundering,
- Articles 53 and 56: Measures for Direct Recovery of Property,
- Article 54: Confiscation Tools,
- Articles 51, 54, 55, 56 and 59: International Cooperation for the Purpose of Confiscation; and,
- Article 57: The Return and Disposal of Confiscated Property.

Structure

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Zimbabwe as well as access to information issues in much more detail.

¹ Implementation Review Group (2020), 'State of implementation of the United Nations Convention against Corruption', available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/8-10June2020/V2002129e.pdf> [accessed on 20 December 2020].

Subsequently, the implementation of the Convention is reviewed, and examples of good practices and deficiencies are provided. Then, recent developments are discussed, and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

Methodology

The report was prepared by the Anti-Corruption Trust of Southern Africa (ACT-SA) with support from the UNCAC Coalition. ACT-SA made efforts to obtain information for the report from civil society organizations (CSOs), the private sector, communities and government entities, including the Zimbabwe Anti-Corruption Commission (ZACC), National Prosecuting Authority (NPA), Financial Intelligence Unit (FIU), Office of the President and Cabinet (OPC), Ministry of Justice, Legal and Parliamentary Affairs and Ministry of Home Affairs, and the Zimbabwe Revenue Authority (ZimRa). As part of this dialogue, a draft of the report was circulated for further inputs. However, efforts to get feedback and information on specific cases from government officials did not yield any results. In addition, consultations were affected by the national COVID-19 lockdown, which limited physical interaction.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for CSOs. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practices and areas in need of improvement in articles of UNCAC Chapters II and V. In preparing this report, the authors considered the recent UNCAC review of Zimbabwe using only the Executive Summary on the UNODC website, since the contents of the full government report were not made public.²

² Ibid.

II. Executive Summary

Zimbabwe has made significant progress towards developing normative legal frameworks for the implementation of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC), which it signed on 20 February 2004 and ratified on 8 March 2007.

However, a lack of political will and a lack of resources constitute a significant drawback in fostering effective corruption prevention and an effective stolen asset recovery regime. The results of existing anti-corruption efforts are far from sufficient and convincing. This affirmation is supported by ever-increasing cases of corruption, and very few convictions. The National Prosecuting Authority (NPA) stands accused of weak prosecution and political interference on its activities which frustrate anti-corruption efforts since accused persons either end up being acquitted or the prosecution process takes longer to be finalised.

More to the point, the government of Zimbabwe has yet to show interest in and genuine commitment to enforcing anti-corruption laws and punishing offenders. The perception of a lacking commitment may result from many high-profile leaders being implicated in corruption scandals. This is a great cause for concern since most leaders are not exemplary in refraining from corruption. In other words, Zimbabwe is not walking the talk against corruption. Existing measures are polluted by a patronage system that largely favours Politically Exposed Persons (PEPs), who too often escape investigations and prosecutions.

Part of the progress made includes the promulgation of the following legislative framework for corruption prevention and stolen asset recovery:

- Constitution of Zimbabwe Amendment (No. 20) Act, 2013,³
- Public Procurement and Disposal of Public Assets Act,⁴
- Money Laundering and Proceeds of Crime Act, as amended,⁵
- Public Entities Corporate Governance Act [Chapter 10:31],⁶
- Anti-Corruption Commission Act [Chapter 9:22],⁷
- Public Finance Management Act [Chapter 22:19],⁸
- Audit Office Act [Chapter 22:18],⁹
- Public Service Act [Chapter 16:04],¹⁰
- Civil Matters (Mutual Assistance) Act;¹¹ and
- Criminal Matters (Mutual Assistance) Act [Chapter 9:06].¹²

The key institutional arrangements for corruption prevention and stolen asset recovery include:

- Zimbabwe Anti-Corruption Commission,
- Office of the President and Cabinet,
- Public Service Commission,

³ See <https://zimlil.org/zw/legislation/act/2013/amendment-no-20-constitution-zimbabwe>.

⁴ See <https://zimlil.org/zw/legislation/act/2017/5>.

⁵ See <https://zimlil.org/zw/legislation/act/2013/4>.

⁶ See http://www.veritaszim.net/sites/veritas_d/files/PUBLIC%20ENTITIES%20CORPORATE%20GOVERNANCE%20ACT_0.pdf.

⁷ See <http://www.veritaszim.net/node/105>.

⁸ See <https://zimlil.org/zw/legislation/consolidated-act/chapter-2219>.

⁹ See <http://www.veritaszim.net/node/160>.

¹⁰ See <https://zimlil.org/zw/legislation/act/1995/21>.

¹¹ See <https://www.jsc.org.zw/jscbackend/upload/Acts/2001/0802updated.pdf>.

¹² See <https://www.jsc.org.zw/jscbackend/upload/Acts/2014/0906updated.pdf>.

- Office of the Auditor General,
- Corporate Governance Unit in the Office of the President and Cabinet,
- Procurement Regulatory Authority of Zimbabwe,¹³
- Financial Intelligence Unit,¹⁴
- National Prosecuting Authority,¹⁵
- Zimbabwe Republic Police,¹⁶ and
- Zimbabwe Revenue Authority.¹⁷

However, despite having these laws, policies and institutional arrangements in place, gaps still exist as evidenced through the ever-increasing cases of corruption, including corruption by PEPs. The following are some of the most recent cases that were reported between 2018 and 2020:

- ↔ In July 2019, Prisca Mupfumira, the Minister of Public Service, Labour and Social Services, was arrested in connection with US\$94 million that was missing from a pension fund. She was among the first ministers of the Zimbabwe African National Union-Patriotic Front (ZANU–PF) to be arrested by President Emmerson Mnangagwa’s administration. Mupfumira spent two months in remand prison before she was released on bail in September 2019. Media reports allege that whilst in remand prison, she enjoyed comfort which is not afforded to fellow inmates.¹⁸ At the time of reporting the matter was still pending in court.¹⁹
- ↔ In June 2020, the former Minister of Health Obadiah Moyo was arrested and charged with criminal abuse of office over the alleged awarding of a US\$60 million contract for COVID-19 supplies. The health minister allegedly awarded a multi-million-dollar contract for COVID-19 medical supplies at inflated prices and without the consent of the Procurement Regulatory Authority of Zimbabwe (PRAZ).²⁰

There are several other cases in which PEPs are implicated in corruption. In most cases, some of these PEPs are never arrested, and if they get arrested, the investigations and prosecutions take long to be concluded. On the other side, members of civil society and media who report cases of corruption face increased persecution, imprisonment or worse. The case of Hopewell Chin’ono, a renowned journalist who has been arrested and intimidated by the government after exposing corruption, is a shining example.

Furthermore, corruption by law enforcement agents themselves is more worrying, especially when they are bribed to scuttle investigations of corruption cases. For instance, on the 17 July 2020, Zimbabwe Anti-Corruption Commission (ZACC) confirmed the arrest and appearance in court of a Provincial Public Prosecutor and several high-level officials working under the Police Commercial Crimes Division (CCD). The suspects faced allegations of criminal abuse of duty. The allegations arose from an earlier arrest and appearance in court

¹³ See <http://www.praz.gov.zw/index.php?lang=en>.

¹⁴ See <https://www.fiu.co.zw/>.

¹⁵ See <https://zimlil.org.zw/legislation/act/2014/4>.

¹⁶ See <http://www.zrp.gov.zw/>.

¹⁷ See <https://www.zimra.co.zw/>.

¹⁸ Ndoro, T. (2019), ‘Prisca Mupfumira sitting pretty & receiving special treatment at Chikurubi? – ZACC denied entry to investigate’ available at <https://iharare.com/zacc-denied-entry-to-investigate-mupfumira-prison/> [accessed on 3 February 2021].

¹⁹ Madzianike, N. (2020), ‘Updated: Mupfumira case to continue ‘at all costs’ available at <https://www.herald.co.zw/just-in-mupfumira-trial-fails-to-kick-off/> [accessed on 20 December 2020].

²⁰ BBC (2020), ‘Coronavirus: Zimbabwe health minister in court on corruption charges’ available at <https://www.bbc.com/news/world-africa-53119989> [accessed on 20 December 2020].

of City of Harare officials for procedural violations. The officers allegedly received bribes from suspects whom they were investigating.

The failure to contain corruption speaks volumes about inadequate resources, the lack of institutional capacity, compromised integrity of law enforcement agents and the judiciary, political interference into the investigations and prosecution of corruption, as well as increasing impunity, especially when PEPs are involved. It is against this background that several interventions are needed to develop the capacities of existing institutions and reform some laws.

a) Description of Process

The report was compiled with limited participation of government entities, who did not respond to requests for information. However, CSOs participated. More details about the level of transparency and CSO participation in the official UNCAC review process in Zimbabwe are provided in Chapter III of this report.

b) Availability of Information

Access to the information required for the report, especially from government entities, was limited. The full government report on the review process was kept as top secret, except for an Executive Summary published through the UNODC website.²¹ In the compilation of this report, ACT-SA requested the Zimbabwe Anti-Corruption Commission (ZACC) to avail the full report on Zimbabwe's implementation of Chapter II and V of the UNCAC, but ZACC did not respond, thereby limiting input of the government in the compilation thereof.

c) Implementation into Law and Enforcement

Zimbabwe's legislative framework for corruption prevention and asset recovery is extensive and there are several key authorities involved in corruption prevention and asset recovery, as can be seen above.

Nevertheless, huge gaps still exist in the country's anti-corruption framework, as evidenced by the never-ending cases of corruption in the country, including corruption by Politically Exposed Persons (PEPs). Inadequate resources, the lack of institutional capacity, political interference into investigations and prosecution of corruption, as well as increasing impunity, are among the persisting issues that must be addressed to make the fight against corruption more effective.

TABLE 1: Implementation and enforcement summary - Chapter II

UNCAC articles	Status of implementation in law	Status of implementation in practice
Art. 5 – Preventive anti-corruption policies and practices	partially implemented	moderate
Art. 6 – Preventive anti-corruption body or bodies	partially implemented	moderate
Art. 7.1 – Public sector employment	largely implemented	moderate
Art. 7.3 – Political financing	largely implemented	moderate
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	partially implemented	moderate

²¹ See Implementation Review Group (2020), 'State of implementation of the United Nations Convention against Corruption' available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/8-10June2020/V2002129e.pdf> [accessed on 20 December 2020].

Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	partially implemented	poor ²²
Art. 9.1 – Public procurement	largely implemented	moderate
Art. 9.2 – Management of public finances	partially implemented	moderate
Art. 10 and 13.1 – Access to information and the participation of society	largely implemented	poor
Art. 11 – Judiciary and prosecution services	largely implemented	moderate
Art. 12 – Private sector transparency	partially implemented	poor
Art. 14 – Measures to prevent money-laundering	largely implemented	moderate

TABLE 2: Implementation and enforcement summary - Chapter V

UNCAC articles	Status of implementation in law	Status of implementation in practice
Art. 52 and 58 – Anti-money laundering	largely implemented	moderate
Art. 53 and 56 – Measures for direct recovery of property	fully implemented	moderate
Art. 54 – Confiscation tools	partially implemented	moderate
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	fully implemented	moderate
Art. 57 – The return and disposal of confiscated property	partially implemented	poor

TABLE 3: Performance of selected key institutions - Chapter II

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (e.g. resources, technical skills, independence)
Zimbabwe Anti-Corruption Commission	moderate	Technical skills but have limited resources
The Office of the President and Cabinet	moderate	Technical skills but have limited resources
Public Service Commission	moderate	Technical skills but have limited resources
The Office of the Auditor General	moderate	Technical skills but have limited resources
Corporate Governance Unit in the Office of the President and Cabinet	moderate	Technical skills but have limited resources
The Procurement Regulatory Authority	moderate	Technical skills but have limited resources

²² The ZACC has recently launched a whistleblower application to assist in the reporting of corruption cases. However, its effectiveness is hampered by the lack of institutional trust and whistleblower legislation.

TABLE 4: Performance of selected key institutions - Chapter V

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (e.g. resources, technical skills, independence)
Financial Intelligence Unit	moderate	Technical skills but have limited resources
Zimbabwe Anti-Corruption Commission	moderate	Technical skills but have limited resources
The National Prosecuting Authority	moderate	Technical skills but have limited resources
Zimbabwe Republic Police	moderate	Technical skills but have limited resources
Zimbabwe Revenue Authority	moderate	Technical skills but have limited resources

Institutional arrangements are in place, but the institutions responsible for preventive measures and asset recovery lack the capacity to execute their mandates in the most effective, efficient, and sustainable manner. For instance, ZACC exists but lacks visibility in all parts of the country due to resource constraints.

That being the case, resources are the major obstacles to existing institutions in executing their mandates. For instance, in the case of the former Zimbabwe Revenue Authority (ZIMRA) Commissioner-General Gershem Pasi, a Harare magistrate granted his application for refusal for further remand since the State did not only fail to give Pasi a trial date, but investigations were incomplete. A team of investigators, who were supposed to travel to China as part of the investigations, had not done so for more than 22 months since he was arrested.²³

d) Key recommendations for Priority Actions

The following are the key recommendations for priority actions to be taken to ensure the full implementation of the UNCAC in Zimbabwe. More specific recommendations for Chapters II and V of the UNCAC are provided in Chapter VI of this report.

It is recommended that Zimbabwe:

1. Improves its interaction with CSOs, the independent media and the private sector in the UNCAC review processes and the fight against corruption in general by ensuring that more CSOs, media and private sector players are consulted;
2. Enacts and implements a law on access to information in line with international best practices, including the establishment of an independent body such as an Information Commissioner to oversee the implementation of the said law;
3. Increases the financial and human resource capacities of anti-corruption institutions such as the Zimbabwe Anti-Corruption Commission (ZACC) and the Financial Intelligence Unit (FIU) to implement their mandates in the most effective, efficient, independent and sustainable manner;
4. Works to obliterate cases of impunity against corruption, especially cases of corruption involving Politically Exposed Persons (PEPs).

²³ Madzianike, N. (2020), 'Just in: Court declares Pasi free man', available at <https://www.herald.co.zw/just-in-ex-zimra-commissioner-general-pasi-granted-application-for-refusal-of-further-remand/> [accessed on 27 November 2020].

III. Assessment of Review Process for Zimbabwe

The government self-assessment report was compiled with limited participation of a diversity of civil society organisations (CSOs). For instance, ACT-SA came to know about the consultative workshop for the review process through a CSO whose mandate has nothing to do with corruption-related issues. Furthermore, an invitation letter from the National Economic Consultative Forum (NECF) dated 9 May 2019 confirms that CSOs and churches were only given one hour, from 13:45-14:45 hours on Wednesday, 15 May 2019, to contribute to the process. Therefore, further to the poor selection of participating CSOs, the time allocated was inadequate.

a) Report on the Review Process

Table 5 below provides details of the transparency, country visit and civil society participation in Zimbabwe's UNCAC review process.

TABLE 5: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	yes	This was provided when ACT-SA enquired with ZACC.
Was the review published somewhere/schedule known?	yes	It was communicated to very few organizations. For instance, ACT-SA came to know about it through NANGO, an umbrella organisation that had received it from the National Economic Consultative Forum that was coordinating the reviews together with ZACC.
Was civil society consulted in the preparation of the self-assessment?	yes	The following CSOs were consulted: ↔ NANGO ↔ TI-Z Other anti-corruption CSOs were not, but should have been invited.
Was the self-assessment checklist published online or provided to civil society?	not published online, but provided to CSOs	It was communicated to NANGO by the National Economic Consultative Forum but not directly provided to anti-corruption CSOs.
Did the government agree to a country visit?	yes	The UNCAC review visit for Zimbabwe by Cabo Verde and the Republic of Angola took place from 13-16 May 2019.
Was a country visit undertaken?	yes	Same as above.
Was civil society invited to provide input to the official reviewers?	yes	The following were invited: ↔ NANGO ↔ TI-Z

Was the private sector invited to provide input to the official reviewers?	yes	Through the National Economic Consultative Forum.
Has the government committed to publishing the full country report?	unknown	The full report was not published except for the executive summary.

b) Access to Information

Access to information is a constitutional right under Section 62 of the Constitution of Zimbabwe. Therefore, any citizen, including permanent residents, juristic persons and the media have the right to access any information held by the state or by any institution or agency of government at every level. However, some types of information are not publicly accessible through websites and other platforms. Information on laws giving effect to the implementation is publicly available through the website of the Parliament of Zimbabwe²⁴ and through civil society organisations such as the Zimbabwe Legal Information Institute²⁵ and Veritas²⁶. In view of this, information of legal, policy and institutional arrangements was readily available, and hence it was easy for the authors of this report to access this information.

However, Zimbabwe's review report on the implementation of Chapter II and V of the UNCAC was not made public. Despite efforts to communicate with ZACC, the report was not made available.

To obtain information, the authors relied on other sources such as CSOs and the media, to name but a few. The only available information was the government's executive summary and the government expert list, but the names of contact persons were not up to date. Some of the experts listed on the UNODC website have died, such as the late Chairperson of the Anti-Corruption Commission.

Information on cases was difficult to obtain since it is not established practice of the government to publish reports of cases or other pertinent cases relevant to the compilation of the report. The government was simply unwilling to provide this information.

Information on cases is only made available when they are finalised by courts of law. When this happens, judgements or court rulings are made available on the websites of the Judicial Service Commission (JSC)²⁷, and the Zimbabwe Legal Information Institute (ZIMLII).²⁸

²⁴ See <https://www.parlzim.gov.zw/acts>.

²⁵ See <https://zimlil.org.zw/legislation/numbered-act>.

²⁶ See <https://www.veritaszim.net/acts>.

²⁷ See <https://www.jsc.org.zw/judge>.

²⁸ See <https://zimlil.org/content/judgments>.

IV. Assessment of Implementation of Chapter II & V Provisions

This report explains the extent to which Zimbabwe has implemented Chapters II and V of the United Nations Convention against Corruption (UNCAC) which it signed and ratified on 20 February 2004 and 8 March 2007, respectively. In pursuit thereof, sections below provide a description of relevant laws, policies, mechanisms, and practices in place, as well as of the institutions involved in monitoring, enforcement and sanctioning in the respective areas.

1. Chapter II - Preventive measures

Chapter 2 of the UNCAC covers Articles 5 to 14, which foresee measures and mechanisms for the prevention and combating of corruption, promotion of integrity, accountability and proper management of public affairs and public property. This Chapter focuses on preventive measures, standards and procedures and sets out the main prevention goals and ways to achieve them. States Parties are required to introduce, maintain, and coordinate effective anti-corruption measures and policies, in cooperation with civil society. Furthermore, this Chapter highlights the importance of preventive policies, the need for continuous assessment of existing anti-corruption practices and international co-operation. Since preventive policies, measures, and bodies can be more effective with the clear reporting and participation of civil society, the UNCAC also provides guidance on the organisation of those processes and relations. In addition, this Chapter sets out the measures and systems that need to be applied to achieve transparency in the public sector, and include measures to prevent corruption in the public administration, the judiciary, etc. The Chapter concludes with provisions relating to the prevention of money laundering.

1.1 Article 5 - Preventive anti-corruption policies and practices

1.1.1 Interpretation of the Article

In Article 5 of the UNCAC, States Parties are encouraged to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. In addition, States Parties should promote effective practices aimed at the prevention of corruption.

1.1.2 Implementation of Article

Zimbabwe has put in place several policies and practices seeking to prevent corruption. The Constitution of Zimbabwe and the Zimbabwe Anti-Corruption Commission Act [Chapter 9:22] are among some of the existing laws.

In addition, Zimbabwe developed the Transitional Stabilization Programme 2018–2020 that has identified corruption as one of the national challenges that require attention. On the positive, the Programme seeks, among others, to increase the capacity of the anti-corruption bodies, establishing anti-corruption courts and enhancing the anti-money-laundering framework.

Furthermore, institutions such as the Zimbabwe Anti-Corruption Commission (ZACC) and the Office of the Auditor General carry out system reviews and audits that unearth corruption and other irregularities. However, observers have expressed their concern that recommendations from the Auditor General have largely been ignored and thus, the integrity of public

accounting is not preserved.²⁹ The audits are largely perceived as merely academic with no meaningful policy reforms informed by the findings of these audits. Whilst the current Auditor General has done commendable work; previously, there have been delays in finalising Audit Reports. Section 10 of the Audit Office Act [Chapter 22:18] requires the Auditor General to examine public accounts and thereafter submit a report to the Minister of Finance no later than 30 June of each year. The 2019 Audit Report is yet to be finalised. The failure to timeously produce an audit report compromises principles of public finance management and limits the effectiveness of audits as an intrinsic tool in the detection and deterrence of resource abuse, and is important in identifying corruption risks and vulnerabilities in public finance.

On 11 July 2020, Zimbabwe launched the National Anti-Corruption Strategy and Action Plan for 2020-2024. However, the development process lacked inclusivity, since several CSOs such as the Anti-Corruption Trust of Southern Africa (ACT-SA) were not consulted. The lack of buy-in from CSOs may jeopardise its implementation.

Moreover, there is still a need for a more robust framework for the prevention of corruption within the private sector. An example is the existence of cartels in the fuel sector and monopolies in the pharmaceutical industry, which serve to drive up the costs of basic goods, which adversely affect the general population. The fact that Sakunda and Greenfuel Pvt Limited enjoy a monopoly in the fuel sector is indicative of the need for more robust policy and legislation on private sector corruption regarding monopolies in the different sectors.³⁰

1.1.3 Deficiencies

Whilst Zimbabwe boasts of an impressive legal and policy framework on anti-corruption, huge gaps exist in the implementation of these frameworks. The existing laws are selectively enforced as there are 'untouchables' among the Politically Exposed Persons. For instance, the former Minister of Mines and Mining Development, Obert Mpofu, was subpoenaed to appear before a relevant parliamentary portfolio committee to answer to allegations of corruption in the mining sector in which US\$15 billion disappeared, but he refused to attend the hearings, and no action has been taken against him to date.³¹ This means that Zimbabwe still harbours individuals who are above the law, giving credence to accusations of impunity against corruption³², despite the fact that Zimbabwe signed and ratified anti-corruption conventions that include but are not limited to the UNCAC, the SADC Protocol against Corruption and the African Union Convention on Preventing and Combating Corruption that prohibits impunity.

1.2 Article 6 - Preventive anti-corruption body or bodies

1.2.1 Interpretation of the Article

Article 6 provides guidance to the States Parties signatories to the Convention on the institutional set-up for developing a (legal and institutional) system to implement a policy of effective prevention and repression of corruption. Namely, the members foresee the creation

²⁹ Zaba, F. (2019), 'Authorities should take public audit reports seriously', available at <https://www.theindependent.co.zw/2019/07/05/authorities-should-take-public-audit-reports-seriously/> [accessed on 3 February 2021].

³⁰ Mhlanga, B. (2020), 'Zim losing US\$400m to Oiline Cartels', available at <https://www.theindependent.co.zw/2020/02/20/zim-losing-us400m-to-oil-pipeline-cartels/> [accessed on 27 November 2020].

³¹ Newzimbabwe Mail (2018), 'Obert mpofu refuses to answer questions on missing \$15 billion in parly, Says He Will Not Be Presided Over By Temba Mliswa', available at <https://www.thezimbabwemail.com/parliament-parliament/obert-mpofu-refuses-answer-questions-missing-15-billion-parly-says-will-not-presided-temba-mliswa/> [accessed on 24 November 2020].

³² Mangwaya, M. (2020), 'TIZ blasts lambasts impunity of corrupt officials', available at <https://www.newsday.co.zw/2020/10/tiz-lambasts-impunity-of-corrupt-officials/> [accessed on 27 November 2020].

of conditions for the bodies that are key in the fight against corruption, to effectively perform their functions.

1.2.2 Implementation of Article

Chapter 13 of the Constitution of Zimbabwe provides for institutions to combat corruption and crime. The following are classic examples:

↔ Zimbabwe Anti-Corruption Commission (ZACC)

The main anti-corruption body is the Zimbabwe Anti-Corruption Commission (ZACC), provided for under Sections 254 to 257 of the Constitution of Zimbabwe. Section 255 outlines the following as the functions of ZACC:

- to investigate and expose cases of corruption in the public and private sectors,
- to combat corruption, theft, misappropriation, abuse of power and other improper conduct in the public and private sectors,
- to direct the Commissioner-General of Police to investigate cases of suspected corruption and to report to the Commission on the results of any such investigation,
- to promote honesty, financial discipline, and transparency in the public and private sectors; and
- to refer matters to the National Prosecuting Authority for prosecution.

ZACC was established in 2005 in terms of Chapter 13, Part 1 of the Constitution of Zimbabwe, and the Zimbabwe Anti-Corruption Commission Act of 2004. The provision that establishes the ZACC can also be found in Zimbabwe's former Constitution. It was under Section 108A of that Constitution that the ZACC was established in 2004. However, since its birth, the organization was perennially beset by a number of challenges that include a corrupt leadership, and lack of capacity due to inadequate funding.

Initially, ZACC had been at the receiving end of insults and derision from the public, which felt it was doing less than it should to contain corruption.³³ The epitome of ZACC's dysfunction is the multiple corruption scandals involving ZACC Commissioners themselves. This could be a result of the compromised appointment procedure, which gives the President a lot of power to appoint the ZACC Commissioners. The Zimbabwean political elite has often been accused of grand corruption and, because of the President's power to appoint Commissioners, it is often the same Politically Exposed Persons (PEPs) who are appointed as Commissioners.

The first known corruption scandal involving ZACC Commissioners occurred in 2008 when they corruptly received luxury properties in up-market areas.³⁴ Property corruption scandals continued in 2013, when the ZACC Chief Executive, Ngonidzashe Gumbo, was arrested on an allegation of defrauding the Commission of US\$435 000. He was accused of making secret profits from a transaction involving a ZACC property. Gumbo was found guilty and sentenced to an effective two years in prison in March 2015.³⁵ In 2014, it emerged that a ZACC investigator was paid by the Zimbabwe Football Association (ZIFA) for work he was

³³ Start up Biz Zimbabwe (2019), 'Corruption in the Spotlight as ZACC resigns', available at <https://startupbiz.co.zw/corruption-in-the-spotlight-as-zacc-resigns/> [accessed on 27 November 2020].

³⁴ Magaisa, A. (2016), 'The last dance before sunset', available at <http://alexmagaia.com/big-saturday-read-last-dance-sunsetzimbabwes-political-elite-looting-state-citizens-can/> [accessed on 27 November 2020].

³⁵ Nemukuyu, D. (2015), 'Anti-Corruption Commission boss jailed', available at <http://www.herald.co.zw/anti-corruption-commission-boss-jailed/> [accessed on 27 November 2020].

doing for the ZACC against ZIFA officials. Media reports alleged that this suggested there was undue collusion between the two organizations in handling this issue.³⁶

In January 2019, the ZACC Chairperson, Deputy Chairperson and all eight Commissioners resigned.³⁷ They did so after President Mnangagwa stated that he would restructure the ZACC,³⁸ but it is unclear whether this is what prompted the mass resignations. When all Commissioners resign, the ZACC is left at a standstill as the Commissioners play an integral role in the ZACC's functioning. The ZACC Act does not envision a situation where all Commissioners resign; thus there is no provision in the Act to deal with the situation. However, the ZACC slowly started regaining public confidence in July 2019 when seven ZACC Commissioners, including Fungai Jessie Majome, John Makamure, Gabriel Chaibva, Thandiwe Thando Mlobane, Frank Muchengwa, Michael Dennis Santi (Rtd Maj) and Kuziva Phineas Murapawere, were sworn in. The organization then embarked on a massive public awareness programme through its Twitter handle.³⁹ In September 2020, ZACC launched an anti-corruption whistleblower mobile application to make it easier for citizens to confidentially report suspected cases of high-level graft in the country.⁴⁰

The Constitution also gives the ZACC the power to produce and present any reports of "improper conduct" by government officials or members of the private sector.⁴¹ The power to name and shame is a powerful tool that the ZACC can utilise to pressure government and corrupt companies into initiating change. It can drive policy changes to ensure a positive public image. The ZACC Act does not, however, provide the ZACC with full autonomy regarding the reports which they publish. It requires that the Commissioners produce a report annually which is presented to parliament.⁴² This must be done through the appropriate Minister. At the inception of the ZACC, the appropriate Minister was the Minister of Home Affairs. However, ZACC has been removed from the Home Affairs Ministry but has not been allocated to a different Ministry, which has resulted in any Minister being able to meddle in the affairs of the ZACC. Ministers may request that the ZACC produce additional reports and any report must be given to this Minister before it is published.⁴³ This provision takes away some independence from the ZACC because, although the Act states that the ZACC may release its reports as it sees fit if the Minister does not agree with the contents of a report, he or she may exert political pressure to have the report changed or not published at all. The drafters of the ZACC Act did not include a provision which prescribes that the reports produced by the Commission be made available to the public. The Act only requires that reports be presented to the Minister who may add comments as he sees fit.⁴⁴ This deprives the work of the ZACC of transparency, and it could lose the public's confidence, if it is seen not to be working actively to combat corruption. The ZACC has failed to produce and present reports regularly to parliament, but of great concern is parliament's failure to question the ZACC on its failures in this regard. This omission suggests that the fight against corruption is not a priority for parliament. Parliament has failed to check on the work which the ZACC is mandated to do. This lack of oversight contributes to the ZACC's inefficiencies.

³⁶ The Herald (2014), 'How did Zifa pay a ZAAC investigator?', available at <https://www.herald.co.zw/how-did-zifa-pay-a-zaac-investigator/> [accessed on 24 November 2020].

³⁷ Mashaya, B. (2019), 'Zacc chair, Commissioner resign', available at <https://www.dailynews.co.zw/articles/2019/02/01/zacc-chairCommissioners-resign> [accessed on 27 November 2020].

³⁸ Ibid.

³⁹ See <https://twitter.com/ZACConline>.

⁴⁰ See The Herald (2014), 'How did Zifa pay a ZAAC investigator?'.

⁴¹ See Section 257 of the Constitution of Zimbabwe, 2013.

⁴² See Section 17(1) of the ZACC Act.

⁴³ Ibid, and 17(4) of the ZACC Act.

⁴⁴ See Section 17(6)(b) of the ZACC Act.

In an attempt to strengthen ZACC by giving its officers more powers, on 28 June 2019, the Minister of Justice, Legal and Parliamentary Affairs gazetted Statutory Instrument 143/2019, the Criminal Procedure and Evidence (Designation of Peace Officers) (Amendment) Notice, 2019 (No. 3), which designates ZACC's officers as "peace officers" for all purposes under the Criminal Procedure and Evidence Act. This means that ZACC officers were given arresting powers that they did not have before. The ZACC Act gives the ZACC broad powers to enable it to fight corruption effectively. However, these powers have not enabled the ZACC to achieve its mandate as envisioned by the drafters of the ZACC Act. The powers which have been conferred upon the ZACC sometimes require co-operation from the police, the national prosecuting authority and the attorney general's office. An example of this is that a ZACC Commissioner is required to be accompanied by a police officer during the search and seizure of property belonging to individuals suspected of corruption crimes.⁴⁵

On 19 June 2020, ZACC officials claimed to have used their powers to arrest the former Health and Child Care Minister Obadiah Moyo.⁴⁶ This demonstrates that ZACC officials had already started using in practice the new arresting powers given to them. However, the ZACC's arresting power has been a heavily debated and contentious issue in the ZACC's case against Zimbabwe's former Higher and Tertiary Education Minister, Jonathan Moyo, and his Deputy, Godfrey Gandawa. The ZACC accused Moyo of conniving with Gandawa and some officials within his Ministry to siphon more than US\$400 000 from the Zimbabwe Manpower Development Fund (ZIMDEF) for personal gain. This resulted in Moyo's arrest, which he challenged in the Constitutional Court of Zimbabwe, arguing that the ZACC had no powers of arrest. The Constitutional Court held that the ZACC indeed had no arresting powers, but that a police officer seconded to the ZACC had the power to arrest.⁴⁷ As a result, Moyo was set free.

Furthermore, ZACC is not adequately funded.⁴⁸ Regardless of the vastness of the country they are supposed to serve, ZACC has offices in Harare, Gweru, and Bulawayo only and this bears testimony to funding challenges. The lack of independent budget allocation for the ZACC is a major flaw in both the ZACC Act and the Constitution of Zimbabwe. An effective Anti-Corruption Agency (ACA) requires a generous budget to fund its activities and to fulfil its mandate of combating corruption.⁴⁹ This is recognised as an international best practice. The ZACC falls significantly short in this aspect because, ever since its inception, it has not been allocated its full budget request by the treasury. The budget allocation over the years has fallen below 20% of the requested amount.⁵⁰ This explains that there is a proposal to retain 15% of the value of recovered stolen assets to fund the body's operations.⁵¹ In the 2019 Zimbabwe budget statement, the ZACC was

⁴⁵ See Section 13(4)(b) of the ZACC Act.

⁴⁶ Murwira, Z. (2020), 'ZACC arrests health minister', available at <https://www.herald.co.zw/zacc-arrests-health-minister/> [accessed on 27 November 2020].

⁴⁷ See the court ruling *Moyo v Sgt Chacha & Others* (CCZ 19/17, Const. Application No. CCZ 73/16) [2017] ZWCC 19 (20 September 2017) available at <https://zimlil.org.zw/judgment/constitutional-court-zimbabwe/2017/19> [accessed on 20 December 2020].

⁴⁸ Mupondo, R. (2019), 'Poor funding compromises Zacc independence', available at <https://www.newsday.co.zw/2019/11/poor-funding-compromises-zacc-independence/> [accessed on 27 November 2020].

⁴⁹ See Jakarta Statement on Principles for Anti-Corruption Agencies (2012), available at <https://www.epac-eacn.org/latest-news/98-principles-for-anti-corruption-agencies>.

⁵⁰ Katongomara, A. (2018), 'ZACC operations under threat', available at <https://www.chronicle.co.zw/zacc-operations-under-threat/> [accessed on 27 November 2020].

⁵¹ Mhlanga, P. (2020) 'ZACC goes for broke', available at <https://businesstimes.co.zw/zacc-goes-for-broke/> [accessed on 19 November 2020].

allocated US\$5 million dollars.⁵² This is significantly lower than the requested budget allocation, which is estimated to have been over US\$9 million.⁵³ Poor funding has crippled the ZACC's ability to achieve its mandate of combating corruption. The money received from the treasury is often enough to pay salaries only. It does not cover the expense of conducting thorough investigations or anti-corruption campaigns across the country.

The ZACC can only be perceived as a truly independent and impartial body by a reflection of the Commissioners who constitute that body. In March 2019, the President appointed Justice Loice Matanda-Moyo as the ZACC Chairperson.⁵⁴ This development was announced as the Committee on Standing Rules and Orders was in the middle of selecting eight new members of the commission from a large pool of 130 applicants.⁵⁵ Mnangagwa's decision to appoint Justice Matanda-Moyo has been met with some criticism as she is not viewed as an independent candidate. This is because she is married to the Foreign Affairs and International Trade Minister, Sibusiso Busi Moyo.⁵⁶ Although it could be argued that the Chairperson's marital status should not play a role in their appointment, the conflict-of-interest present in the appointment of Justice Matanda-Moyo cannot be ignored. SB Moyo himself has been implicated in the massive looting of mineral resources when Zimbabwe entered into the DRC Conflict.⁵⁷ The question then pertains to her impartiality if concerned citizens were to institute a complaint against her husband on the bedrock of Zimbabwe's plundered fiscal resources in that war where a few generals benefitted. Additionally, the anti-corruption body has not only to be independent but to be seen to be independent of political malleability. It is no secret that ZACC was the body used by the current Vice President Constantino Guvheya Chiwenga to settle a matrimonial dispute from his estranged wife Mary Chiwenga by instituting spurious charges of externalization of foreign currency, yet she has not been found guilty to date. Prominent high-profile officials such as Prof. Jonathan Moyo have decried that the involvement of ZACC in such cases was bad for the commission's image.⁵⁸

↔ **Specialised Anti-Corruption Courts**

On 29 March 2018, the Judicial Service Commission launched the Bulawayo and Harare specialised anti-corruption courts to tackle cases of corruption and deal with all forms of corruption.⁵⁹ The establishment of these special courts is commendable and good practice as it means that judges have an opportunity to specialise themselves on this issue. Indicatively, this improves the judge-to-case ratio, thereby potentially promoting case resolution efficiency. However, there has been no public information on the progress and successes of this new phenomenon in the justice sector. The specialized courts have been buttressed by the enactment of the amended Money Laundering and Proceeds of Crime Act

⁵² See Zimbabwe National Budget Statement (2019) at p. 168.

⁵³ Langa, V. (2017), 'Underfunding stifles Zacc operations', available at <https://www.newsday.co.zw/2017/04/underfunding-stifles-zaccoperations/> [accessed on 15 November 2020].

⁵⁴ Mpofu, M. (2019), 'Latest: President Emmerson Mnangagwa appoints new ZACC chairperson', available at <https://www.myzimbabwe.co.zw/news/43219-latest-president-emmersonmnangagwa-appoints-new-zacc-chairperson.html> [accessed on 10 November 2020].

⁵⁵ Ibid.

⁵⁶ Kanambura, A. (2019), 'Uproar over Mnangagwa's Pick of New Chair', available at <https://www.theindependent.co.zw/2019/03/29/uproar-overmnangagwas-pick-for-new-zacc-chair/> [accessed on 7 November 2020].

⁵⁷ UN Security Council (2002), 'Letter dated 15 October 2002 from the Secretary-General addressed to the President of the Security Council', available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20S%202002%201146.pdf> [accessed on 19 October 2020].

⁵⁸ Pindula News (2019), 'If there's a crime here, it's ZACC's shocking involvement, Jonathan Moyo on Marry Chiwenga charge sheet', available at <https://news.pindula.co.zw/2019/12/15/if-theres-a-crime-here-its-zaccs-shocking-involvement-jonathan-moyo-on-marry-chiwenga-charge-sheet/> [accessed on 1 November 2020].

⁵⁹ Chingarande, D. (2018), 'Anti-corruption courts officially open' available at <https://www.newsday.co.zw/2018/03/anti-corruption-courts-officially-open/> [accessed on 25 December 2020].

whose provisions place reliance on a combination of civil and criminal procedures to combat financial crimes through 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 specialised 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.⁶⁰

↔ **The National Prosecuting Authority (NPA)**

The NPA is established in terms of Section 258 of the Constitution of Zimbabwe.⁶¹ It is responsible for instituting and undertaking criminal prosecutions, including corruption prosecutions. It is one of the bodies to which cases from ZACC are referred to for prosecution. Prosecutors employed by the NPA have also been accused of corruption. For instance, on 17 July 2020, ZACC confirmed the arrest and appearance in court of a Provincial Public Prosecutor for Harare who was arrested together with a Senior Assistant Commissioner Detective Assistant, an Inspector and a Detective, all of the Police Commercial Crimes Division-CCD Unit, on allegations of criminal abuse of duty.⁶² In addition, the NPA is often supported by prosecutors seconded from the Zimbabwe Republic Police (ZRP) which was deemed unconstitutional, since it is in contravention of Section 208 (4) of Constitution of Zimbabwe Amendment (No. 20) 2013.⁶³ Communities consulted decried that some of these police prosecutors are not only corrupt but lack corruption prosecutorial capacity.⁶⁴

↔ **Zimbabwe Republic Police (ZRP) - Police Anti-Corruption Unit (PACU)**

ZRP detects, investigates and prevents corruption. The mandate of PACU is to suppress, investigate and detect corruption and all other economic crimes committed within or against parastatals, statutory bodies, and the private sector. It envisages promoting the four pillars of good corporate governance. However, the unit has a presence in Harare and Bulawayo only, which means that its effectiveness is severely undermined. In addition, ZRP gained notoriety for turning a blind eye to corruption perpetrated by its managers. In the case of the former Commissioner-General Augustine Chihuri, the police ignored all allegations of corruption against him until he left office. The former Commissioner is currently being charged for corruption, though he is in exile.⁶⁵

↔ **Special Anti-Corruption Unit (SACU) in the Office of the President and Cabinet**

In addition to the above, in May 2018, President Emmerson Mnangagwa established a Special Anti-Corruption Unit housed in the Office of the President and Cabinet to improve efficiency in the fight against all forms of graft and to strengthen the effectiveness of national mechanisms for the prevention of corruption.

⁶⁰ Matumbi, C. (n.d.), 'Combating corruption through effective criminal justice practices, international cooperation and engagement of civil society: the Zimbabwean perspective' available at https://www.unafei.or.jp/publications/pdf/RS_No107/No107_32_IP_Zimbabwe.pdf [accessed on 25 December 2020].

⁶¹ See <https://zimlil.org/zw/legislation/act/2013/amendment-no-20-constitution-zimbabwe>.

⁶² Masakadza, B. (2020), 'Senior Cop, Prosecutor in Court', available at <https://dailynews.co.zw/senior-cop-prosecutor-in-court/> [accessed on 2 November 2020].

⁶³ See Zimbabwe Law Officers Association & Another v NPA & Others (CCZ 1/19, Const Application No CCZ 32/14) [2019] ZWCC 01 (19 February 2019), available at <https://zimlil.org/zw/judgment/constitutional-court-zimbabwe/2019/1> [accessed on 26 December 2020].

⁶⁴ Meeting of 1 August 2020 with members of the Kwekwe Anti-Corruption Monitoring Voluntary Action Group.

⁶⁵ Ndoro, T. (2019), 'Justice at last as Augustine Chihuri, Senior police officers face arrest for abuse of office during Mugabe days', available at <https://iharare.com/justice-at-last-as-augustine-chihuri-senior-police-officers-face-arrest-for-abuse-of-office-during-mugabe-days/> [accessed on 3 November 2020].

The overall objectives of the unit include: to improve efficiency in the fight against all forms of corruption and to strengthen and improve the effectiveness of the national mechanisms for the prevention and fight against corruption in accordance with its own internal anti-corruption strategy, as well as the national anti-corruption strategy and action plan. The Unit collaborates with the Zimbabwe Anti-Corruption Commission (ZACC) and the Zimbabwe Republic Police (ZRP), as well as other such institutions in the fight against corruption. It also assists ZACC and other investigative agencies of the State in the perusal and consideration of corruption dockets, subject to the issuance of Authority to Prosecute by the Prosecutor General, to prosecute corruption cases referred to the National Prosecuting Authority by investigative agencies.

However, this Special Anti-Corruption Unit is not sustainable since its existence has no legal backing. Mr. Munyaradzi Bidi of ACT-SA pointed out that it may be dissolved when another President is elected.⁶⁶ In the announcements made by the President and his Chief Secretary, they did not specify the legal authority under which the unit has been established, so it can be concluded that the Special Unit was established by Presidential decree, itself a hallmark of arbitrary rule, which leads to the perceptions that it is an illegal structure that was set up to fight perceived political enemies of the current establishment as well as to duplicate efforts of the National Prosecuting Authority (NPA), regardless of not having prosecutorial capacity.⁶⁷ There is serious discontent that the unit is not serving any purpose and instead of setting it up, the President should have used the same resources given to it to capacitate the NPA.⁶⁸

The Chief Secretary's statement on the establishment of the unit suggests that the special unit's power to carry out prosecutions will be "subject to the issuance of Authority to Prosecute by the Prosecutor General".⁶⁹ Due to the fact that the Prosecutor General (PG) is the only body that has the power to prosecute, the legality of the President's decision has been called into question.⁷⁰ Interestingly, the statement also states that the members of the Special Unit will be subject to the Official Secrets Act, a situation that places onerous and unusual obligations on them because of the ominous nature of that legislation. There is no legal authority that allows the Office of the President to exercise or in any way interfere with prosecution authority. Ideally, the Office of the President should keep away from prosecution functions. According to Section 258 of the Constitution⁷¹, the supreme law of the land, legal authority to prosecute vests in the NPA. It is the only agency that has the power to prosecute on behalf of the State. There is an exception provided for in Section 263, under which powers of prosecution may be conferred on persons besides the NPA, but this legal authority must be given by an Act of Parliament, and those powers must not limit or conflict with the NPA's constitutional authority. There is no indication that the Special Unit's powers of prosecution have been conferred by an Act of Parliament. Instead, the Special Unit is a creature of a presidential decree.

The NPA is headed by the PG, whose office is independent and does not form part of the civil service. In addition, persons who assist the PG in the performance of his duties are employed

⁶⁶ Meeting with Munyaradzi Bidi of the Anti-Corruption Trust of Southern Africa on 13 August 2020.

⁶⁷ Nyarota, D. (2020), 'Mnangagwa's Special Anti-Corruption Unit illegal', available at <https://263chat.com/mnangagwas-special-anti-corruption-unit-illegal/> [accessed on 17 November 2020].

⁶⁸ Ibid.

⁶⁹ Office of the President and Cabinet (2018), 'President Mnangagwa establishes a Special Anti-Corruption Unit', available at <http://www.theopc.gov.zw/index.php/303-president-mnangagwa-establishes-a-special-anti-corruption-unit> [accessed on 3 February 2021].

⁷⁰ Kairiza, T. (2018), 'Mnangagwa's anti-corruption unit illegal' available at <https://www.theindependent.co.zw/2018/06/01/mnangagwas-anti-corruption-unit-illegal/> [accessed on 3 February 2021].

⁷¹ See <https://zimlil.org.zw/legislation/act/2013/amendment-no-20-constitution-zimbabwe>.

by a board, established under an Act of Parliament. In this regard, Section 259(10) states as follows: “An Act of Parliament must provide for the appointment of a board to employ persons to assist the Prosecutor-General.” These persons, who exercise prosecution authority cannot, under any circumstances, be employed outside the NPA. There is a good reason why the PG and his staff operate outside the normal civil service, and it is to protect their independence. Therefore, placing prosecutors under the Office of the President undermines this important principle of independence and gives credence to the perception that the unit is a political tool against opponents.

In addition, the Police Anti-Corruption Unit (PACU) has not been decentralized as it is only present in Harare and Bulawayo, yet incidents of corruption are widespread. Similarly, ZACC has no national presence since at the time of reporting it had offices in Bulawayo, Gweru and Harare only, in a country broken down into ten administrative provinces that are divided into 59 districts, 1,200 wards and a total population of at least 14.44 million (2018).⁷²

Furthermore, the existing institutions are accused of being heavily compromised with some of them being not only led by corrupt individuals but taking instructions from the executive arm of the government. For instance, the Special Anti-Corruption Unit is housed in the Office of the President and Cabinet and takes instructions from the President and is therefore not independent.⁷³ For example, the Director Police Intelligence Commissioner Douglas Nyakutsikwa has made an application for referral of this matter to the Constitutional Court (ConCourt) where he intends to challenge the constitutionality of the establishment of the Special Anti-Corruption Unit (SACU), headed by two individuals, including the City of Harare director of works and housing services, who both face charges of criminal abuse of office. Mr. Nyakutsikwa would like the ConCourt to make an order declaring SACU’s activities unconstitutional. Transparency International Zimbabwe (TI-Z) also says the SACU is an illegal entity, which unnecessarily duplicates roles of the prosecuting authority.⁷⁴ There are many instances in which some of the existing institutions were accused of being used by the executive and political parties for personal political gain, especially when they appear to be targeting perceived political enemies, leaving similarly corrupt individuals close to the administration untouched. The case of Obert Mpofu, the former Minister of Mining and Minerals Development, who is linked to the US\$15 billion diamond scandal, is more telling.⁷⁵ The following are shining examples of compromised anti-corruption bodies:

- The former ZACC Chief Executive Officer, Mr. Ngonidzashe Gumbo, was jailed for two years in 2015 after he had defrauded his employer of \$435 000⁷⁶;
- At the time of writing this report, a senior member of the ZACC was on suspension for misconduct after a complaint was raised against him and President Mnangagwa had constituted a tribunal to inquire into his fitness to hold public office;⁷⁷

⁷² See https://en.wikipedia.org/wiki/Districts_of_Zimbabwe.

⁷³ See Nyarota, D. (2020), Zimbabwe: 'Mnangagwa's Special Anti-Corruption Unit illegal' [accessed 25 December 2020].

⁷⁴ Ibid.

⁷⁵ Report Focus Ltd (2018), 'Obert Mpofu refuses to testify on the missing \$15 billion diamond revenue', available at <https://www.reportfocusnews.com/2018/02/22/obert-mpofu-refuses-testify-missing-15-billion-diamond-revenue/> [accessed on 26 November 2020].

⁷⁶ See Nemukuyu, D. (2015), 'Anti-Corruption boss jailed'.

⁷⁷ Murwira, Z. (2020), 'ZACC Commissioner faces corruption allegations', available at <https://www.herald.co.zw/zacc-commissioner-faces-corruption-allegations/> [accessed on 27 November 2020].

- The former Prosecutor-General Johannes Tomana was arrested on 8 July 2016 and accused of various charges of improper conduct, including charges of criminal abuse of office. Regardless of Tomana facing these charges, President Mnangagwa appointed him as Ambassador of the Democratic Republic of Congo (DRC), which shows that appointments are not based on the integrity of candidates.⁷⁸
- On 27 January 2020, Luke Malaba, the Chief Justice of Zimbabwe, decried that the NPA stands accused of weak prosecution, which frustrates the ends of justice because suspects end up being released at court for want of prosecution. This scenario lends credence to the 'catch and release' accusations.⁷⁹

It is also of pivotal importance to note that some of the institutions are seriously under-capacitated. This has a huge bearing on their ability to fight corruption. It is thus not surprising that the existence of these institutions is not bringing about a reduction in the number of corruption cases. Similarly, investigations are not only long and winding, but there are very few convictions in Zimbabwe.

1.2.3 Good practices

The setting up of Zimbabwe Republic Police (ZRP) - Police Anti-Corruption Unit (PACU) is a good practice to complement the efforts of ZACC.

Furthermore, the establishment of specialised anti-corruption courts in Bulawayo and Harare is a good practice, as it gives judges an opportunity to specialise themselves on this issue, and improves the judge-to-case ratio, thereby potentially promoting case resolution efficiency. Since their establishment in 2018, the courts have prosecuted five former Ministers, and two of them have been successfully convicted and are currently serving their terms of imprisonment.

1.2.4 Deficiencies

The major challenges for the effective, efficient and sustainable execution of their mandates are the very limited legal, financial, and human resources capacities of these anti-corruption bodies. For instance, ZACC has no offices and officers at district levels, which seriously undermines its capacity to execute its mandate effectively. Furthermore, the Special Anti-Corruption Unit in the Office of the President and Cabinet is largely believed to be unsustainable since its establishment is not justified by any law whatsoever.

A major deficiency of these bodies is the lack of independence and susceptibility to political meddling, as is the case with SACU which is believed to be unduly influenced by the President's party who wants to prosecute its political opponents. The case of *Kasukuwerere v Mujaya and Ors* is also indicative of the realities of judicial independence in practice at the Magistrates Courts, specifically as the courts dispense with justice.⁸⁰ The political context is important in situating the allegations of political meddling and lack of judicial independence. At a political rally in September 2020, President Emmerson Mnangagwa told his supporters

⁷⁸ Madimure, J. (2020), 'President deploys 5 ambassadors', available at <https://www.herald.co.zw/just-in-president-deploys-5-ambassadors/> [accessed on 27 November 2020].

⁷⁹ Judicial Service Commission (2020), 'Chief Justice Malaba', available at <https://www.jsc.org.zw/jscbackend/upload/Publications/Chief%20Justice%20L%20Malaba%2027-01-2020.pdf> [accessed on 25 December 2020].

⁸⁰ See *Kasukuwerere v Mujaya & 3 Others* (HH 562-19, HC 11252/18) [2019] ZWHHC 562 (21 August 2019), available at <https://zimlil.org.zw/judgment/harare-high-court/2019/562> [accessed 2 January 2021].

that he would ask South Africa to extradite loyalists of his predecessor, Robert Mugabe.⁸¹ The country's national prosecuting authority latched onto this threat by formally approaching South Africa for the return of former minister Saviour Kasukuwere under the guise that this political foe had pending cases before the courts, but had fled before his trial was completed. The initial case related to the abuse of office by Kasukuwere, who was accused of corruptly awarding state land to his cronies while in office without following the established procedure. The subsequent counter-suit by Kasukuwere related to the procedural irregularities in the handling of the trial matter, where a judge found out that there was undue political pressure to have the accused tried and found guilty. The judge found on behalf of the applicant as he noted on the record that there desperation and impatience to have the trial proceed by the State Prosecutor as well as withholding of critical information needed by the defence.⁸² These comments, he noted, have a bearing on the impartiality and independence of the judiciary.

This lack of independence of such bodies impedes the proper functions and leads to monies being lost that will not be recovered due to political meddling to settle personal scores on corruption-related matters.

1.3 Article 7 - Public sector

1.3.1 Interpretation of the Article

Article 7 of the Convention gives guidance to the States Parties to the Convention in order to regulate the internal framework with regard to the criteria for candidacy, election and promotion for public office and, in particular, for the transparency and financing of these procedures. Public administration, in the modern sense of the word, is composed of professionals, people who obtain employment with the purpose of building a career and perform their work as a professional and vocational calling, as compensation for which they receive a salary. As a rule, public administration employees, who are solely responsible for the performance of public functions, i.e. the direct provision of services to citizens and the business community, have a special status that distinguishes them from private sector employees. Laws regulate this status.

1.3.2 Implementation of Article

The legal framework for the recruitment, hiring, retention, payment, promotion, and retirement of civil servants is guided by the following:

- a) Constitution of Zimbabwe,
- b) Public Service Act [Chapter 16:04],
- c) Public Service Regulations (2000), and
- d) Public Finance Management Act [Chapter 22:19].

Institutional arrangements in place include the Public Service Commission (PSC) and the Training Advisory Board (TAB), which is part of the Commission.

The Public Service Commission is responsible for policy development and implementation of recruitment, hiring, retention, payment, promotion, and retirement-related issues. Recruitment to the civil service is supposed to be based on merit and requires the prior publication of vacancies on a central portal for all junior and some senior positions.

⁸¹ Du Plessis, C. (2020), 'Zimbabwe seeks former Mugabe minister Saviour Kasukuwere's extradition to face criminal charges', available at <https://www.dailymaverick.co.za/article/2020-10-13-zimbabwe-seeks-former-mugabe-minister-saviour-kasukuweres-extradition-to-face-criminal-charges/> [accessed on 27 November 2020].

⁸² See *Kasukuwere v Mujaya & 3 Others* (HH 562-19, HC 11252/18) [2019] ZWHHC 562 (21 August 2019), available at <https://zimlil.org/zw/judgment/harare-high-court/2019/562> [accessed on 27 November 2020].

In addition, all civil servants take sector-specific training courses that also cover ethics and corruption. The PSC continuously reviews and revises the training courses through the TAB. Several public entities regularly rotate and routinely transfer staff to minimise corruption risks. There are numerous cases in which individuals suspected of corruption are transferred instead of being expelled from the public service. For instance, Mazowe-based Zimbabwe Republic Police officers were transferred over corruption instead of being charged and discharged from the public service.⁸³ Additionally, days after being confirmed as Prosecutor General, Kumbirai Hodzi moved to purge a top National Prosecuting Authority (NPA) lawyer, apparently targeted for links with the fallen government of President Robert Mugabe. This lawyer, who was the director for economic crimes in the NPA and a former chief law officer, was advised that he had been transferred to Guruve, a district in Mashonaland Central. There had always been a perception that he was loyal to former President Mugabe and had prevented political prosecutions of officials from the so-called G40 – the arch-nemesis of current president Emmerson Mnangagwa.⁸⁴

In addition, qualification and disqualification criteria have been established for presidential and vice-presidential candidates⁸⁵ and parliamentary candidates.⁸⁶

Furthermore, the Electoral Act [Chapter 2:13]⁸⁷ provides for the disqualification of candidates in the event that they are convicted of an offence involving breach of trust, dishonesty or physical violence⁸⁸ or illegal practices committed during electoral campaigns⁸⁹ for political parties and candidates and other stakeholders, together with their subsidiary legislation, regulate electoral funding matters. The Political Parties (Finance) Act [Chapter 2:11]⁹⁰ and its regulations provide for the financing of political parties by the State, define permissible and prohibited donations and establish the obligation for parties to keep a register and books of accounts for all donations and expenses. Sanctions for violating these rules are established in Sections 139–141 of the Electoral Act [Chapter 2:13].

Whilst the normative framework for the recruitment, hiring, retention, payment, promotion, and retirement of civil servants is impressive, the implementation is beset by several challenges.

Firstly, there is growing public concern around the politicization and abuse of public (civil) servants to advance the political interests of the ruling Zimbabwe African National Union-Patriotic Front (ZANU PF) in Zimbabwe.⁹¹ For instance, on 3 September 2017, the Guruve District Administrator, who is a civil servant, asked his subordinates to make financial contributions to a Mashonaland Central ZANU PF Youth Interface Rally.

⁸³ Karowangoro, A. (2020), 'Mazowe ZRP officers transferred over corruption', available at <https://zimorningpost.com/mazowe-zrp-officers-transferred-over-corruption/> [accessed on 27 November 2020].

⁸⁴ Machaya, P. (2019), 'Top NPA lawyer Chris Mutangadura ousted over Mugabe', available at <https://www.zimlive.com/2019/02/09/top-npa-lawyer-chris-mutangadura-ousted-over-mugabe-links/> [accessed on 27 November 2020].

⁸⁵ See Section 91 (1) of the Constitution of Zimbabwe.

⁸⁶ See Sections 121 and 129 of the Constitution, and Section 46 of the Electoral Act [Chapter 2:13].

⁸⁷ See <https://www.zec.org.zw/final/files/ELECTORAL%20ACT%20CHAPTER%202%2013%20UPDATED%20.pdf>.

⁸⁸ See Section 46 of the Constitution.

⁸⁹ See Sections 134–157 of the Constitution.

⁹⁰ See <https://zimlil.org.zw/legislation/act/2001/4>.

⁹¹ Anti-Corruption Trust of Southern Africa (2017), 'ZANU-PF abusing and politicizing civil servants in Zimbabwe', available at <http://kubatana.net/2017/09/15/zanu-pf-abusing-politicizing-civil-servants-zimbabwe/> [accessed on 27 November 2020].

Furthermore, the ZANU PF youth interface rallies that are political in nature were organised by civil servants using government resources and time.⁹²

Moreover, the recruitment processes, particularly of senior civil servants, are not transparent. All those recruited under the special service department are allegedly seconded by PEPs whilst Permanent Secretaries are imposed on ministries. Nepotism is also a challenge in parastatals, such as the National Social Security Authority (NSSA).⁹³ A workplace survey by the Industrial Psychology Consultants confirmed the prevalence of nepotism. From a sample of 718 employees, 31.3% said there is a high prevalence of nepotism in their organisation, 30.1% indicated a moderate prevalence, 24.9% indicated a low prevalence and 13.6% indicated no prevalence of nepotism.⁹⁴

In addition, the recruitment processes of junior civil servants, especially nurses and police officers, is undertaken on a political basis with various “lists” submitted from different districts based on political affiliation, without due regard to the necessary educational and other qualifications.⁹⁵ For instance, the Vice President of Zimbabwe Mohadi has noted that the recruitment of nurses should resemble that of the police and the army, which have national representation through a quota system: *“You will find that whenever there is a recruitment drive in the army or police, they have what they call a quota system where each and every province brings its own people.”*⁹⁶ In reality, such recruitments always favor applicants from the ruling party ZANU PF.

1.3.3 Deficiencies

The recruitment processes are tainted with the following challenges:

- ↔ Most senior positions are only open to officers who are already in the system and known within political circles. This means that qualified individuals who are not well-connected are not recruited.
- ↔ In addition, there seems to be considerable confusion regarding selection procedures, which could contribute to unethical conduct among those selecting candidates for promotion.
- ↔ There is currently a militarization of the Public Service by deliberately appointing the Permanent Secretaries of most Government Ministries from the military pool. The employees serving under these ministries automatically become political functionaries when the need arises at the hands of the ruling party, which amounts to corruption, as they are paid from State coffers to undertake party business. For instance, the military complex which comprises the army, ex-army officers and veterans from the 1970s war of liberation, has steadily begun to consolidate civilian authority occupying positions. Following the 2017 coup, Rtd General Chiwenga was made the Vice President, and the Minister of Health, the late Air Chief Perence Marshall Shiri was heading the Lands,

⁹² Zimbabwe Human Rights Association (2017), ‘ZANU-PF orders civil servants to fund Mashonaland central rally’, available at <http://kubatana.net/2017/09/08/zanu-pf-orders-civil-servants-fund-mash-central-rally/> [accessed on 27 November 2020].

⁹³ Ndebele, H. (2017), ‘Nepotism rocks NSSA over recruitment process’, available at <https://www.theindependent.co.zw/2017/10/27/nepotism-claims-rock-nssa-recruitment-process/> [accessed on 27 November 2020].

⁹⁴ IPC Consultants (2017), ‘Nepotism Prevalence in the workplace survey report’, available at <http://ipcconsultants.com/wp-content/uploads/2017/03/Nepotism-in-the-workplace-survey-report.pdf> [accessed on 27 November 2020].

⁹⁵ NewZimbabwe.com (2018), ‘Police promotions raise stink as favouritism, tribalism is alleged’, available at <https://www.newzimbabwe.com/police-promotions-raise-stink-as-favouritism-tribalism-is-alleged/> [accessed on 27 November 2020].

⁹⁶ Zimeye (2019), ‘Kembo Mohadi sides with Matabeleland’, available at <https://www.zimeye.net/2019/10/14/kembo-mohadi-sides-with-matabeleland/> [accessed on 27 November 2020].

Agriculture and Rural Resettlement Ministry, the late General Sibusiso Moyo was heading the Ministry of Foreign Affairs and International Trade and Military doctor Air Commodore Jasper Chimedza was also appointed as the new permanent secretary in the health ministry.⁹⁷

1.4 Article 8 - Codes of conduct for public officials

1.4.1 Interpretation of the Article

Article 8 encourages States Parties to promote integrity, honesty, and responsibility among its public officials in keeping with the fundamental principles of its legal system. These codes or standards ensure adherence to the correct, honourable and proper performance of public functions. The Article encourages States Parties to learn relevant initiatives of regional, interregional, and multilateral organisations, such as the International Code of Conduct for Public Officials, among others. In addition, States Parties are urged to establish measures and systems to facilitate the reporting of corruption by public officials. Another important measure encouraged under this Article is to require public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits, from which a conflict of interest may result with respect to their functions as public officials.

1.4.2 Implementation of Article

The Constitution establishes the obligation to avoid conflicts between private interests and official or public duties. Parliamentarians are bound by the Code of Conduct and Ethics for Members of Parliament whilst a code exists for certain staff of public entities specified in the Public Entities Corporate Governance Act [Chapter 10:31].⁹⁸ However, this Act does not establish sanctions for providing false information. The failure by civil servants and judicial officers to disclose to a superior any conflict of interest or other personal information relevant to any matter connected with the discharge of their duties is deemed an act of misconduct. Sanctions for misconduct exist, but they are rarely enforced.

In Zimbabwe, public officers have become regularly involved in situations where their public duty conflicts with their personal interests. For example, in 2013, Supa Mandiwanzira, the owner of a broadcasting company, was appointed as the Deputy Minister of Information and Broadcasting Services, which is the ministry responsible for the administration and supervision of broadcasting companies.⁹⁹ This meant that the Minister was both a stakeholder in and the custodian of the media industry, entailing the possibility of abuse of power, corruption and unfair competition.

In April 2016, the Zimbabwe Parliament's Standing Rules and Orders Committee approved a draft Assets Declaration Register that is intended to require parliamentarians, together with cabinet members, to declare their assets in terms of the Constitution and of the House's Standing Rules and Orders.¹⁰⁰ The declarations are incorporated in the Code of Conduct and Ethics for Members of Parliament.¹⁰¹ According to the Code and the Register thereof, all

⁹⁷ Aljazeera (2018), 'Is Chiwenga on a path to transform Zimbabwe in Sisi's Egypt', available at <https://www.news24.com/news24/africa/zimbabwe/is-chiwenga-on-a-path-to-transform-zimbabwe-into-sisis-egypt-20180504> [accessed on 27 November 2020].

⁹⁸ See Sects. 34 and 37 of the Public Entities Corporate Governance Act [Chapter 10:31].

⁹⁹ Guma, L. (2011), 'Zimbabwe: Debate in parliament exposes broadcasting authority', available at <https://allafrica.com/stories/201112150186.html> [accessed on 27 November 2020].

¹⁰⁰ Gumbo, L. (2016), 'MPs to declare assets', available at <https://www.herald.co.zw/mps-to-declare-assets/> [accessed on 25 December 2020].

¹⁰¹ See http://www.veritaszim.net/sites/veritas_d/files/Code%20of%20Conduct%20and%20Ethics%20for%20Members%20of%20Parliament.pdf.

immovable assets must be declared, and such declaration must disclose the address in which the asset is located, its year of purchase, the percentage of the asset owned and names of any co-owners.¹⁰² Movable properties that are subject to registration by law, such as cars, must also be declared, along with information encompassing a brief description of the asset, its location, year of acquisition and estimated value.¹⁰³ Other movable properties, such as precious stones, jewellery, and coins valued in excess of US\$25 000 are to be declared, together with movable assets valued in excess of US\$15 000 and real estate alienated in the past 12 months. In addition, bank accounts, deposits, investment funds, any other savings systems and any debts and liabilities above US\$25 000 will have to be declared.¹⁰⁴ Part V of Annex 1 to the Assets Declaration Register provides that any gifts, services or advantages free of charge or subject to subsidies as compared to the market value received from persons, organizations, companies, autonomous administrations, national companies or foreign public institutions, and worth more than US\$4 500, must be declared, recording the source of the gift, service or advantage. It is a criminal offence and contempt of Parliament for a public officer to make an inaccurate or incomplete declaration.¹⁰⁵

Most of the time, the extent of the asset holdings of public officers become known only when they are going through an uncivil divorce or some other civil lawsuit, or when they simply brag about how rich they are. In 2010, the country was shocked when the wife of Doctor Ignatius Chombo, the Minister of Local Government, Public Works and Urban Development, claimed that she and her husband owned close to a hundred houses and business stands in Zimbabwe, 12 investment companies, more than 3000 hectares of farmland, 15 vehicles, various assets in South Africa, and mines, farms and safari lodges in Zimbabwe.¹⁰⁶ The Minister did not earn much money in the 1980s, before holding public office, which is a good example of how public officers in Zimbabwe are exploiting the absence of assets declaration laws to loot the public purse and get away with it.

Another senior public officer, Obert Mpofu, who mysteriously owns thousands of hectares of land in Zimbabwe, bought a bank for more than US\$20 million and went on a real estate “shopping spree” when he was the Minister of Mines. It has been alleged that during his tenure, there was mass looting of resources, especially in the diamond sector.¹⁰⁷ After he was removed from the post, he received a financial windfall, including the closure of the bank he had bought¹⁰⁸, leading to many questions being asked about the legitimacy of his fortunes. However, there was no chance of remedial action because no official record of his assets ever existed.

The following are some examples of provisions related to conflict of interest:

- Rules on the appointment and tenure of the Prosecutor General (PG), who is the head of the National Prosecuting Authority (NPA), are provided for under Section 259 of the Constitution of Zimbabwe. The National Prosecuting Authority Act [Chapter 7:20] and the National Prosecuting Authority (Code of Ethics) Regulations (2015) further

¹⁰² Ibid.

¹⁰³ Ibid, see Part I of Annex 1.

¹⁰⁴ Ibid, see Part IV of Annex 1.

¹⁰⁵ Ibid, see Annexes 1 and 2.

¹⁰⁶ Nehanda Radio (2010), ‘Messy divorce exposes Minister Chombo’s mega riches’, available at <https://nehandaradio.com/2010/11/05/messy-divorce-exposes-minister-chombo%E2%80%99s-mega-riches/> [accessed on 27 November 2020].

¹⁰⁷ Cross, E. (2011), ‘The greed and corruption of Obert Mpofu’, available at <https://www.politicsweb.co.za/opinion/the-greed-and-corruption-of-obert-mpofu> [accessed on 27 November 2020].

¹⁰⁸ Ibid.

regulate the recruitment, discipline, conditions of service and ethical behaviour of NPA officials. Prosecutors must recuse themselves from any proceedings where there are grounds to do so or disclose those grounds to the other parties in the proceedings.

- Sections 106 and 196 of the Constitution of Zimbabwe promote integrity, honesty, and responsibility among public officials.
- Other legislation, such as the Public Entities Corporate Governance Act and the Zimbabwe Anti-Corruption Commission Act, also promote ethical behaviour for different categories of public officials.
- In addition, the Criminal Law (Codification and Reform) Act criminalises the concealment of a transaction from a principal/supervisor or of a personal interest in a transaction.
- The appointment and removal of judges are regulated by the Constitution of Zimbabwe and the Judicial Service Act [Chapter 7:18]. The Judicial Service Commission enforces rules on employment, discipline and conditions of service as set out in the Judicial Service Regulations. The Judicial Service (Code of Ethics) Regulations serve as a code of conduct for judicial officers.

1.4.3 Deficiencies

Whilst the normative legal and policy framework is impressive, several challenges exist:

- ↔ There is neither a clear definition of a conflict of interest nor an established procedure to report conflicts of interest cases to superiors or to manage such conflicts when they arise.
- ↔ There is no code of conduct for civil servants, although there are claims that a draft code is being developed. This position was proffered by the applicants in the case of *Kasukuwerere vs. Mujaya Ors*, in which the court accepted that there was no code of conduct for civil servants. There is only Section 174 of the Criminal Law (Codification & Reform) Act, which creates the offence of Criminal Abuse of Office, but this is too broad. There is a need for a code derived from this enabling Act to act as a guide for civil servants. The case of *Kasukuwerere vs. Mujaya Ors* HC 11252/18 also exposes this lacuna.¹⁰⁹
- ↔ Sections 34 and 37 of the Public Entities Corporate Governance Act [Chapter 10:31] do not establish sanctions for providing false information.
- ↔ There is no comprehensive legal and administrative framework to facilitate the reporting of acts of corruption in the public sector.
- ↔ Zimbabwean medical staff are allowed to carry out personal business activities in direct conflict with their official duties and responsibilities. For instance, they can open private clinics and pharmacies that offer the same services which they render as part of their duties and responsibilities as employees of the government.

1.5 Article 9 - Public procurement and management of public finances

1.5.1 Interpretation of the Article

Article 9 of the UNCAC constitutes a kind of framework for the way in which the signatory states to the Convention should regulate public procurement to prevent corruption, as well as the measures they need to take to increase transparency and accountability in the management of public finances.

¹⁰⁹ See <https://zimlil.org/zw/judgment/harare-high-court/2019/562>.

It can be said that the article is relatively concentrated and short in content. It first presents the basic principles that should be retained during the implementation of public procurement procedures, that is, the principles according to which those who conduct the procurements should be guided during their work. Hence, the following three principles are mentioned:

- transparency.
- competition; and
- objective criteria for the selection of bidders, that is, impartiality in the selection process.

The Convention also explicitly requires the measures taken to preserve these principles, and at the same time, to be effective in preventing corruption in public procurement. In order to ensure the proper application and fulfilment of the requirements of Article 9, the United Nations (UN) goes beyond the Convention, by publishing detailed Guidelines for anti-corruption measures in public procurement procedures and public finance management.¹¹⁰

It is also very important that Article 9 of the Convention, and the Guidelines, cover the entire public procurement cycle – from assessing the need for procurement, through planning, implementing of the tender, the selection of the best bidder, to the contract concluding and its realization – because only by looking at procurements in this way, can corruption in said procurement be prevented. The importance here is also due to the fact that public procurement laws, for the most part, are limited only to the procedure that leads to the conclusion of public procurement contracts, that is, the so-called tender phase, as is the case with the Macedonian law.¹¹¹

However, each of the three main phases in the implementation of public tenders, the pre-tender, tender and post-tender phases, are important for the prevention of corruption, since corruption is generally most present in the pre-tender phase, is then enabled in the tender phase and is consequently exercised in the post-tender phase. Hence, the prevention of corruption should adequately include measures in each of these phases, although not all phases are included in the subject law on public procurement.

1.5.2 Implementation of Article

The normative legal framework in place is comprehensive. Public procurement is mainly regulated by the Constitution of Zimbabwe, the Public Procurement and Disposal of Public Assets Act [Chapter 22:23]¹¹² and the Public Procurement and Disposal of Assets (General) Regulations (2018).¹¹³ Section 195 of the Constitution provides that “*companies and other commercial entities [...] must establish transparent, open and competitive procurement systems*”. A key authority in the procurement process is the Procurement Regulatory Authority of Zimbabwe (PRAZ), which is established by the Act. PRAZ is mandated to:

- supervise public procurement,
- monitor compliance with the Act,
- advise and assist procuring entities,
- issue directives and guidelines and maintain relevant databases.¹¹⁴

¹¹⁰ See https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf.

¹¹¹ Ibid.

¹¹² See <https://zimlil.org/zw/legislation/act/2017/5>.

¹¹³ See http://veritaszim.net/sites/veritas_d/files/SI-5-2018ed.pdf.

¹¹⁴ See Sections. 5–7, Constitution of Zimbabwe.

The establishment of a Procurement Management Unit (PMU) headed by the entity's accounting officer is a key requirement for any entity, as defined in Section 10 of the Public Finance Management Act. In addition, evaluation committees for procurements are appointed for amounts above the threshold specified in Section 10 (2) of the Public Procurement Regulations.

Competitive bidding is among the key principles to be employed except in the cases listed in Section 30 of the Act. Detailed rules and procedures for invitations to bid, the content of invitations, bidding periods, the content of bids and the opening and evaluation of bids are set out in Sections 36–56 of the Act and Sections 18–34 of the Regulations.

The Code provided for in the first schedule to the regulations establishes the obligation to disclose conflicts of interest to direct supervisors. Bidders are disqualified if found guilty of unethical conduct, involving dishonesty or corruption.

The Zimbabwe Anti-Corruption Commission may monitor and examine procurement procedures. Similarly, the Office of the Auditor General can also conduct compliance and financial audits of public procurements.

In addition, according to Section 305 of the Constitution of Zimbabwe and Section 28 of the Public Finance Management Act, national budget proposals should be submitted to the Parliament of Zimbabwe for consideration and adoption. Furthermore, all government ministries and statutory and constitutional bodies are required to submit monthly, quarterly, and annual financial statements to the Office of the Auditor General and the Parliament.

Section 41 of the Act establishes the obligation for each public entity to have an accounting authority to establish and maintain effective, efficient, and transparent systems of financial and risk management and internal controls as well as a system of internal audit. In addition, the PSC may appoint internal auditors to investigate any government entity. The Office of the Auditor General also conducts external audits. The National Archives Act also provides for the storage, preservation, and disposal of government records. In keeping thereof, any falsification or destruction of records is punishable.

1.5.3 Deficiencies

Despite this seemingly robust legal framework, public procurement is beset by several challenges, especially regarding corruption in the awarding of tenders. The following is a shining example:

On 12 June 2020, Zimbabwe's Minister of Health, Obadiah Moyo, was arrested, facing charges of criminal abuse of office. Moyo and top executives from the government-owned National Pharmaceutical Company (Nat Pharm) allegedly handpicked companies not on the procurement register to supply drugs worth millions of dollars during the COVID-19 national emergency. One of these companies, Drax International, was only two weeks old when it was paid US\$2 million dollars to a bank account in Hungary, triggering an INTERPOL investigation. The payment was part of deals worth US\$60 million signed with the company, without a public tender.¹¹⁵

¹¹⁵ Mathuthu, M. (2020), 'Zimbabwe arrests health minister in Covid-19 procurement scandal', available at <https://www.zimlive.com/2020/06/19/zimbabwe-arrests-health-minister-in-covid-19-procurement-scandal/> [accessed on 27 November 2020].

Section 195 of the Constitution provides that “*companies and other commercial entities {...} must establish transparent, open and competitive procurement systems*”. The award of the Drax contracts by Nat Pharm, a government entity, was not open, transparent, or competitive. Section 308 of the Constitution provides that “*every person who is responsible for the expenditure of public funds has a duty to safeguard the funds and to ensure that they are spent only on legally authorized purposes and in legally authorized amounts*”. Additionally, it states that “*every person who has custody or control of public property has a duty to ensure that it is not lost, destroyed, damaged, misapplied or misused*”. There was gross overpricing of goods supplied by Drax. The Minister of Health has admitted to this, which is why he claimed that Drax had agreed to reduce the contract price. This was only after public pressure from media revelations of the scandal.¹¹⁶

Section 31 of the Public Procurement Act [Chapter 22:14] in relation to tendering proceedings, states that the invitation to suppliers to tender shall be published in the Gazette, where the procuring entity is the State, and in a newspaper circulating in the area in which the procuring entity has jurisdiction or carries on business, where the procuring entity is not the State, and in a newspaper of wide international circulation or in a relevant trade or technical or professional journal of wide international circulation. In relation to the Drax deal, no such publication was ever made in clear violation of the provision of this act that would ensure transparency through public scrutiny. Section 34 regarding the eligibility of suppliers, states that in the case of a body corporate, potential suppliers’ directors or officers may not have been convicted in any country of an offence by whatever name in the preceding ten years. The local Zimbabwean representative for Drax is a convicted criminal with various criminal cases pending before the courts. This should have raised a red flag for Nat Pharm about the companies’ eligibility for being awarded such a tender.

Section 4 of the Statutory Instrument 171 of the 2002 Procurement Regulations¹¹⁷ relates to the procurement process that requires prior review by the State Procurement Board and states that where a procuring entity requires the supply of goods, construction works or services that exceed the value of US\$500 000, the procuring entities shall invite formal tenders. The Drax case involved a contract of US\$60 million, which is considerably above the threshold where it is mandatory for formal tenders to be invited. The fact that this deal was made in violation of this provision shows the extent to which corruption prevails in the health sector. Additionally, the fact that the President of the Country sanitized this deal by officiating over the signing ceremony shows the extent to which corruption is embedded at the upper echelons of power as the President’s own sons were involved in this murky deal.¹¹⁸

In June and July 2020, National Pharmaceutical Company (Nat Pharm) officials, including board members, were arrested by the Zimbabwe Anti-Corruption Commission (ZACC) on allegations of abuse of office. In June, three former top Nat Pharm bosses appeared in court facing allegations of approving Drax International LLC to supply and deliver medicines and surgical sundries to the government without following procurement procedures. These three former Nat Pharm bosses have since appeared before the Harare Magistrates’ Courts charged with criminal abuse of office.¹¹⁹

¹¹⁶ Ibid.

¹¹⁷ See <https://www.law.co.zw/download/procurement-regulations-2002/>.

¹¹⁸ Newzimbabwe.com (2020), ‘Zimbabwe: Mnangagwa links to Drax international emerge, president begged for \$60m from dodgy firm’, available at <https://allafrica.com/stories/202006160462.html> [accessed on 27 November 2020].

¹¹⁹ Madzianike, N. (2020), ‘NatPharm bosses arrested, appear in court’, available at <https://www.herald.co.zw/natpharm-bosses-arrested-appear-in-court/> [accessed on 27 November 2020].

The main challenge for Zimbabwe is that the country has not yet introduced electronic platforms for invitations to bid, awards contracts and other relevant information. Such information should not only be online, but the contracts and data on public procurement should be published and made freely accessible on a central online platform in an open data format, in line with the Open Contracting Data Standards, which is global best practice. Electronic platforms reduce human interface, which is prone to corruption.

1.6 Article 10 - Public reporting

1.6.1 Interpretation of the Article

Article 10 of the Convention requires State Parties to take appropriate measures for increasing the transparency and openness of the administration. The Convention indicates that each State should find in its legislation modules which will provide citizens with information about the organization and the procedures of making decisions of the public administration, as well as information on the risks of corruption in the area of public administration.

1.6.2 Implementation of Article

Under Section 62 of the Constitution, every Zimbabwean citizen or permanent resident has the right to access any information held by public authorities insofar as the information is required in the interests of public accountability. However, there is no enabling legislation giving effect to this right.

A major challenge has been the deliberate use of security services such as the police to silence journalists who report on corruption. The Zimbabwe Republic Police arrested prominent journalist and documentary filmmaker Hopewell Chin'ono in 2020 over his alleged exposé of government corruption. The journalist was first detained after reporting on allegations involving US\$60 million worth of contracts awarded to companies at inflated prices for COVID-19 supplies, including Personal Protective Equipment, by the Ministry of Health that allegedly involved senior government officials. The Zimbabwean health minister was subsequently fired for his involvement in this corruption.¹²⁰ In September 2020, after spending about 45 days behind bars on a charge of inciting public violence, Chin'ono was released from prison on bail.

The government has been trying to silence reporters like Chin'ono, who report on high-level corruption by imprisoning them, by imposing social media restrictions, including a proposed cybercrime bill, and by dispelling dissent, journalists and activists say.¹²¹ The Southern Africa Litigation Centre (SALC) condemned Chin'ono arrest, stating that it violates Zimbabwe's constitutional provisions. His arrest is also in violation of several international legal principles and guidelines, including the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 9 of the African Charter on

¹²⁰ Amnesty International (2020), 'Zimbabwe: Authorities continue their crackdown on dissent with arrest of investigative journalist and activist', available at <https://www.amnesty.org/en/latest/news/2020/07/Zimbabwe-authorities-continue-their-crackdown-on-dissent-with-arrest-of-investigative-journalist-and-activist/> [accessed on 27 November 2020]; See also President and Fellows of Harvard College (2020), 'What Hopewell Chin'ono's Arrest Says about the Free Press in Zimbabwe', available at <https://niemanreports.org/articles/what-hopewell-chinonos-arrest-says-about-the-free-press-in-zimbabwe/> [accessed on 12 November 2020].

¹²¹ See Committee to Protect Journalists (2020), 'Journalists attacked in Zimbabwe since 1992', available at <https://cpj.org/africa/zimbabwe/> [accessed on 27 November 2020].

Human and Peoples' Rights and the African Union Declaration of Principles on Freedom of Expression in Africa.¹²²

Another limitation is the proposed Cyber Security and Data Protection Bill, which will stifle media freedoms on reporting corruption.¹²³ In February 2019, following the approval for the repeal of Access to Information and Protection of Privacy Act (AIPPA) by Cabinet¹²⁴, the Data Protection Bill was one of the Bills that was proposed to address data protection and privacy issues in alignment with the Constitution. The gazetted Bill sets out to merge two aspects: cybersecurity and data protection.¹²⁵ Section 164 states: *"Any person who unlawfully by means of a computer or information system makes available, transmits, broadcasts or distributes a data message to any person, group of persons or to the public with intend to incite such persons to commit acts of violence against any person or persons or to cause damage to any property shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment."* Provisions such as these are at risk of being relied on to inhibit constructive criticism, which is important for promoting transparency and accountability, especially from the government. There is therefore a danger that such provisions will be used as political tools and mechanisms by the state to prevent the expression of dissenting opinions. This will potentially stifle citizen engagement and open debate, both of which are necessary elements to promote democracy.¹²⁶

Authorities have tried to sneak in a repressive provision in the bill's current gazetted form, permitting the covert use of "keystroke loggers", which facilitate remote data access, as well as the monitoring and recording of computer activities. It is neither known under which circumstances the forensic tools would be used nor how the State would authorise such surveillance.¹²⁷ Keystroke loggers are dangerous because they represent a severe infringement of the right to privacy, giving military intelligence access to the back end of mobile user data, which is provided through the postal authority under interception of the Communications Act. There is no judicial oversight or other accountability measures for monitoring and reviewing potential abuses of such intrusive technologies, and the bill has no specific safeguards to protect whistleblowers who can be targeted for leaking information of public interest.

Although several e-government initiatives have been introduced, such as the ZimConnect portal¹²⁸, the portal suffers from frequent breakdowns. In addition, not all public entities have published information and reports of their work and performance on websites and other platforms.

¹²² SALC (2020), 'Statement condemning the re-arrest of Hopewell Chin'no', available at <https://www.southernafricallitigationcentre.org/2020/11/04/statement-condemning-the-re-arrest-of-hopewell-chinono/> [accessed on 28 November 2020].

¹²³ See http://veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf.

¹²⁴ Ncube, X. (2019), 'Cabinet approves AIPPA repeal', available at <https://www.newsday.co.zw/2019/02/cabinet-approves-aippa-repeal/> [accessed on 28 November 2020].

¹²⁵ Applied Law & Technology (2020), 'Zimbabwe gazettes Cyber Security and Data Protection Bill', available at <https://altadvisory.africa/2020/05/20/zimbabwe-gazettes-cyber-security-and-data-protection-bill/> [accessed on 28 November 2020].

¹²⁶ Ibid.

¹²⁷ Mahomed, F. (2020), 'Creeping clampdown on dissent: Beware Zimbabwe's cybersecurity bill', available at <https://www.dailymaverick.co.za/article/2020-09-24-creeping-clampdown-on-dissent-beware-zimbabwes-cybersecurity-bill/> [accessed on 28 November 2020].

¹²⁸ See <https://zimeservices.pfms.gov.zw/irj/portal/anonymous>.

In the health sector, for example, the risks of corruption are even higher where there are power asymmetries or an imbalance of information, inter alia, between health-care provider and patient, and between government, the private sector and rights holders. The vulnerability is heightened in terms of the accessibility of information since a lack of information about rights in the health system can provide a smokescreen for corruption. Moreover, patients are vulnerable due to the so-called “information imbalance” in the health sector, with doctors being more knowledgeable about the health-care services that they provide than the receivers of these services. A study by Transparency International Zimbabwe (TIZ) from 2020 on the Corruption Risk Assessment in the Health Sector¹²⁹ revealed that 32% of the respondents indicated that they have witnessed or have been asked to undergo unnecessary procedures, while 11% have indicated that they have had false treatment from doctors. Interestingly, information gathered by TIZ’s Key Informant Interviews during the corruption risk assessment indicated that systems to report various forms of malpractices exist within the health care sector, but that they have limited systems to follow up on these reports.

1.6.3 Good practices

On 8 September 2020, ZACC launched a whistleblowing application to report corruption.¹³⁰ Whilst it is yet to be tested, this comes out as a good practice to emulate.

1.6.4 Deficiencies

The government actively tries to silence those who report on corruption by imprisoning them and by imposing social media restrictions, among other measures.

1.7 Article 11 - Measures relating to the judiciary and prosecution services

1.7.1 Interpretation of the Article

Article 11 directly indicates the need for integrity of judges and strengthening the measures in the judiciary towards eliminating corruption. The Convention indicates that it is important to maintain the independence of judges and to create mechanisms that will strengthen the principle of integrity of judges. All of this is aimed at eliminating the possibilities for bribing judges. The provision gives guidelines and states can regulate this not only through primary legislation, but should also rely on by-laws such as codes of conduct, etc. The Convention considers this measure exclusively important; it even provides direction that states can also do this by forming special bodies that will precisely monitor the implementation of this measure.

1.7.2 Implementation of Article

The Constitution of Zimbabwe provides for the independence of the judiciary. More to the point, it states that “*The courts are independent and are subject only to this Constitution and the law, which they may apply impartially, expeditiously and without fear, favour or prejudice*”. For the judiciary to be independent, it must avoid being captured by partisan interests. Section 165 of the Constitutions provides principles guiding the judiciary. Section 165 stipulates principles to guide the judiciary and exhorts members of the judiciary to respect and honour

¹²⁹ Transparency International- Zimbabwe (2020), ‘Corruption risk Assessment in Management & Distribution of Social Protection Initiatives & Humanitarian Aid in Zimbabwe’, available at <https://www.tizim.org/2020/03/corruption-risks-in-the-management-and-distribution-of-social-protection-initiative-and-humanitarian-aid-in-zimbabwe/> [accessed on 28 November 2020].

¹³⁰ Popovich, A. (2020), ‘Zimbabwe Anti-Corruption Commission creates whistleblowing app’, available at <https://whistleblowersblog.org/2020/09/articles/global-whistleblowers/zimbabwe-anti-corruption-commission-creates-whistleblowing-app/> [accessed on 28 November 2020].

their office and to strive to enhance their independence to ensure public confidence in the judicial system. In addition, there is a Judicial Service (Code of Ethics) Regulation, 2012.¹³¹

Section 4 of the Code states that *“Every judicial officer shall, individually and collectively, uphold, maintain and promote the following values attaching to judicial office, as further elaborated in this Part —*

- (a) personal and institutional independence; and*
- (b) integrity; and*
- (c) propriety, and the appearance of propriety; and*
- (d) equality, that is, equal treatment of all before the courts; and*
- (e) impartiality, not only in respect of decisions but also in respect of the process by which any decision is made; and*
- (f) competence and diligence.”*

The Judicial Service Commission (JSC) itself has adopted a set of values that include fairness, accessibility, professionalism, and independence. The Constitution anticipates the risk of judicial capture, which is why Section 165(4) prohibits members of the judiciary from engaging in political activities; holding office in or be members of any political organisation; soliciting funds for or contributing towards any political organisation; or attending political meetings.

Section 198 of the Constitution of Zimbabwe Amendment Act 20 of 2013 requires the enactment of national legislation regulating disclosure of assets by public officers and establishing codes of conduct to be observed by public officers. It also requires that there should be measures specifying the standards of good corporate governance to be observed by government bodies and other state-controlled commercial entities.

1.7.3 Deficiencies

The previously mentioned constitutional obligation has not been implemented yet, as there is no assets declaration regime in place in the country. Furthermore, several challenges exist in the judiciary. There is a widespread perception that political referees in Zimbabwe are compromised. These referees include persons who are in positions to act as arbiters in political disputes or enforcers of law and order. There have also been charges of judicial capture and the capture of electoral institutions. In essence, it has been argued that there is interference with the independence of these political referees.¹³²

In 2007/08, the Reserve Bank of Zimbabwe ran a scheme which was ostensibly designed to support commercial agriculture. At the time, Zimbabwe was undergoing a major land revolution, with significant changes in land ownership under the Fast Track Land Reform Programme (FTLRP).¹³³ One of the biggest changes was that several judges were made beneficiaries of the Farm Mechanisation Scheme. While the gold standard of remunerating judges is that their pay must come from the State's Consolidated Revenue Fund, i.e. the central public purse, and not from private or quasi-public sources, making them beneficiaries of this scheme is problematic since it puts their independence in question.¹³⁴ For example, late Chief Justice Godfrey Chidyausiku, who was the foremost judicial voice in support of the land reform programme, received machinery and equipment worth US\$381 946 through the

¹³¹ http://www.archive.kubatana.net/html/archive/legisl/120220judreg.asp?sector=LEGAL&year=0&range_start=1.

¹³² Magaisa, A. (2020), 'BSR Exclusive: Beneficiaries of the RBZ Farm Mechanisation Scheme', available at <https://www.bigsr.co.uk/single-post/2020/07/18/BSR-EXCLUSIVE-Beneficiaries-of-the-RBZ-Farm-Mechanisation-Scheme> [accessed on 28 November 2020].

¹³³ Ibid.

¹³⁴ Ibid.

scheme. He died in 2017, and his loan still outstanding. Many other members of the judiciary, former and current Senior Magistrates, Justices and Supreme Court Judges alike, benefitted from similar loans worth between US\$33 695 and US\$107 848, which are all still outstanding.¹³⁵ Bearing this in mind, the following are classic cases where the judicial independence of judicial officers was questionable:

- ↔ Former Justice Benjamin Paradza was arrested and convicted of corruption. However, the International Committee of Jurists (ICJ) pointed out that Justice Paradza was being persecuted because he has “a history of passing judgements perceived as unfavourable to the ruling authorities.” That being the case, he was targeted for adhering to ethical standards for judges according to an open letter to the Government of Zimbabwe by the International Commission of Jurists.¹³⁶
- ↔ The case involving former Justice Michael Majuru is telling as to the extent of political interference into the work of the judiciary in Zimbabwe. It was exposed by the same Justice in a communication to the African Commission on Human and Peoples’ Rights. Justice Majuru submitted that the former Minister of Justice, Legal and Parliamentary Affairs, the Hon. Patrick Chinamasa, invited Justice Majuru’s workmate, who was also a Judge at the Administrative Court, to his office to issue instructions on a matter involving a media house called the ANZ, which was a major critic of the government. ANZ and the government had previously been involved in litigation. The essence of the directive from the Minister to Majuru’s workmate was to exercise undue influence over Justice Majuru, so that he would make a favourable judgment in favour of the government. This amounted to judicial interference by the Minister over the work of a presiding Judge, which violated the notion of judicial independence. Justice Majuru was also summoned by Enoch Kamushinda, a suspected member of the Central Intelligence Office (CIO), which is the security branch of the State, for a meeting at Kamushinda’s office on 22 October 2003. This information was conveyed through another CIO operative with instructions that the complainant should dismiss the ANZ appeal. As a reward for dismissing the ANZ appeal, Kamushinda promised Justice Majuru a fully developed farm in Mashonaland West Province.¹³⁷
- ↔ On 2 September 2020, scores of lawyers in their courtroom robes protested outside the High Court, demanding that the government and the courts should respect Zimbabwe’s Constitution. The lawyers alleged that the courts had unfairly denied bail to some prisoners and had interfered with lawyers working to defend prisoners, such as Chin’ono. There is increasing suspicion of political interference in the way Chin’ono and Ngarivhume’s cases were handled by the courts, suggesting that the courts were politicised and serving the interests of politicians at the expense of constitutionalism.¹³⁸ Ngarivhume is a politician who has been similarly persecuted for taking action against corruption in Zimbabwe.
- ↔ On 29 January 2019, Haru Mutasa, a journalist reporting for Aljazeera News Media, stated that Zimbabwean lawyers protested, demanding an independent judiciary to try protesters amid fears that security forces and politicians were interfering in trials of arrested protesters. The lawyers fear of interference in their clients’ fast-track trials by both the

¹³⁵ Ibid.

¹³⁶ International Commission of Jurists (2003), ‘High Court judge arrested in Zimbabwe’, available at <https://www.icj.org/high-court-judge-arrested-in-zimbabwe/> [accessed on 28 November 2020].

¹³⁷ See <https://africanlii.org/afu/judgment/african-commission-human-and-peoples-rights/2008/95>.

¹³⁸ Chigumadzi, P. (2020), ‘In Zimbabwe, two political prisoners are a symbol of a repressive state’, available at <https://www.washingtonpost.com/opinions/2020/08/18/zimbabwe-two-political-prisoners-are-symbol-repressive-state/> [accessed on 28 November 2020].

ruling party and the security forces. Placards decried, among other, serious allegations, such as judicial capture.¹³⁹

↔ Apart from many incidents in which members of the judiciary have been implicated in corruption, they were also involved in political storms such as the RBZ Farm Mechanization Scandal exposed by Alex Magaisa, in which members of the bench borrowed but never paid back loans.¹⁴⁰ The 1995/9 VIP Housing Scandal implicated some judges as well.¹⁴¹

1.8 Article 12 - Private sector

1.8.1 Interpretation of the Article

Article 12 of the United Nations Convention against Corruption represents a framework providing guidance on which measures should be undertaken to reduce and eliminate corruption in the private sector. The Article of the Convention refers to legal regulation at the level of the national economy through the application of accounting and auditing standards, as well as defining the appropriate penal policy for non-compliance with the measures. The Convention also refers to cooperation of the state agencies in charge of combating corruption with the business sector that support the implementation of the legal regulation. Promoting standards and procedures, codes of conduct for the proper and honest performance of the activities by the private sector, the use of good business practices between the businesses and contractual relations of the business sector with the state and all relevant professions in order to prevent conflicts of interest, the affirmation of proactive preventive policies for narrowing the space for corruption and conflict of interest, intensifying the realization of the activities arising out of the legal competencies, strengthening the inter-institutional and international cooperation, intensification of the cooperation with the private sector and, of course, strengthening its capacity for the efficient and effective fight against corruption.

Article 12 also refers to the appropriate definition of the restrictions and determination of a time period for professional engagement of former public servants by the private sector after the termination of their obligation in a public institution, due to retirement or resignation, in the case of job positions which are directly related to the functions held or supervised by those public officials during their tenure.

Within the preventive measures foreseen by the Convention, and in order to prevent corruption, Article 12 also underlines the need of each state institution to undertake the necessary measures in accordance with the domestic legislation for establishing a records keeping and bookkeeping system. It is necessary for the purpose of disclosing the financial statements and accounting and auditing standards, for the purpose of enabling the prohibition of certain actions in the case of maintaining off-the-book accounts when part of the transactions are inadequately identified, when presenting non-existent costs, recording incorrect identification, use of false documents, as well as consciously destroying accounting documents before the expiration of the deadline stipulated by law. Each State Party should prohibit tax incentives and other forms of fiscal obligations that would induce relations with public servants who would have certain benefits, which is a punishable offence in accordance with Article 15 and Article 16 of the Convention.

¹³⁹ Mutasa, H. (2019), 'Zimbabwe lawyers demand independent judiciary to try protesters', available at <https://www.aljazeera.com/videos/2019/1/29/zimbabwe-lawyers-demand-independent-judiciary-to-try-protesters> [accessed on 28 November 2020].

¹⁴⁰ See Magaisa, A. (2020), 'BSR Exclusive: Beneficiaries of the RBZ farm mechanisation scheme'.

¹⁴¹ See https://en.wikipedia.org/wiki/Corruption_in_Zimbabwe [accessed on 1 January 2021].

1.8.2 Implementation of Article

Zimbabwe has taken measures to prevent corruption in the private sector, such as:

- ↔ The Public Entities Corporate Governance Act has established the National Code on Corporate Governance¹⁴², which contains guiding principles and recommendations to ensure the integrity of private entities and applies to all business entities in both the public and private sectors.
- ↔ The Zimbabwe Anti-Corruption Commission carries out oversight of practices, systems, and procedures in both the private and public sectors to prevent corruption.
- ↔ The Companies Registry registers companies and associations in accordance with the Companies and Other Business Entities Act and maintains a registry of companies. The registry is paper-based, although a project to digitize it is underway. The provision of false statements, including for the purposes of registering a company, is an offence.
- ↔ Chapter 4 of the National Code on Corporate Governance recommends specific measures on governance risks in private entities. Boards of companies should be assisted by internal audit units which should, inter alia, assess risks of fraud, corruption, unethical behaviour and other irregularities.
- ↔ Sections 255–260 of the same Code recommend that companies establish a whistleblowing system that is independent, trusted, and anonymous. Unfortunately, in relation to these whistleblowing provisions, the onus is on the individual companies to set up these systems. Sadly, for some companies, this process, if established, may reveal internal weakness; hence, few companies are willing to establish a robust whistleblowing system.
- ↔ The Companies Act contains provisions on accounting and auditing systems for all registered companies and associations in Zimbabwe. Sections 140–155 refer to the content and form of accounts, auditors' reports, and auditors' right to access books and records. Auditors and accountants must apply the International Financial Reporting Standards, as approved by the Public Accountants and Auditors Board.
- ↔ Provisions on accountability and oversight of auditors and accountants are set out in the Public Accountants and Auditors Act and the Chartered Accountants Act.
- ↔ Zimbabwe has a new law, the Companies and Other Business Entities Act promulgated in 2019.¹⁴³ Some key changes are the introduction of an electronic registry of companies, the establishment of an inspectorate to better enforce the Act's provisions, measures to make the beneficial ownership of companies more transparent and the introduction of a system to continuously update the registry. However, the implementation of the law is still lagging behind since many government entities have not yet migrated from manual systems to the digitized systems.
- ↔ The International Financial Reporting Standard 9¹⁴⁴ contains provisions prohibiting the use of accounting practices for the purpose of committing corruption offences. Concealing, destroying, falsifying, or making false entries in company books with the intent to defraud or deceive is an offence. In the case of *Robin Vela vs. the Auditor General and BDO Zimbabwe Chartered Accounts*, the High Court set aside the forensic audit of the National Social Security Authority (NSSA) for the period 1 January 2015 to 28 February 2018, produced on behalf of the Auditor General of Zimbabwe by BDO Chartered Accountants, and ordered that it should be reviewed and set aside.¹⁴⁵

¹⁴² See http://www.veritaszim.net/sites/veritas_d/files/PUBLIC%20ENTITIES%20CORPORATE%20GOVERNANCE%20ACT_0.pdf.

¹⁴³ Ibid.

¹⁴⁴ See <https://www.ifrs.org/issued-standards/list-of-standards/ifrs-9-financial-instruments/>.

¹⁴⁵ See <https://zimlil.org/zw/judgment/files/harare-high-court/2020/405/2020-zwhhc-405.pdf>.

However, the tax legislation of Zimbabwe does not expressly prohibit deductions of bribe payments from taxable income.¹⁴⁶

A very recent example of corruption in the private sector in Zimbabwe is the establishment of separate facilities to treat “VIP” COVID-19 cases.¹⁴⁷ A recent study by TIZ (2020) on the Corruption Risk Assessment in Health Sector revealed that there is a presence of a substantial quasi-private system that operates corruptly within the public sector, which is detrimental to the public health care system. For example, an audit of the so-called Public-Private Partnership at one of the local hospitals in Chitungwiza revealed how private players including radiographers, pharmacists and doctors, among others, abused the public hospital infrastructure to attend to their own private patients.¹⁴⁸

Another such example is the pharmaceutical industry, which stands out as being particularly prone to corruption. The TIZ study showed that government regulators stand idle while out-of-control private companies fuel corruption in the entire sector. For example, due to drug shortages, pharmaceutical companies (and individuals) are importing drugs illegally and selling them at highly inflated prices at the detriment of poor health-care end-users.¹⁴⁹

1.9 Article 13 - Participation of society

1.9.1 Interpretation of the Article

Article 13 of the United Nations Convention against Corruption expressly recognises the role of civil society in the fight against corruption. This provision requires each state that has ratified the Convention to promote the active participation of individuals and groups outside their sector, particularly civil society organisations, in order to assist in the fight against corruption and raise awareness about this issue. In addition to the recognition of the civil society in Article 13, there is also Article 63, which provides space for civil society inclusion in the operation of the Convention.

Civil society organisations may attend meetings of the Conference of the States Parties to the UNCAC (COSP). Thus, organisations with consultative status with the UN Economic and Social Council (ECOSOC) may apply for observer status, and it should be automatically granted unless the COSP decides otherwise. The organisations that do not have consultative status with ECOSOC may also submit a request for observer status, but that procedure is a bit more complex. Civil society organisations may also make written submissions to the COSP and the UNCAC Implementation Review Group (IRG). The submissions, which have a limited word count, become part of the official documentation of the Conference. They are published on the Conference’s webpage and may be dispersed among the States Parties through formal channels.

During the plenary sessions of the COSP, representatives of non-governmental observers who register for an address are allowed to speak once all the speakers from the States Parties and from the intergovernmental organisations have finished. Civil society organisations may

¹⁴⁶ See <https://zimlil.org/zw/legislation/act/1967/5>.

¹⁴⁷ Karombo, T. (2020), ‘Outrage over coronavirus hospitals for ‘political elite’ in Zimbabwe’, available at <https://www.zimlive.com/2020/03/26/outrage-over-coronavirus-hospitals-for-the-political-elite-in-zimbabwe/> [accessed on 28 November 2020].

¹⁴⁸ Transparency International Zimbabwe (2020), ‘Corruption Risk Assessment in Management and distribution of Social protection Initiatives and Humanitarian Aid in Zimbabwe’, available at <https://www.facebook.com/tizimbabwe/posts/tiz-undertook-a-corruption-risk-assessment-in-management-and-distribution-of-soc/3080670225277490/> [accessed on 28 December 2020].

¹⁴⁹ Ibid.

organise accompanying events, such as meetings, presentations or panels discussions of topics related to the Convention, but outside the official agenda of the Conference and only with a state sponsor. CSOs may organise meetings together with governmental representatives. They can present the outcomes of the COSP and discuss the anti-corruptive efforts in their state.

UNCAC Coalition

In order to provide wider involvement of civil society at the international level, the UNCAC Coalition, being a global network of more than 350 civil society organisations from over 100 countries, is dedicated to promoting the ratification, effective implementation and monitoring of the Convention. Civil society organisations from Zimbabwe are part of this Coalition.

The UNCAC Coalition was established in August 2006 and mobilises civil society action on an international, regional, and national level. The Coalition participates in joint actions about the general positions of the Convention, assists in the exchange of information among members, and supports national civil society efforts to promote the Convention.

1.9.2 Implementation of Article

Civil society organisations exist in the country through associations registered under the Private Voluntary Organizations Act, as well as all those registered under the common law trust. Anti-corruption organisations include Transparency International Zimbabwe and the Anti-Corruption Trust of Southern Africa (ACT-SA), among others. However, the civic operating environment is limited for both individuals and associations.

The government has been consistently curtailing the freedom of civil society and the media to play their role in society.¹⁵⁰ The participation of civil society in the preparation of anti-corruption strategies or policies is limited. For instance, ACT-SA was not consulted when the government developed the National Anti-Corruption Strategy and Action Plan 2020-2025. Whilst NGOs in Zimbabwe can receive foreign funding, they are often demonized as agents of the former colonizers.

Whilst States Parties are required to promote the active participation of individuals and groups outside the public sector, in Zimbabwe, there are several cases in which individuals and juristic persons are persecuted. The following are shining examples:

- ↔ Hopewell Chin'ono, a renowned investigative journalist, was arrested, detained, and charged after he exposed corruption that resulted in the arrest and dismissal of the Health Minister Obadiah Moyo. Chin'ono had also linked the first family to the COVID-19 scandal in which Drax International, a recently formed company, had been procedurally awarded a US\$60 million contract for the supply of COVID-19 consumables.¹⁵¹
- ↔ In the run-up to the protests on 31 July 2020 and thereafter, the Zimbabwe police arrested several high-profile activists, including award-winning international journalist Hopewell Chin'ono, politician and convener of the planned protests Jacob Ngarivhume, writer and 2020 Booker prize nominee Tsitsi Dangarembga and MDC Alliance spokesperson Fadzayi Mahere for demonstrating against corruption linked to the looting of the COVID-

¹⁵⁰ Reporters Without Borders (2019), 'Page not yet turned on Mugabe era', available at <https://rsf.org/en/zimbabwe> [accessed on 3 February 2021].

¹⁵¹ See Mduduzi, M. (2020), 'Zimbabwe arrests health minister in Covid-19 procurement scandal'.

19 funds.¹⁵² Dozens of activists have been incarcerated while some went into hiding since the call for protests against incessant corruption, especially in the handling on the COVID-19 response by the government through irregular tenders began. Authorities issued a list of 14 wanted activists on the eve of the anti-corruption march.¹⁵³

1.9.3 Deficiencies

Generally, the state's attacks on civil society have been systematic, both before and after the 2017 coup, and especially since the January 2019 shutdown atrocities, where more than 17 people were shot dead and several injured.¹⁵⁴ Civil society members across the country have reported an increase in surveillance, abductions, arbitrary arrests and detention and interruption of their meetings by suspected state agents. Their legitimate and vital work of providing oversight, supporting and protecting vulnerable citizens, is now criminalised. In the same period, Zimbabwe's state-controlled media has led an onslaught against civil society leaders whom they accuse of planning to topple the government. These baseless allegations have been followed by a spate of arrests of civil society activists.¹⁵⁵

1.10 Article 14 - Measures to prevent money-laundering

1.10.1 Interpretation of the Article

Article 14 of the Convention, also completed from Chapter 2, imposes the States Parties to create a legal and administrative system for detecting and preventing money-laundering by establishing cooperation and information exchange, both between the various bodies within the state and between the states.

1.10.2 Implementation of Article

Zimbabwe has put in place several measures to prevent money laundering. The Money-Laundering Act [Chapter 9:24], the Bank Use Promotion & Suppression of Money Laundering Act [Chapter 24:24]¹⁵⁶, as amended¹⁵⁷, and other legislation, establish a domestic regulatory and supervisory regime to counter money-laundering and the financing of terrorism.

- ↔ The Money-Laundering Act [Chapter 9:24] establishes obligations for customer identification and verification, the reporting of suspicious transactions; record-keeping; and other measures to counter money-laundering, as well as the sanctions thereof.
- ↔ Another key achievement was the setting up of the Financial Intelligence Unit (FIU) in 2004, established in terms of Section 3 of the Bank Use Promotion and Suppression of Money Laundering Act. It exists as an administrative establishment of the Reserve Bank of Zimbabwe (RBZ), though it has its own corporate governance structure, which is distinct from that of the RBZ.¹⁵⁸ However, the FIU does not have sufficient legal

¹⁵² Matsaka, F. (2020), 'Scores of Zimbabwe protesters arrested, military in streets', available at https://www.washingtonpost.com/world/africa/empty-streets-in-zimbabwe-as-security-forces-thwart-protest/2020/07/31/cda13416-d309-11ea-826b-cc394d824e35_story.html [accessed on 28 November 2020].

¹⁵³ Amnesty International (2020), 'Zimbabwe: Authorities thwart anti-corruption protests, launch a witch-hunt against activists', available at <https://www.amnesty.org/en/latest/news/2020/07/zimbabwe-authorities-thwart-anti-corruption-protests-launch-a-witchhunt-against-activists/>; Mahomed, F. (2020), 'Zimbabwean government lashes out at anti-corruption protesters with an iron fist', available at <https://www.dailymaverick.co.za/article/2020-08-02-zimbabwean-government-lashes-out-at-anti-corruption-protesters-with-an-iron-fist/> [both accessed on 28 November 2020].

¹⁵⁴ Human Rights Watch (2019), 'Zimbabwe: Excessive Force Used Against Protesters', available at <https://www.hrw.org/news/2019/03/12/zimbabwe-excessive-force-used-against-protesters> [accessed on 28 November 2020].

¹⁵⁵ Heal Zimbabwe Trust (2019), 'Heal Zimbabwe condemns arrest of CSO members', available at <http://kubatana.net/2019/05/21/heal-zimbabwe-condemns-arrest-of-cso-members/> [accessed on 28 November 2020].

¹⁵⁶ See <https://www.fiu.co.zw/>.

¹⁵⁷ See https://www.rbz.co.zw/documents/acts/bankuse_promotion.pdf.

¹⁵⁸ Ibid.

autonomy and operational independence from the RBZ.¹⁵⁹ The Zimbabwean authorities should therefore set a clear distinction between the Unit and the RBZ as two separate independent statutory bodies.¹⁶⁰ Overall, the implementation of its activities has been constrained by limited resources. Zimbabwe should invest heavily in money laundering and terrorist financing (ML/TF)-specific capacity-building programmes and set aside sufficient financial resources to ensure effective implementation and achievement of the desired Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) outcomes.¹⁶¹

- ↔ In addition, Zimbabwe has constituted a National Task Force that serves as a platform for local cooperation in combating money-laundering and the financing of terrorism.
- ↔ Zimbabwe has introduced a disclosure system to detect and monitor cross-border movements of cash and bearer negotiable instruments.
- ↔ Furthermore, the National Prosecuting Authority (NPA) coordinates international cooperation in cases involving money-laundering and related predicate offences. This is provided for under the Criminal Matters (Mutual Assistance) Act. Cooperation is also possible through the International Criminal Police Organization (INTERPOL). Similarly, Section 37 of the Money-Laundering Act empowers the FIU to exchange information with foreign counterparts. There are no statistics available to demonstrate that the FIU exchanges information with foreign counterparts. However, what is available is its cooperation at a domestic level, as shown in the table below.

TABLE 6: Domestic requests received by the FIU¹⁶²

Agency	2015	2016	2017	2018
ZIMRA	3	14	23	55
Immigration	5	4	5	7
National Intelligence Service	2	4	8	24
CID HQ	2	0	1	0
CID CCD	17	17	22	63
CID Minerals Flora and Fauna	1	1	0	2
CID Law and Order	1	3	2	5
INTERPOL NCB Harare	0	0	1	1
ZACC	0	1	1	16
NECI	0	1	2	1
CID Anti-Corruption Unit	0	0	0	6
CID Asset Forfeiture Unit	0	0	0	13
CID Homicide	0	0	0	3
CID Vehicle Theft Squad	0	0	0	5
RBZ Financial Markets	0	0	0	1
TOTAL	31	45	65	201

1.10.3 Deficiencies

Zimbabwe's FIU is not sufficiently independent from the RBZ, and its activities have been restricted by insufficient resources.

¹⁵⁹ See <https://www.fiu.co.zw/wp-content/uploads/2017/07/2ND-ROUND-MUTUAL-EVALUATION-REPORT-OF-THE-REPUBLIC-OF-ZIMBABWE.pdf>.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

¹⁶² See <https://www.fiu.co.zw/wp-content/uploads/2020/11/Consol-NRA-2020.pdf>.

2. Chapter V - Asset Recovery

Articles 51 to 59 give guidance to States Parties on securing and recovering stolen assets. In that regard, the basic mechanisms for cooperation between States Parties to the UNCAC are in the fields of detection, securing, confiscation and recovery. In other words, Chapter V of the UNCAC embarks upon the last part of the fight against corruption, the recovery of stolen assets.

The confiscation of proceeds of crime, i.e. their permanent seizure by an order issued by a court or other competent authority, is one of the key desired outcomes in the fight against corruption. Fighting organised crime syndicates is a huge challenge considering that these syndicates enjoy increased financial power and capital accumulated through illicit trafficking in narcotic drugs and weapons. In addition, the traditional approach of imprisoning criminals has proven insufficient to deal with growing organised crime, which is why the confiscation of illegally acquired assets is considered a key element of contemporary strategies to combat organised crime.

Therefore, the detection of illegally acquired property and property benefits and their confiscation are glorified as being among the most unique and effective measures for tackling or reducing organised crime. That said, confiscation serves as a huge blow to crime, as criminals are prevented from acquiring the necessary capital for committing other crimes. Through this measure, the desired objectives of the law that “crime should not pay” and that “no one can retain the property benefits gained from criminal activity” is fulfilled. It also brings to life the principle that “wrong cannot become right”.

2.1 Article 51 - General provision, Article 56 - Special cooperation, and Article 59 - Bilateral and multilateral agreements and arrangements

2.1.1 *Interpretation of the Articles*

Article 51 of the Convention refers to the prevention and detection of transfers of proceeds of crime and envisages measures for detecting the proceeds of crime, with an emphasis on international cooperation between countries. In addition, particular importance is given to the cooperation between the signatory states to this Convention regarding the recovery of property acquired in an unlawful manner, as a fundamental principle of this Convention.

Article 56 of the Convention regulates the possibility of submitting data to other states about illegally incurred proceeds through offences that are subject to this Convention.

Article 59 of the Convention envisages the possibility of the States Parties to conclude additional bilateral or multilateral agreements for the purpose of promoting the effectiveness of international cooperation, as well as for discovering illegally obtained property and property benefits in the sense of Chapter V of the UNCAC.

2.1.2 *Implementation of Articles 51, 56 and 59*

The Zimbabwean legal framework for asset recovery consists mainly of the following:

- a) Money Laundering and Proceeds of Crime Act [Chapter 9:17],¹⁶³ as amended,¹⁶⁴
- b) Criminal Matters (Mutual Assistance) Act [Chapter 9:06]¹⁶⁵; and the

¹⁶³ See <https://zimlil.org.zw/legislation/num-act/2013/4/Money%20Laundering%20and%20Proceeds%20of%20Crime%20Act.pdf>.

¹⁶⁴ Ibid.

¹⁶⁵ See <https://www.jsc.org.zw/jscbackend/upload/Acts/2014/0906updated.pdf>.

c) Criminal Procedure and Evidence Act [Chapter 9:07].¹⁶⁶

The Zimbabwe Anti-Corruption Commission (ZACC) has promised to engage an international organisation to help track and recover assets illegally siphoned out of the country, as it moves a gear up in the fight against corruption.¹⁶⁷ This initiative is managed under the asset recovery unit of the Commission, which is currently seized with 36 domestic applications for the forfeiture of assets worth about US\$4,5 million. The unit has been boosted by the establishment of the Unexplained Wealth Orders.¹⁶⁸ The idea is that in order to combat money laundering, terrorist financing, tax evasion and corruption, it has become necessary to give powers to ZACC, ZIMRA and ZRP to elicit explanations from persons who exhibit great wealth without having any apparent lawful means of obtaining such wealth.¹⁶⁹ ZACC has scored some moderate success when it won a civil-based asset forfeiture order against a Zimra official. A house worth US\$150 000 and vehicle valued at US\$10 000 were forfeited to the State after a former he failed to explained the source of income used to buy them, since his income between 2014 and 2018 was US\$44 907.¹⁷⁰

Section 6B (c) of the Money-Laundering Act authorises the FIU to disseminate the results of its analysis to foreign entities. Furthermore, Section 37 (1) of the Act authorises the FIU to share any other information with any counterpart agency that is subject to similar secrecy obligations with respect to the information it receives.¹⁷¹ There is no evidence publicly available to demonstrate whether this is done in practice, which testifies to the lack of transparency with which this is done.

In addition to the FIU, the Zimbabwe Republic Police also shares information through INTERPOL. However, there have been instances in which INTERPOL had refused to cooperate with Zimbabwe, especially when the organisation risked being abused to facilitate the arrest of perceived political enemies, such as in the case of Jonathan Moyo, Saviour Kasukuwere, Patrick Zhuwao, Mandiitawepi Chimene and Walter Mzembi who fled the country following the November 2017 military coup, which ousted the late former President Robert Mugabe. This happened notwithstanding the fact that the accused persons have corruption cases to answer for.¹⁷²

In addition, Zimbabwe is a member of the Asset Recovery Inter-Agency Network for Southern Africa (ARIANSAs), and it uses the ARIANSAs platform for information sharing purposes.¹⁷³ The above-mentioned case of the ZIMRA official whose house was forfeited to the State was similarly reported on the ARIANSAs website, which suggests there is inter-agency sharing of information. However, efforts to gain access to the full particulars of the case on the website

¹⁶⁶ See <https://zimlil.org/zw/legislation/act/2016/2>.

¹⁶⁷ Mapakame, E. (2020), 'Zimbabwe: ZACC engages international expert to recover assets', available at <https://www.herald.co.zw/zacc-engages-international-expert-to-recover-assets/> [accessed on 11 December 2020].

¹⁶⁸ See http://www.veritaszim.net/sites/veritas_d/files/Money%20Laundering%20and%20Proceeds%20of%20Crime%20Amendment%20Bill.pdf.

¹⁶⁹ Ibid.

¹⁷⁰ Nemukuyu, D. (2020), 'Corruption: Zimra official loses house', available at <https://www.herald.co.zw/corruption-zimra-official-loses-house/> [accessed on 28 November 2020].

¹⁷¹ See <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/8-10June2020/V2002129e.pdf>.

¹⁷² Zimlive (2020), 'Interpol declines Zimbabwe requests to arrest former Mugabe ministers', available at <https://www.zimlive.com/2019/08/22/interpol-declines-zimbabwe-requests-to-arrest-former-mugabe-ministers/> [accessed on 28 November 2020].

¹⁷³ See <https://new.arinsa.org/> [accessed on 28 November 2020].

requires one to be a member of the group, which shows the information is not available for public consumption.¹⁷⁴

Part II of the Criminal Matters (Mutual Assistance) Act [Chapter 9:06] authorises the Minister of Justice to designate other countries for the purposes of taking evidence and production of documents. However, there is no single country designated under the Act to date. This has the potential of compromising investigations.

In addition, it would be remiss if Zimbabwe's cooperation with other entities, such as the Southern African Development Community (SADC) and the African Union (AU), is not highlighted. Zimbabwe has also signed and ratified the SADC Protocol against Corruption (SPAC) and the African Union Convention on Preventing and Combating Corruption (AUCPCC). However, Zimbabwe has not signed any bilateral treaties or agreements on criminal matters.

2.2 Article 52 - Prevention and detection of transfers of proceeds of crime, and Article 58 - Financial intelligence unit

2.2.1 Interpretation of the Articles

Article 52 points out to the States Parties the need to take appropriate action when performing all financial transactions, regardless of whether they are related to a criminal offence like money-laundering, and, of course, in that process these actions of controlling transactions should in no way hinder the financial institutions in the performance of their business.

The obligation under Article 58 of the UN Convention against Corruption is that the special authorities for financial intelligence should cooperate with one another for the purpose of preventing and combating the transfer of illegally obtained property as a result of proceeds of offences envisaged in this Convention, as well as promote ways and means of recovering such proceeds through establishing special financial intelligence authorities, which would be responsible for receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions.

2.2.2 Implementation of Articles 52 and 58

The law through Section 14 (1) of the Money-Laundering and Proceeds of Crime Act [Chapter 9:24], prohibits financial institutions from establishing or maintaining anonymous accounts or accounts under fictitious names.¹⁷⁵

More to the point, Section 15 (3) demands that financial institutions identify and verify the identity of beneficial owners. They are also required to determine if a customer or a beneficial owner is a politically exposed person. If that is the case, approvals are sought from senior management before establishing business relations. In addition, Section 20 (1) (b) demands that measures be taken to identify the source of wealth and funds and other assets of the customer or beneficial owner.

Furthermore, the Director-General of the FIU may issue directives or guidelines seeking to:

- a) further clarify or elaborate on their obligations in terms of their risk-based approach;
or
- b) prohibit or restrict business relationships with other obliged entities.

¹⁷⁴ Ibid.

¹⁷⁵ See <https://zimlil.org/zw/legislation/num-act/2013/4/Money%20Laundering%20and%20Proceeds%20of%20Crime%20Act.pdf>.

It would be remiss if it is not mentioned that obliged entities are required to exercise enhanced due diligence, proportionate to the risk, towards business relations and transactions with natural and legal persons from countries identified by the FIU through a directive or circular, which include those countries identified by the Financial Action Task Force.¹⁷⁶

Pursuant to Section 24 of the Money-Laundering and Proceeds of Crime Act [Chapter 9:24], obliged entities must maintain all books and records with respect to their customers and transactions for no less than five years from the date of the transaction, or the date the business relationship ended. However, in practice, it is unclear whether this is being observed.

The establishment or operation of shell banks, as defined under Section 13 of the Act, is prohibited in Zimbabwe. It is also prohibited for any person to enter into or continue business relations with a shell bank or a respondent financial institution in a foreign country that permits any of its accounts to be used by a shell bank.

2.2.3 Deficiencies

Despite the existing legal framework, several challenges exist. For instance, except for members of the Parliament and certain staff of public entities, Zimbabwe has not established a financial disclosure system for appropriate public officials. There is thus no requirement for public officials to report foreign financial accounts in which they have an interest or over which they have signature or other authority. This notwithstanding the fact that the FIU has the power to obtain information from the financial institutions and other entities listed under Section 6E of the Money-Laundering and Proceeds of Crime Act [Chapter 9: 17]. In addition, the Director-General may issue freezing orders having effect for not more than 14 days in respect of suspicious accounts.

2.3 Articles 53 - Measures for direct recovery of property, Article 54 - Mechanisms for recovery of property through international cooperation in confiscation, and Article 55 - International cooperation for purposes of confiscation

2.3.1 Interpretation of the Article

Article 53 of the Convention elaborates cases of direct recovery of property acquired in an unlawful manner. That is, in the first paragraph, the possibility is foreseen that other states may submit a civil procedure for determining ownership of property resulting from having committed any of the criminal offences envisaged in this Convention, before the courts where the property is situated. The second paragraph covers the possibility of predicting ways of compensation towards other States for damages caused by some of the incriminating behaviours in the Convention against Corruption within the State, in which the criminal procedure is conducted. The third paragraph envisages the possibility of taking into account, by the national courts, the request of the other States for compensation for damages caused by any of the criminal offences specified in the Convention in the adoption of the decision for the confiscation of property and proceeds acquired through a criminal offence.

Article 54 of the Convention envisages mechanisms for recovering unlawfully acquired property through international cooperation and use of confiscation and envisages the possibility for providing legal assistance in relation to requests from other states for taking measures for freezing or temporary seizure of such property.

¹⁷⁶ See <http://www.fatf-gafi.org/countries/#high-risk> [accessed on 3 February 2021].

Article 55 of the Convention envisages the possibility for a State to adopt confiscation decisions of another State by directly adopting the enforceable confiscation decision of the State that made the request, or part of the enforceable decision of the State that made a request in another state. Competent courts would reach a new confiscation decision based on the confiscation decision of the state that made the request. The obligations of the states regarding the implementation of these requests shall be additionally envisaged, and the confiscation request framework shall be stated.

2.3.2 Implementation of Articles 53, 54 and 55

Zimbabwe does not have a provision allowing other States to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence. The major challenge is the fact that the definition of a 'person' under Section 2 of the Criminal Procedure and Evidence [Chapter 9:23] Act is limiting since it does not include foreign States. Nonetheless, criminal liability does exist in terms of separate legal entities, such as private or public limited companies. Furthermore, Zimbabwean law does not specifically recognise the rights of foreign States as legitimate owners of property or primary claimants in confiscation proceedings.

On the positive, Section 32 of the Criminal Matters (Mutual Assistance) Act [Chapter 9:06] provides for the enforcement of foreign forfeiture court orders. A registered foreign forfeiture order may be enforced as if it were a forfeiture order made by a court.

The property identified as the tainted property of a person convicted of a serious offence, which includes money-laundering offences as defined under Section 2 of the Money-Laundering and Proceeds of Crime Act, may be confiscated.¹⁷⁷ A confiscation order may be issued in cases where the concerned person absconds or dies, provided the conditions set out in Section 51 of the Act are met. In addition, Part I of Chapter V of the Act provides for civil forfeiture in respect of tainted and terrorist property.

Furthermore, the Criminal Matters (Mutual Assistance) Act provides for the enforcement of foreign interdicts.

However, no requests for freezing, seizure or confiscation have been received under the Criminal Matters (Mutual Assistance) Act, and there are no cases where the courts have ordered the enforcement of foreign forfeiture orders. Section 9 of the Act describes the information that any request for assistance in a criminal matter should include. Zimbabwe does not require that there be a treaty to aid with the purposes of confiscation.

2.4 Article 57 - Return and disposal of assets

2.4.1 Interpretation of the Article

Article 57 of the Convention regulates the situation with the effects of the property confiscation and the property benefit obtained through offences envisaged in this Convention. That is, it targets the so-called "fate" of the confiscated property. Thus, it is envisaged that the confiscated property is handled in accordance with the national law, and the possibility of returning the confiscated property to the legitimate owners is also envisaged. Furthermore, guidelines are provided for adding norms in national legal systems through which the competent authorities are authorised to return the confiscated property to the requesting states.

¹⁷⁷ See Sections 50-57 of the Criminal Matters (Mutual Assistance) Act [Chapter 9:06].

2.4.2 Implementation of Article

Any moneys recovered are supposed to be credited to the Recovered Assets Fund. The law authorises the Minister of Finance to withdraw money from the Recovered Assets Fund to compensate victims who have suffered losses as a result of serious offences or to pay third parties for interests. The Asset Recovery provisions in Zimbabwe are relatively new in terms of application with the prior mentioned case involving the ZIMRA official.¹⁷⁸ To date, no evidence on how these recovered assets have been disposed of, and the manner in which the funds have been used, has been publicly available.

In addition, the Minister of Finance may authorise payments from the Recovered Assets Fund to share recovered property with foreign States. Pursuant to Section 97 (2) (b) of the Act, Zimbabwe may deduct the expenses relating to the recovery, management, and disposition of confiscated property.

A court may exclude property from a confiscation order when a person who is not the defendant has an interest in it.

2.4.3 Deficiencies

However, Zimbabwe has not concluded an agreement for the final disposition of confiscated property. The country has huge potential to recover stolen assets considering that it has some knowledge of the countries of destination of ill-gotten wealth. The Zimbabwe Anti-Corruption Commission (ZACC) has recently claimed that they have so far identified US\$7 billion in cash and properties worldwide, stashed by former and current senior government officials, as it intensifies its efforts to recover Zimbabwe's ill-gotten wealth. The country's chairperson Justice Loice Matanda-Moyo said some of the properties and cash are stashed in Switzerland, the United Kingdom, the United States of America, Singapore, Hong Kong, Malaysia, Mauritius and Spain, among others.¹⁷⁹

The main challenge is the lack of political will. In March 2018, the country published a list of 1,844 externalizers, and most of the looters were in mining, agriculture, manufacturing and cross-border freight.¹⁸⁰ The named and shamed corporates and individuals had failed to return nearly \$1 billion externalised in the past years, despite the government giving them a three-month amnesty period. What makes it difficult for Zimbabwe to recover stolen assets is the fact that the majority of the externalizers are politically exposed persons who wield power over the anti-corruption bodies. The lack of goodwill is manifest in that as of October 2020; the government had not yet engaged an international partner in its asset recovery process, many years after the formation of the ZACC. According to a ZACC Commissioner, *"We need to recover assets hidden abroad, but as ZACC, we are not fully capacitated to investigate and trace them so we need to work with other organisations abroad"*.¹⁸¹ This shows the lack of political goodwill to expeditiously set up and finance this body to enable the quick recovery of such assets.

¹⁷⁸ See Nemukuyu, D. (2020), 'Corruption: Zimra official loses house'.

¹⁷⁹ The Herald (2020), 'Zimbabwe: Asset recovery - Zacc identifies u.s.\$7 billion cash, properties', available at <https://allafrica.com/stories/202002260692.html> [accessed on 28 November 2020].

¹⁸⁰ Rahman Alfa Shaban, A. (2018), 'Zimbabwe publishes list of nation looters, chasing \$827 million', available at <https://www.africanews.com/2018/03/19/zimbabwe-publishes-list-of-nation-looters-chasing-827-million/> [accessed on 28 November 2020].

¹⁸¹ See Mapakame, E. (2020), 'ZACC engages international expert to recover assets'.

V. Recent Developments

↔ **Setting up of the Assets Forfeiture Unit (AFU)**

The National Prosecuting Authority (NPA) and the Zimbabwe Anti-Corruption Commission (ZACC) have been building their capacities to recover assets acquired through corruption. Prosecutor-General Kumbirai Hodzi said the NPA had made headway in implementing a comprehensive strategy for asset recovery. He stated that the NPA has set up the Assets Forfeiture Unit (AFU) that collaborates with other government entities, such as ZACC, the Zimbabwe Revenue Authority, the Financial Intelligence Unit, and other investigative agencies, for the purposes of facilitating the identification, tracing, freezing and confiscation of property.¹⁸² The unit comprises four lawyers and several investigators. However, there were plans to further strengthen it through the recruitment of more staff and implementation of training programmes. The setting up of the AFU is a legal requirement under Section 27A (4) of the Money Laundering and Proceeds of Crime Act [Chapter 9:24], as amended. It has also been reported that at the beginning of 2020, the unit was seized with 14 cases under asset tracing investigations running into millions of US dollars.¹⁸³

↔ **Capacity building and learning missions**

In 2019, ZACC provided its officers with international training to sharpen their skills in asset recovery. Three benchmarking visits were made to the Nigeria Economic and Financial Crimes Commission, the Botswana Directorate on Corruption, and the Economic Crimes and Tanzania Anti-corruption Agency.¹⁸⁴

↔ **High Court order to seize assets acquired from proceeds of corruption**

In January 2020, the Prosecutor General approached the High Court seeking an order to seize a residential stand and vehicles belonging to a Zimbabwe Revenue Authority official, who was employed as a revenue officer at Beitbridge Border Post. It is alleged she may have enriched herself through ill-gotten wealth.¹⁸⁵

↔ **Recovered assets, funds and restraining orders secured in 2019**

ARINSA reported that in 2019, Zimbabwe investigated 232 new cases of money laundering, of which 70 were cases involving seizures. The value of the seizure orders amounted to US\$7 145 298. In addition, nine successful forfeiture orders were obtained, which amounted to the value of US\$6 588 000.¹⁸⁶

¹⁸² Bwititi, K. (2020), 'NPA cranks up machinery for asset recovery', available at <https://www.sundaymail.co.zw/zacc-npa-cranks-up-machinery-for-assets-recovery> [accessed on 28 November 2020].

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Laiton, C. (2020), 'PG seeks forfeiture of Zimra official's assets', available at <https://www.newsday.co.zw/2020/01/pg-seeks-forfeiture-of-zimra-officials-assets/> [accessed on 28 November 2020].

¹⁸⁶ ARINSA (2020), '2019 Annual Report', available at https://www.unodc.org/documents/southernafrica/Publications/TransnationalOrganisedCrime/ARINSA_Annual_Report_2020_Final.pdf [accessed on 28 November 2020].

VI. Recommendations

↔ Key recommendations

It is recommended that Zimbabwe:

1. Improves its interaction with CSOs, the independent media and the private sector in the UNCAC review processes and the fight against corruption in general by ensuring that more CSOs, media and private sector players are consulted;
2. Enacts and implements a law on access to information in line with international best practices, including the establishment of an independent body such as an Information Commissioner to oversee the implementation of the said law;
3. Increases the financial and human resource capacities of anti-corruption institutions such as the Zimbabwe Anti-Corruption Commission (ZACC) and the Financial Intelligence Unit (FIU) to implement their mandates in the most effective, efficient, independent and sustainable manner;
4. Works to obliterate cases of impunity against corruption, especially cases of corruption involving Politically Exposed Persons (PEPs).

↔ Recommendations under Chapter II of the UNCAC

It is recommended that Zimbabwe:

5. Involves a diversity of stakeholders, including CSOs, independent media and vulnerable groups, in the implementation and review of the 2020-2024 national anti-corruption strategy and action plan;
6. Provides adequate resources to preventive anti-corruption bodies such as ZACC to ensure that they implement their mandates in the most effective, efficient, sustainable and independent manner.
7. Develops a clear definition of conflict of interest, and establishes procedures to be followed by civil servants to report conflicts of interest to superiors or manage such conflicts when they arise;
8. Recruits senior public servants on merit;
9. Develops a code of conduct and enforces it on civil servants at all levels;
10. Develops a comprehensive legal and administrative framework to facilitate the reporting of acts of corruption in the public sector;
11. Strengthens and capacitates institutions and public service systems that enable early detection of corruption;
12. Capacitates institutions vested with the investigation and prosecution of corruption, and financial crimes in general;
13. Develops a law on access to information in line with international best practices, including the establishment of an independent body to oversee the implementation of the law.
14. Reviews the Companies and Other Business Entities Act to provide for a central online beneficial ownership registry;
15. Revises its tax legislation so that it expressly prohibits deductions of bribe payments from taxable income.
16. Introduces electronic platforms in an open data format, in line with the Open Contracting Data Standards for invitations to bid, contract awards and other relevant information, making it freely accessible to the public.

It is recommended that ZACC:

17. Demonstrates its independence of political malleability by investigating cases of all politically exposed persons without fear or favour.
18. Includes an effective and transparent implementation of reporting and follow-up on reports of corruption received through its whistleblowing application.

↔ **Recommendations under Chapter V of the UNCAC**

It is recommended that Zimbabwe:

19. Establishes an open financial disclosure system for public officials to report foreign financial accounts in which they have an interest, or over which they have signature or other authority;
20. Develops a well-developed risk-based approach supervision framework in financial institutions and designated non-financial businesses and professions, such as casinos, lawyers, real estate, and other dealers in precious stones and minerals;
21. Develops a legal framework on confiscation and measures to ensure that criminals are deprived of their ill-gotten wealth;
22. Draws on Mutual Legal Assistance frameworks with other nations and organisations to assist in identifying and recovering proceeds of corruption and money laundering within the country and abroad;
23. Reforms legislation to provide for provisions allowing other States to initiate civil action in Zimbabwean courts to establish title to or ownership of property acquired through the commission of offences;
24. Capacitates the Financial Intelligence Unit (FIU) and the Zimbabwe Anti-Corruption Commission (ZACC) to enable the quick recovery of stolen assets by providing it with sufficient financial resources and institutional independence;
25. Amends the Public Entities Corporate Governance Act [Chapter 10:31] to include sanctions for providing false information;
26. Engages partners in foreign states to facilitate the identification, tracing, seizure, confiscation and return of stolen assets.

VII. Annex

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