



ZIMBABWE ANTI-CORRUPTION COMMISSION

"Refuse, Resist and Report Corruption"

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Increased Public Accountability Key to Curbing Corruption

By Commissioner John Makamure

The past couple of weeks saw the Zimbabwe Anti-Corruption Commission ramping up its anti-corruption fight through the arrest of two high profile figures. They are former Netone chief executive officer Lazarus Muchenje and Registrar General Clemence Masango. The Netone arrests also include former board member Paradzai Mutandwa and six other officers from the same company. The charges revolve around criminal abuse of duty as a public officer and fraudulent activities. The Commission is currently investigating several other high profile cases involving public officials and private sector operators. Arrests are expected in the near future.

The majority of the corruption cases that the Commission is seized with involve criminal abuse of duty as a public officer as defined in Section 174 (1) (A) of the Criminal Law (Codification and Reform) Act. The provision provides that if a public officer, in the exercise of his or her functions as such, intentionally— (a) does anything that is contrary to or inconsistent with his or her duty as a public officer; or (b) omits to do anything which it is his or her duty as a public officer to do; for the purpose of showing favour or disfavour to any person, he or she shall be guilty of criminal abuse of duty as a public officer and liable to a fine not exceeding level thirteen or imprisonment for a period not exceeding fifteen years or both such fine and imprisonment. Just to demonstrate how public officials abuse their offices for private gain, Muchenje is facing a staggering seven counts in that regard.

It is therefore extremely important that the concept of public accountability is well-understood and that it permeates throughout the public sector if we are to curb corruption. Development effectiveness or achievement of a developmental state requires high standards of accountability, transparency and openness. However, although formal accountability systems are put in place for the most part, they are not necessarily made to work in many countries. Many good laws are enacted, but they are not always enforced or monitored. Public agencies are given mandates and funds, but their performance may not be properly assessed and suitable action taken to hold them accountable. Public audits of accounts and parliamentary reviews are

done, but follow up actions may leave much to be desired. All this is a fertile ground for breeding corruption in its various forms.

The underlying principle that should be understood is that public office is a public trust. Public accountability or social accountability pertains to the obligations of persons or entities entrusted to manage public resources to be answerable for their fiscal, managerial and programme responsibilities that have been conferred on them, and to report to those that have conferred these responsibilities. Those who confer the responsibilities are the citizens. Accountability plays a particularly important role in the public sector. It is about giving an answer for the way in which one has spent money, exercised power and control, mediated rights and used discretions vested by law in the public interest.

Our Constitution has several provisions to promote the concept of public accountability. Section 194 outlines the basic values and principles governing public administration, which include a high standard of professional ethics, accountability, transparency, efficient and economical use of resources and provision of services impartially, fairly, equitably and without bias. Section 196 (3) requires public officers in leadership positions to abide by the following principles of leadership:

- objectivity and impartiality in decision-making;
- honesty in the execution of public duties;
- accountability to the public for decisions and actions; and
- Discipline and commitment in the service of the people.

Part 4 of the Constitution is about safeguarding of public funds and assets. Section 308 stipulates that it is the duty of every person who is responsible for the expenditure of public funds to safeguard the funds and ensure that they are spent only on legally authorised purposes and in legally authorised amounts. It is also the duty of every person who has custody or control of public property to safeguard the property and ensure that it is not lost, destroyed, damaged, misapplied or misused. This section goes on to say an Act of Parliament must provide for the speedy detection of breaches of provisions to safeguard public funds and assets and the disciplining and punishment of persons responsible for any such breaches.

These provisions of the Constitution can be enforced through various statutes such as the Public Finance Management Act, the Audit Office Act, and Criminal Law (Codification and Reform) Act, among others. Sections 85 to 91 of the Public Finance Management Act is about financial misconduct and offences and penalties for the abuse and misappropriation of public resources. Section 91 states that an accounting officer or accounting authority shall be guilty of an offence and liable upon conviction 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, if that accounting officer wilfully or in a grossly negligent way abuse public resources.

Any person who purports to borrow money or to issue a guarantee, indemnity or security for or on behalf of a Ministry, reporting unit, public entity or constitutional

entity, or who enters into any other contract which purports to bind a Ministry, reporting unit, public entity or constitutional entity to any future financial commitment, shall be guilty of an offence and liable upon conviction to a fine not exceeding level ten or to imprisonment for a period not exceeding five years, or to both such fine and imprisonment.

The Act goes on to say any person who (a) hinders or obstructs the Auditor-General or the Treasury or an internal auditor appointed in terms of section 80; (b) refuses or fails to produce any information that is in that person's possession or under that person's control in relation to the financial management, financial performance or banking activities of a Ministry or in relation to the management or control of any State property or liability when required to do so in terms of this Act; (c) resists or obstructs any person acting in the discharge of his or her functions in terms of this Act; (d) without reasonable excuse, refuses or neglects to pay any public money into a bank account of the State or a Ministry; (e) without reasonable excuse, refuses or neglects to pay any trust money into a trust bank account; (f) makes any statement or declaration, or gives any information required to be given in terms of this Act, knowing it to be false or misleading or not believing it to be true; (g) does any act for the purpose of procuring for another person the improper payment of any public money or trust money and the improper use of any public resources; shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Furthermore, any person who, under examination by an internal or external auditor in terms of Part VIII, makes any statement which he or she knows to be false or does not have reasonable grounds to believe to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

So basically the legal framework to promote public accountability and punish transgressors is largely in place. The State must strengthen enforcement of the laws. Above all, we must build a culture of public accountability at all levels of decision-making if we are to make headway in the fight against corruption. We need champions of anti-corruption in the public sector who fully appreciate that the authority assigned to a public officer is a public trust which must be exercised in a manner which demonstrates respect for the people and readiness to serve them.

Commissioner John Makamure is the ZACC Spokesperson and chairs the committee on Prevention and Corporate Governance.

john.makamure@gmail.com. ZACC Toll Free Lines: 08010101/08004367; Landline: + 263 242 369602/5/8. Corruption reports to reports@zacc.co.zw, infor@zacc.co.zw