



ZIMBABWE ANTI-CORRUPTION COMMISSION

"Refuse, Resist and Report Corruption"

SUNDAY MAIL ARTICLE

Legal reform to strengthen anti-corruption fight

By Commissioner John Makamure

The past two weeks saw the Zimbabwe Anti-Corruption Commission intensify investigations into suspected corrupt activities in the procurement of materials to fight the COVID-19 pandemic. The ZACC chairperson Justice Loyce Matandamoyo-Moyo has been on record calling on those conferred with the mandate to manage COVID-19 donations to exercise a high degree of transparency and accountability or face severe punishment for any corrupt practices.

In my previous instalments I pointed out that these were not empty threats from the ZACC boss. The arrest of three senior officials from Natpharm for alleged abuse of office in the procurement of materials earmarked for the COVID-19 response is clear evidence of the Commission determination to root out corruption in this area. Investigations continue in order to bring others implicated to book. The Commission would like to reiterate its call for those with any information that will facilitate investigations to bring it forward. Maximum protection from any form of victimisation is guaranteed. This Commission has a constitutional mandate to execute and will do so without any fear or favour.

And the Commission is not ending with investigations only. We have already unleashed our systems and compliance unit to review COVID-19 procurement procedures with a view to proffer recommendations to the relevant authorities on how to close loopholes for corruption. This emanates from two of our constitutional functions "to make recommendations to the Government and other persons on measures to enhance integrity and accountability and prevent improper conduct in the public and private sectors"; and "to promote honesty financial discipline and transparency in the public and private sectors".

Now to the subject matter of this article. The Commission is fully cognisant of the fact that an appropriate policy and legal framework is a necessary condition for winning the fight against corruption. Zimbabwe has a fairly robust legal framework through statutes such as the Constitution of the Republic of Zimbabwe Amendment (No. 20) 2013, Anti-Corruption Commission Act, Prevention of Corruption Act, Money

Laundering and Proceeds of Crime Amendment Act, Criminal Law (Codification and Reform) Act, among others.

The unexplained wealth orders were recently enacted into law, thereby giving impetus to the process of forfeiting assets reasonably suspected to have been acquired through tainted money. The unexplained wealth orders are a profound development in the quest for zero tolerance to corruption. This is because someone can be acquitted in a criminal trial but still have assets forfeited as long as on the balance of probabilities there is reasonable suspicion that they were acquired from corrupt activities. One does not have to prove beyond any reasonable doubt that the assets were acquired through proceeds of crime and corruption.

While the Zimbabwe Anti-Corruption Commission cannot make an application to the courts to grant unexplained wealth orders, the Commission works closely with the National Prosecuting Authority to lodge applications. We are confident that the improved legal framework on asset recovery should enable the Commission to surpass its target of recovering assets worth ZWL300 million by the end of this year.

Anti-Corruption Commission Lay Bill and Whistle blower Protection

In order to deepen policy and legal reform, the ZACC has come up with an Anti-Corruption Commission Lay Bill for submission to the Attorney General's Office which has the mandate to draft proper bills for laying before Parliament. Our proposed legislation is in line with the constitutional function "to make recommendations to the Government and other persons on measures to enhance integrity and accountability and prevent improper conduct in the public and private sectors".

Included in the Lay Bill is a comprehensive section on whistle blower protection. A whistle blower means a person who makes a report to the Zimbabwe Anti-Corruption Commission about the commission, attempted commission or suspected commission of an illegal corrupt practice by a person in a public or private organization. A person reporting includes an employee or former employee, a temporary worker, a trainee, a consultant and a contractor. The purpose of this law is to encourage persons who have knowledge of the commission of illegal corrupt practices to report such practices to the Anti-Corruption Commission and to provide protection to persons against any reprisals, prejudicial action or penalization of such persons for having reported the commission of an illegal corrupt practice in a public or private organisation.

Since coming into office in July last year, the Commission has received several reports of witnesses being victimised for reporting suspected corruption. This explains why the Commission has moved with speed to propose whistle blower protection provisions in the Anti-Corruption Commission Lay Bill. We are proposing punitive penalties for any conduct that victimises whistle blowers.

Prosecutorial powers

Apart from rare private prosecutions, the power to prosecute currently lies with the National Prosecuting Authority. However, section 263 of the Constitution provides that an Act of Parliament may confer powers of prosecution on persons other than the NPA, but those powers must not limit or conflict with the NPA's powers under this Part. So contrary to assertions from other circles, it is possible that ZACC can have powers to prosecute. Discussions are currently underway with the relevant authorities to determine how best this can be implemented.

Clear guidelines will be developed as to when ZACC should itself undertake prosecutions (with or without the assistance of the NPA) and when it should refer the matters to the NPA for prosecution. Of course where ZACC is going to prosecute, its legal officers would have to be fully trained on the prosecution of crimes of corruption which are often very complex cases. That is why the Commission has entered into memoranda of understanding with various local and international partners (NPA included) to ensure its officers are adequately trained to competently prosecute the corruption matters.

The establishment of anti-corruption courts is a significant step towards strengthening prosecution processes in Zimbabwe. Recruitments are underway for these courts to be manned by full-time dedicated prosecutors from the Specialised Anti-Corruption Unit (SACU). ZACC can in the meantime work closely with these prosecutors pending granting of its own prosecutorial powers.

The Commission will continue championing legal and policy reform to make it easier to investigate and prosecute corrupt practices. Because of its secret nature, corruption is one of the most difficult crimes to investigate. To carry out effective enforcement. An anti-corruption agency needs strong power and easier-to-prove offences. The Government and Parliament can demonstrate their political will by continuously passing legislation which is anti-corruption friendly.

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