

- (c) promoting transparency among private entities, including where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- (d) preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities, and
- (e) ensuring that private enterprises have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

An effective anti-corruption strategy needs to adequately balance between preventive and repressive means.⁵² Corruption will not be overcome if preventive measures are not accompanied by effective deterrents. Comprehensive legal provisions against corruption act as an effective deterrent against corruption and enable successful prosecution of corruption.⁵³ To this end, UNCAC provides for a wide range of standards for the criminalization of all forms of corruption and for the effective enforcement of these laws. State Parties are called upon to adopt such legislative and other measures necessary to establish as criminal offences when committed intentionally.⁵⁴ Acts such as promising, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties are to be criminalized.⁵⁵ Further, the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties shall

⁵² Supra note 75 p.28

⁵³ Ibid p. 28

⁵⁴ Article 15

⁵⁵ Ibid

be criminalized by State Parties.⁵⁶ Bribery of foreign officials and officials of public international organizations according to Article 16 of UNCAC State Parties are required to adopt legislation as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization.⁵⁷

UNCAC has also embraced different forms of corruption in order to bring to the fold a holistic approach in the fight against corruption. State Parties are required to criminalize acts such as abuse of power by public officials, abuse of functions, embezzlement, and misappropriation of funds or illicit enrichment.⁵⁸ Most countries in their quest to fight corruption have for years neglected corruption in the private sector. The UNCAC requires State Parties to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities.⁵⁹

⁵⁶ Ibid

⁵⁷ Ibid Article 16(1)

⁵⁸ Ibid Articles 17-20

⁵⁹ i.e. the promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; the solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

CHAPTER THREE

3. THE LEGAL FRAMEWORK RELATING TO THE FIGHT AGAINST CORRUPTION IN ZAMBIA

In this chapter we are going to consider the legal framework relating to the fight against corruption in Zambia. Before the Corrupt Practices Act No. 14 of 1980 became law, all offences relating to bribery and corruption were provided for in the Penal Code; in the same manner as all other felonies and were the concern of the Police under the Ministry of Home Affairs.¹ The Penal Code first became law in this territory on 1 November 1931.² It is often argued that corruption is simply an offence like any other and hence must be fought through the same means that other offences are fought. This argument, however, simplifies the ramifications of corruption. Corruption being a highly contagious offence and difficult to unearth, unlike many others, would consequently need unique approaches. This, therefore, called for a specialized institution equipped to fight corruption effectively. The Penal Code³ was highly inadequate as its provisions were mainly concerned with corruption in the public sector committed by public officers. This law was not comprehensive enough to deal with the private sector.⁴

In 1980, the Zambian Government took a bold step by passing a Bill in Parliament that laid the way for the establishment of a separate body to investigate, prevent and prosecute corruption offences.⁵ The Corrupt Practices Act No. 14, 1980, provided for the

¹ Hon. Mr. Justice Gregory.S. Phiri, "Challenges and Expectations in Prosecuting Corruption Cases," Paper presented to the consultative workshop for prosecutors, 28 March, 2007, Mika Lodge, Lusaka, Zambia

² Ibid

³ Cap 146 of the laws of Zambia

⁴ C.R.Matenga, "Corruption: Is it Endemic in Zambia?" Paper presented at the Citizens Forum Discussion in Lusaka, Zambia, 28 February, 1998. Sponsored by the Friedrich Ebert Stiftung. P.11, Matenga is a Lecturer in the School of Development Studies.

⁵ Supra note 104

establishment of the Anti-Corruption Commission which repealed the provisions of the Penal Code relating to corrupt practices.⁶ The functions of the Commission under the Corrupt Practices Act were threefold. Apart from investigations, the Commission undertook to prevent the occurrence of corruption in both public and private bodies.⁷ Further, the Commission was mandated subject to the directions of the DPP to prosecute offences under the Act.⁸ The Commission was a Government Department under the control and supervision of the President.⁹ The President had the power to appoint a Commissioner who was responsible for the administration of the Commission subject to any specific or general directions of the President.¹⁰ There were general misgivings that the Commission was not independent enough to fight corruption because the Act gave no autonomy to the Commission. The Executive had powers of control for its own purposes, so it was argued.¹¹

In 1996 the Corrupt Practices Act was repealed and replaced with the ACC Act No. 42. It was felt that the Corrupt Practices Act was not comprehensive enough to tackle corruption in the 1990s. All offences under this Act¹² are to be enquired into, tried, and otherwise dealt with in accordance with the Criminal Procedure Code and Part I of the Penal Code.¹³ The Act establishes the ACC as an autonomous body whose functions are to-

⁶ Ibid

⁷ Section 10(1), Corrupt Practices Act, No.14 of 1980

⁸ All offences under Part IV of the Corrupt Practices Act, No. 14 of 1980 could only be prosecuted with the consent of the DPP. Section 43(1) expressly provided that no prosecution for an offence under Part IV shall be instituted except by or with the written consent of the DPP.

⁹ Section 4(2), Corrupt Practices Act, No. 14 of 1980

¹⁰ Ibid section 5(1)

¹¹ Supra note 106 p.12

¹² No. 42 of 1996

¹³ Section 2, Anti-Corruption Commission Act No. 42 of 1996

- (a) prevent and take necessary and effective measures for the prevention of corruption in public and private bodies, including in particular measures for-
 - (i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which may be prone or conducive to corrupt practices; advising public bodies on ways and means of preventing corrupt practices and changes in methods of work or procedures of such bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices; disseminating information on the evil and dangerous effects of corrupt practices on society and enlisting and fostering public support against corrupt practices.¹⁴
 - (ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (iii) disseminating information on the evil and dangerous effects of corrupt practices on society; and
 - (iv) enlisting and fostering public support against corrupt practices.
- (b) receive and investigate complaints of alleged or suspected corrupt practices and subject to the directions of the DPP prosecute-
 - (i) offences under the Act; and
 - (ii) such other offence under any other written law as may have come to the notice of the Commission during the investigation of an offence under the Act.¹⁵

It is clear from the above that the Commission has a broad mandate to fight corruption. The ACC has a clear legislative mandate to investigate any conduct of any public officer which, in the opinion of the Commission may be connected with or conducive to corrupt practices.¹⁶ Its mandate amongst others is preventive and prosecutorial. The ACC is an autonomous body which is not subject to the direction or control of any person or authority.¹⁷ The day-to-day functions of the Commission are discharged by the Director-

¹⁴ Section 9(1) (a)(i)(ii)(iii) and (iv) Anti-Corruption Commission Act No. 42 1996

¹⁵ Ibid section 9 (1),(b),(i) and (ii)

¹⁶ Ibid section 9(1)(c)

¹⁷ Ibid section 5

General (DG) who is appointed by the President.¹⁸ This appointment is subject to ratification by the National Assembly.¹⁹ A person shall not qualify to be appointed DG unless the person is qualified to be appointed judge of the High Court.²⁰ The DG shall not, while he holds the office of Director-General discharge the duties of any other office of emoluments in the Republic of Zambia.²¹

The DG enjoys security of tenure and can only be removed by a resolution of the National Assembly from office for inability to perform the function of his office, whether arising from infirmity of body or mind or from any other cause, of misbehavior.²² The DG is assisted by the Deputy Director-General (DDG) who must be qualified to be appointed as a judge of the High Court.²³ In order for the DG to execute the functions of the Commission stated in the Act, he has been granted the following powers:²⁴ he may authorize in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under the Act; he may require any person in charge of a department, office or establishment of the Government, or the head, chairperson, manager or chief executive officer of any public body, to produce or furnish within such time as may be specified by the DG, any document or a certified true copy of any document which is in his possession or under his control and which the DG considers necessary for the conduct of investigation into alleged or suspected offences under the Act.

¹⁸ Ibid section 16 (1)

¹⁹ Ibid

²⁰ Ibid section 16(4)

²¹ Ibid section 16(5)

²² Ibid section 17(2)

²³ Ibid section 18(1)

²⁴ Ibid section 20(1), (a) and (b)

The DG, his DDG and any officer of the Commission may apply to a judge or a magistrate for a warrant authorizing access to all books, records, returns, and other documents relating to the work of any government department, public body or private body; access to and search of any premises, vessel, boat, vehicle or aircraft if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.²⁵ Furthermore, the DG or any officer of the Commission may obtain a court order to permit the Commission to access any bank account, share account, purchase account, expense account or any other account or any safe deposit box in any bank.²⁶ Any officer of the Commission authorized by the DG may arrest a person without warrant if he reasonably suspects that such person has committed or is about to commit an offence under the Act.²⁷

The DG under the 1996 Act²⁸ has the power to investigate any public officer where there are reasonable grounds to believe that such public officer;²⁹

- (a) has abused or misused his office or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person;
- (b) maintains a standard of living above that which is commensurate with his present or past official emoluments;
- (c) is in receipt or possession of pecuniary resources or property disproportionate to his present or past official emoluments;
- (d) is in receipt of the benefits of any services which he may reasonably be suspected of having received corruptly and in circumstances which amount to an offence under the Act

A public officer means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is

²⁵ Ibid section 20(3)(a) and (b)

²⁶ Ibid section 21(1)

²⁷ Ibid section 22(1)

²⁸ No. 42

²⁹ Ibid section 37(1)

permanent or temporary, whole or in part.³⁰ Any public officer who, after due investigation carried out under section 37(1) of the Act is found to;³¹

- (a) have misused or abused his office, position, or authority to obtain advantage, wealth, property or profit directly or indirectly;
- (b) maintains a standard of living above which is commensurate with his present or past official emoluments;
- (c) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments; or
- (d) be in receipt of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence;

Shall, unless he gives a reasonable explanation, be charged with having or having had under his control pecuniary resources or property reasonably suspected of having been corruptly acquired, or having misused or abused his office.³²

Further, any public officer who, by himself or in conjunction with any other person corruptly solicits, accepts or obtains from any person any gratification as an inducement or reward for doing or forbearing to do anything in relation to any matter or transaction, actual or proposed with which any public body is or may be concerned with shall be guilty of an offence of corrupt practices by public officer.³³ The Commission may refuse to conduct, or may decide to discontinue an investigation where it is satisfied that the complaint or allegation is malicious, trivial, frivolous, vexatious or that the accompanying particulars are insufficient to allow a proper investigation to be conducted.³⁴ The Commission may, however, after investigations make recommendations as it deems fit to the appropriate authority. The appropriate authority must within thirty days from the date

³⁰ Ibid section 3

³¹ Ibid 37(2)

³² Ibid

³³ Ibid section 29(1)

³⁴ Ibid section 9(2)

of such recommendation make a report to the Commission, on any action taken by such authority.³⁵

It is an offence for any person to give or cause to be made false testimony or a false report in any material particular to any matter under investigation.³⁶ Further, making of a false report to the Commission under the Act³⁷ is a criminal offence.³⁸ The rationale behind this is to deter people from making false allegations against others to the Commission. Anyone found guilty of an offence is liable upon conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding ten years or to both.³⁹ Under section 28⁴⁰ any person who pretends that; he is an officer of the Commission or has any of the powers of such officer under the Act, or under any authorization or warrant commits an offence. Further, if any person pretends that he is able to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of an officer of the Commission is guilty of an offence and shall be liable upon conviction to imprisonment for a term not exceeding seven years.⁴¹ The Act makes it an offence for a member of a public body to corruptly solicit, accept or obtain, or agree to accept or attempt to receive or obtain from any person for himself or for any person gratification as an inducement or reward for:⁴²

- (a) his voting or abstaining from voting at any meeting of such public body in favour of or against any misuse, matter, resolution or question submitted to such body; or

³⁵ Ibid section 10(2)

³⁶ Ibid section 27

³⁷ No. 42 of 1996

³⁸ Ibid

³⁹ Ibid

⁴⁰ Act No. 42 of 1996

⁴¹ Ibid section 28

⁴² Ibid section 33(1)

- (b) his performing or abstaining from performing, or his aid in procuring, expediting, delaying or preventing the performance of, any official act by such body; or
- (c) his aid in procuring or preventing the passing of any vote or the granting of any conduct or advantage in favour of any person.

It is an offence for any person to bribe or, attempt to bribe a member of any such public body in the circumstances stated above.⁴³ Corruption is also committed where a public officer directly or indirectly corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person any gratification as an inducement or reward or otherwise on account of his giving assistance or using influence in:⁴⁴

- (a) the promotion, execution or procurement of-
 - (i) any contract with a public or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance; or
 - (ii) any sub-contract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid.⁴⁵

It is an offence for any person to offer a bribe to a public officer as an inducement or reward for doing any of the aforesaid activities.⁴⁶

The Act also provides for situations where a public officer may try to conceal property corruptly acquired by transferring it to a close relative or acquaintance. Such property may be deemed by the court to be in the possession and control of the public officer in

⁴³ Ibid section 33(2)

⁴⁴ Ibid section 34(1)

⁴⁵ Ibid

⁴⁶ Ibid section 34(2)

the absence of a reasonable explanation from the accused.⁴⁷ The Act, in addition, has the following provisions: any public officer to whom any gratification has been corruptly given, promised or offered must make a full disclosure of the circumstances to the Police or the ACC within twenty-four hours of the occurrence of the event; failure to do so constitutes an offence.⁴⁸ Any police officer or officer of the Commission may arrest without warrant any person in respect of whom a report has been made.⁴⁹ A person arrested for having contravened the Act may be searched without warrant and all articles found on him may be seized.⁵⁰ Section 31 of the Act provides for the offence of corrupt transactions by or with private bodies.⁵¹ Any person who, by himself, or in conjunction with any other person corruptly solicits, accepts, or obtains, or agrees to accept or attempts to receive or obtain from any person for himself or for any other person, any gratification as an inducement of a reward in relation to any matter or transaction actual or proposed with which any public body is or may be concerned shall be guilty of an offence.⁵² Conversely, any person who by himself or in conjunction with any other person, corruptly gives, promises or offers any gratification to any person, as an inducement or reward for having done or forborne to do, anything in relation to any matter or transaction with which any public body is or may be concerned shall be guilty of an offence.⁵³

The Act makes it easier to prosecute corruption by modifying some of the rules of evidence. This is done by way of presumptions, which will operate once the prosecution

⁴⁷ Ibid section 37(3)

⁴⁸ Ibid section 40(1)

⁴⁹ Ibid section 40(2)

⁵⁰ Ibid section 40(3)

⁵¹ Under the Act, i.e. Act No. 42 of 1996, private body means any person or organization not being a public body, a voluntary organization, charitable institution, company, partnership or a club.

⁵² Ibid section 31(1)

⁵³ Ibid section 31(2)

proves certain basic facts.⁵⁴ The effect of such presumptions is to shift the burden of proof from the prosecution to the accused. Moreover, the accused is barred from pleading that any gratification solicited, accepted, obtained or agreed to be accepted, given, offered or promised is customary in the profession, business, trade, vocation or calling concerned.⁵⁵ Casual gifts or entertainments, however, can be pleaded as a defence under the Act.⁵⁶

The DPP is empowered to authorize any court to tender a pardon to a prospective witness who is directly or indirectly implicated in an offence under Part IV of the Act so that such a person can give evidence.⁵⁷ However, the pardon is offered on condition that the witness makes a full and true disclosure of all facts or circumstances within his knowledge relating to the offence and to every person involved in the commission thereof, whether as principal or in any other capacity.⁵⁸ The Act has effect within as well as outside Zambia, and notwithstanding where any offence of corruption is committed by such person; he may be dealt with in respect of such offence as if it has been committed within Zambia.⁵⁹

Any person who is guilty of an offence under the Act is liable upon conviction to imprisonment for a term not exceeding twelve years.⁶⁰ Upon a second or subsequent conviction, imprisonment for a term of not less than five years but not exceeding twelve years and in addition to any other penalty imposed, to forfeiture to the State of any pecuniary resource, property, advantage, profit or gratification received in the

⁵⁴ Ibid section 49(1)

⁵⁵ Ibid section 52(1)

⁵⁶ Ibid section 58

⁵⁷ Ibid section 54(1)

⁵⁸ Ibid

⁵⁹ Ibid section 59(1)

⁶⁰ Ibid section 41

commission of an offence under the Act.⁶¹ The court can, under section 42,⁶² in addition to the aforementioned sanctions, order the convicted person to pay the rightful owner the amount or value of any gratification actually received by him. If the rightful owner cannot be ascertained or is himself implicated in the corrupt act, the court must order that the amount or value thereof be paid into the general revenues of the Republic.

**3.1. OTHER LAWS THAT CONSTITUTE THE LEGAL FRAMEWORK IN THE
FIGHT AGAINST CORRUPTION IN ZAMBIA**

(a) THE ELECTORAL ACT⁶³

This is an Act⁶⁴ that was enacted to provide for a comprehensive process for election to the office of President and to the National Assembly; and to empower the Electoral Commission of Zambia in matters relating to elections in Zambia and to provide for offences and penalties in connection with elections.⁶⁵ This Act repealed and replaced the Electoral Act of 1991. The ACC is empowered under the Electoral Act to investigate and prosecute any corrupt practices committed under the Electoral Act in accordance with the ACC Act.⁶⁶ Among the functions of the ACC is to receive and investigate complaints of alleged or suspected corrupt practices and subject to the directions of the DPP, prosecute such other offences under any other written law as may have come to the notice of the Commission during the investigation of an offence under the Act.⁶⁷ The ACC has been

⁶¹ Ibid

⁶² Act No. 42 of 1996

⁶³ No. 12 of 2006

⁶⁴ Ibid

⁶⁵ Ibid Preamble

⁶⁶ Ibid section 3(5)

⁶⁷ Section 9(1)(b)(ii), Anti-Corruption Commission Act No. 42 of 1996

given a clear legislative mandate to administer the Electoral Act that is to investigate and prosecute offences in accordance with the ACC Act.

It is an offence under the Electoral Act for any person who corruptly either directly or indirectly, by oneself or any other person:

- (a) gives, lends, or procures, or offers, promises or agrees to give, lend or procure any money to or for any person to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;
- (b) gives, lends or procures, or offers, promises or agrees to give, lend, or procure, any money to or for any voter or for any other person on behalf of any voter or to or for any other person for acting or joining in any procession or demonstration before, during or after any election;
- (c) makes an gift, loan, offer, promise, procurement or agreement to or for any person in order to induce the person to procure or to endeavour to procure the return of any candidate at any election or the vote of any voter at any election;
- (d) advances or pays or causes to be advanced or paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to an person in discharge or repayment of any money wholly or in part expended in bribery at any election;
- (e) before or during any election, receives or contracts for any money or loan for oneself or for any other person for voting or agreeing to vote or refraining or agreeing to refrain from voting at an election;
- (f) after any election, receives any money on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election; or
- (g) conveys or transfers or is concerned with the conveyance or transfer of any property, or pays or is concerned with the payment of any payment of any money, to any person, or is concerned with the payment of any money, to any person for the purpose of enabling that person to be registered as a voter, thereby to influence that person's vote at any future election, or pays to or is concerned with the payment of any money on account of any voter for the purpose of inducing that person to vote or refrain from voting; shall be guilty of the offence of bribery.

It is also an offence for any person either before or during any election, to receive or to contract for any money or loan for oneself or for any other person for refraining or

agreeing to refrain from voting at any election. Any person who engages in the aforesaid conduct commits an offence and shall be guilty of the offence of bribery.⁶⁸

Section 81 of the Electoral Act⁶⁹ creates the offence of treating and criminalizes the conduct of any person who:

“corruptly by oneself or by any person either before, during or after an election, directly or indirectly gives or provides or pays, wholly or in part, the expenses of any food, drink, entertainment, lodging or provisions to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving that person’s vote at an election shall be guilty of the offence of treating.”

(b) THE PARLIAMENTARY AND MINISTERIAL CODE OF CONDUCT ACT

The object of this Act⁷⁰ is to establish a Code of Conduct for Ministers and Deputy Ministers for the purposes of Article 52 of the Constitution,⁷¹ and to establish a code of conduct for Members of the National Assembly for the purposes of Article 71 of the Constitution.⁷²

A Member of Parliament shall be considered to have breached the code of conduct if he knowingly acquires any significant pecuniary advantage, or assists in the acquisition of pecuniary advantage by another person, by:

- (a) improperly using or benefiting from information which is obtained in the course of his official duties and which is not generally available to the public;
- (b) disclosing any official information to unauthorized persons;
- (c) exerting any improper influence in the appointment, promotion, or removal of a public officer;
- (d) directly or indirectly converting Government property for personal gain or any other unauthorized use; or

⁶⁸ Ibid section 79(f)

⁶⁹ No. 12 of 2006

⁷⁰ Cap 16 of the laws of Zambia

⁷¹ Article 52 of the Constitution states that all Ministers and Deputy Ministers shall conduct themselves, during their tenure of office, in accordance with a code of conduct promulgated by Parliament.

⁷² Preamble, Parliamentary and Ministerial Code of Conduct Cap 16, of the laws of Zambia

- (e) soliciting or accepting transfers of economic benefit, other than-
 - (i) benefits of nominal value, including customary hospitality and token gifts;
 - (ii) gifts from close family members; or

A Member of Parliament is prohibited from speaking in the National Assembly or in any committee thereof, on a matter in which he had a direct pecuniary interest unless he had disclosed the nature of that interest to the National Assembly or Committee.⁷³ Moreover, a Member of Parliament is obliged to make a full disclosure in writing to the Chief Justice where he has an interest in a contract that is made or is proposed to be made by the Government.⁷⁴ For the purposes of the Act, a Member of Parliament has an interest in a contract if he will derive any material benefit, whether direct or indirect from the contract; or if one party to the contract is a firm or body corporate and has material interest, whether direct or indirect, in the firm or body.⁷⁵

Section 10⁷⁶ requires Ministers, the Speaker and Deputy Speaker to make an annual declaration of assets, liabilities and income to the Chief Justice within 30 days after appointment and thereafter within 30 days after each anniversary of their appointment. Complaints that a Minister or Member of Parliament has violated its provisions should be made in writing to the Chief Justice giving particulars of the breaches or alleged breaches.⁷⁷ Furthermore, a member affected by the Act may himself lodge a complaint with the Chief Justice where such allegations have appeared in the public media.⁷⁸ The

⁷³ Ibid section 5

⁷⁴ Ibid section 6

⁷⁵ Ibid section 6(5)

⁷⁶ Parliamentary and Ministerial Code of Code Cap 16

⁷⁷ Ibid section 13(1)

⁷⁸ Ibid section 13(2)

Chief Justice shall then notify the President and the Speaker of the allegation and shall appoint a tribunal to investigate the allegations.⁷⁹

Unlike the Electoral Act which gives the ACC a clear legislative mandate to prosecute offence under it in accordance with the ACC Act. The Parliamentary and Ministerial Code of Code does not do so. Under the later Act any breach has to be reported to the Chief Justice in writing, who in turn constitutes a tribunal which investigates the allegation. It is the tribunal so constituted that may request for assistance from other investigative organs, including among others the ACC.⁸⁰ The organ so requested is empowered to provide information to the tribunal and to conduct investigations on its behalf. In its report, the tribunal may make such recommendations as to administrative actions, criminal prosecutions or other actions to be taken as it thinks fit.⁸¹ From this, it is clear that the ACC cannot institute an investigation or prosecution arising from breach of the Parliamentary and Ministerial Code of Conduct unless the tribunal says so.

⁷⁹ Ibid section 13(3)

⁸⁰ Ibid section 14(7)

⁸¹ Ibid section 14(8)

CHAPTER FOUR

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. CONCLUSIONS

The extent to which corruption can be said to be successfully fought or controlled depends on how the essential tools used to fight it have been applied. These essential tools are prevention and prosecution. The local anti-corruption legislation is required to embrace best practices enunciated in international anti-corruption instruments. Any anti-corruption agency must therefore strive to tailor its laws and strategies in line with these international anti-corruption conventions.

There is need for legislative reform in order to strengthen the law against corruption in Zambia. Happily, it is hoped the legislative review that is underway is going to address the issues highlighted in this paper. The ACC itself has realized that the present legal framework on corruption needs urgent review. The law as it stands is inadequate for an effective fight against corruption. Prevention and prosecution as essential tools in fighting corruption are made impotent in the midst of an inadequate legal framework. Zambia must accede to UNCAC and must also domesticate these international anti-corruption instruments so that they can become law in Zambia.

4.2. RECOMMENDATIONS

The three instruments that have been examined in this paper do recognize that prevention is an essential tool that can be used in the fight against corruption. The adage that 'prevention is better than cure,' holds true in the fight against corruption just as it is relevant in preventive medicine. The SADC Protocol Against Corruption, the African

Union Convention Against Corruption and the United Nations Convention Against Corruption all provide for preventive measures designed to fight corruption. Even though the ACC Act provides for preventive measures, these measures are not comprehensive as is expected by the aforesaid international instruments. The Zambian law has not addressed the need of designing preventive measures in the private sector in order to curb corruption. Although under section 9 of the Act, the ACC¹ is empowered to prevent and take necessary and effective measures for the prevention of corruption in public and private bodies the reality on the ground is that there is no serious attention given to preventing corruption in the private sector. It is therefore recommended that for prevention to be an effective tool in fighting corruption the private sector must be involved as well.

The ACC Act has no provisions for declarations of assets to compel public officials at the time of assumption of office, during and after their term of office in the public service. This is a serious short-coming in the law, and it is recommended that there is need to address it in line with international anti-corruption instruments. The role of civil society is not defined in the ACC Act; as a result it does not conform to international best practices. All the instruments that have been examined in this paper require that anti-corruption bodies provide for civil society participation in fighting corruption. Civil society faces a number of constraints in its efforts to make government accountable and transparent in its operations. First, the absence of a Freedom of Information Act means that the public can only access information that the public authorities choose to release.

¹ No 42 of 1996

The State Security Act is used extensively to keep information away from the public;² corruption as they say, thrives in an environment of secrecy. It is therefore, recommended that the ACC considers civil society in its proposed new law. The law must recognize them as partners in the fight against corruption.

The prevention of corruption cannot be done by the ACC alone, because of this it is prudent that other players are taken on board. In view of this the media which is a critical ally should not be left behind. The SADC Protocol Against Corruption for instance implores State Parties to adopt measures that encourage participation by the media and Non-Governmental Organizations (NGOs) in preventing corruption. The media must be given access to information in cases of corruption and related offences on condition that the dissemination of such information does not adversely affect the investigation process and the right to a fair hearing or trial. The African Union Convention Against Corruption provides that in order for prevention of corruption to be a reality, the right of access to information that is required to assist in fighting corruption and other related offences be provided. By its very nature, corruption is a dark practice that strives not to come to light.³ It is difficult to expose in societies that suppress the twin freedoms of expression and the press. Arguably, freedom of expression and also of the press, are at the core of societies in which there is less corruption. In Zambia, it seems that the role of the media and NGOs in preventing corruption is not defined. It is therefore recommended that the role of the media and NGOs be clearly defined.

Further, the definition of corruption in the ACC Act is not comprehensive enough as it does not capture other forms of corruption. For instance, the ACC Act does not

² Alan Doig and Stephanie McIvor, National Integrity Systems Transparency International Country Study Report Zambia, Transparency International Secretariat, Berlin, Germany, 2003, p.59

³ SAHRIT, Media Report Reporting Corruption in Southern Africa, Harare, Zimbabwe, 2003, p.98

specifically cover corruption in political parties as a result it falls short of the standards set in the AU and UN Conventions which are elaborate on this matter. In order to holistically use prevention as a tool in combating corruption it is recommended that the ACC considers broadening the definition of political corruption.

4.3. REPRESSIVE PROVISIONS UNDER THE ACC ACT

It must be acknowledged that prevention is an integral strategy in fighting corruption which must be embraced by anti-corruption agencies. However, it is not a substitute to the prosecution and punishment of corruption, but a complement to all other ways of fighting corruption. The SADC Protocol Against Corruption, the African Union Convention Against Corruption and the UNCAC all provide for repressive means of combating corruption. The ACC Act makes it easier to prosecute corruption by modifying some of the rules of evidence. This is done by way of presumptions, which operate once the prosecution proves certain facts. The effect of such presumptions is to shift the burden of proof from the prosecution to the accused. The accused is barred from pleading that any gratification solicited, accepted, obtained or agreed to be accepted, given, offered or promised is customary in the profession, business, trade, vocation or calling concerned. This in itself is very good as it enhances prosecution by shifting the burden on to the accused.

A major weakness of the Act is that it does not offer protection to whistle-blowers, the absence of legal protection for whistle-blowers discourages people who may have useful information from volunteering such information to the Commission. It is therefore recommended that there is need to enact whistle-blower legislation which could

encourage legitimate reporting of corruption and protect those who report from victimization. Although the treatment of witnesses is provided under the Criminal Procedure Code,⁴ considering the special nature and effects of offences relating to corrupt practices it is recommended that the ACC enacts a law to take care of such issues. This would be in line with the international instruments that have been discussed in this paper. The ACC has been conducting corruption prosecutions over the last twenty-five years with little success, if any.⁵ The results have been dismal, to say the least, as this has been one of the departments adversely affected by poor funding. Moreover, the lack of adequate manpower has contributed to the dismal record.⁶ This clearly, shows that prosecution as a tool in fighting corruption in Zambia has not been used effectively. The pre-condition on which this essential tool rests is qualified staff and adequate resources. Sadly, the ACC is coming from a background of poor funding. It is therefore recommended that funding to the institution be greatly enhanced and qualified staff in the Legal Department be retained in order for prosecution as an effective tool in fighting corruption to work. The definition of corruption in the ACC Act is narrow, in view of this it is recommended that it be expanded to include obtaining an advantage or benefit through bribery, extortion, influence peddling, fraud and electoral corruption. The definition of gratification must be in line with UNCAC. It is further recommended that the offences in the ACC Act be broadened and must detail specific acts or omissions that constitute offences of corruption and other related offences. The offences must include corruption of witnesses, corruption in relation to sporting events and misapplication of public funds or property. Conversion of property as well as transfer or disposal of

⁴ Cap 87 of the Laws of Zambia

⁵ Supra note 186 p. 67

⁶ Ibid

property knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property must be criminalized in line with UNCAC.

4.4. PENALTIES UNDER THE ACC ACT

The penalties provided under the ACC Act do not reflect the negative consequences that corruption has on society, it is therefore recommended that the penalties be stiffened and that mandatory sentences are introduced. UNCAC requires States Parties to criminalize the most prevalent forms of corruption in both public and private sectors. This is to be done through thorough review of their legal and institutional structures in order to evaluate their compliance with UNCAC. Zambia has done well as far as criminalizing corruption in the public sector is concerned. However, the most prevalent forms of corruption in the private sector have not been addressed or criminalized. The battle against corruption cannot be won to the exclusion of the private sector, the private sector should, therefore be encouraged to develop codes of conduct and ethics as part of the strategy to combat corruption. Article 16 of UNCAC invites States Parties to criminalize bribery of foreign officials of public international organizations. In Zambia, this has not been done. It is therefore, recommended that Zambia takes a leaf from the UNCAC and considers criminalizing corruption involving foreign officials of international organizations.

4.5. DOMESTICATION OF INTERNATIONAL CONVENTIONS

State Parties to all these international anti-corruption conventions and Zambia in particular must not only ratify these instruments but must localize them. In the case of Zambia it has been observed that ratification of international instruments does not lead to implementation. Given Lubinda⁷ commenting on Zambia's ratification of UNCAC said:

“ordinarily, it is a good development since it will open up the country to international co-operation but this must be taken with a pinch of salt because simple ratification will not result in strengthening the fight against corruption because the government lacks capacity to implement these treaties and ratification is just one step but domestication of the convention into Zambian laws is another issue”⁸

This author is in total agreement with the view expressed by Given Lubinda, the signing of these anti-corruption instruments must not be done as a window shopping forum or a public relations platform. The government must accord the fight against corruption the seriousness that it deserves in view of its negative effects on society. It is therefore recommended that apart from ratification, the government must go a step further to domesticate these conventions on corruption. If these conventions are not implemented, they will just be a mere academic exercise; the government must demonstrate seriousness in fighting corruption by domesticating these conventions.

⁷ Chairperson African Network Against Corruption (APNAC) cited in The Post, Monday December 17, 2007.

⁸ Ibid

BIBLIOGRAPHY

BOOKS

Kwame Frimpong and Gloria Jacques, Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviours, Lentswe La Lesedi (Pvt), Gaborone, Botswana, 1999.

Constance Kunaka, Noria Mashumba and Philliat Matsheza, The SADC Protocol Against Corruption: A Regional Framework to Combat Corruption, SAHRIT, Harare, Zimbabwe, 2002.

Komisi Pemberantasan Korupsi, Gap Analysis Study Report: Identification of Gaps Between Laws/Regulations of the Republic of Indonesia and the United Nations Convention Against Corruption, Corruption Education Commission, The Republic of Indonesia, Jakarta, November 2006.

GOVERNMENT AND QUASI-GOVERNMENT PUBLICATIONS

Anti-Corruption News, Vol.2. No.1, 1997.

Anti-Corruption Commission, Draft National Corruption Prevention Policy, February 10, 2006.

Zambia Parliamentary Debates No. 54, 29 July-22 August 1980 column 1079

SEMINAR PRESENTATION

C.R.Matenga, "Corruption: Is it Endemic in Zambia?" Paper presented at the Citizens Forum Discussion in Lusaka, Zambia, 28 February, 1998. Sponsored by the Friedrich Ebert Stiftung.

Hon. Mr. Justice Gregory.S. Phiri, "Challenges and Expectations in Prosecuting Corruption Cases," Paper presented to the consultative workshop for prosecutors, 28 March, 2007, Mika Lodge, Lusaka, Zambia

Mwape Bowa and Goodwell Lungu, "Anti-Corruption Conventions, Why They Are Useful, Their Purpose And Meaning Of Signatory, Ratification And Accession," Paper presented to Parliamentarians at a workshop organized by APNAC-Zambia Chapter, 3 March 2007

JOURNALS AND MAGAZINES

Michael Johnston, "The Search for Definitions: Vitality of Politics and the Issue of Corruption." In International Social Science Journal, No. 149, 1996.

Cherly W. Gray and Daniel Kaufmann, "Corruption and Development," in Finance and Development, March, 1998.

NEWSPAPERS

Times of Zambia, Tuesday, January 17, 1978

Times of Zambia, Wednesday, February 15, 1978

Times of Zambia, Thursday, May 11, 1978

Times of Zambia, Friday, June 9, 1978

Times of Zambia, Monday, December 18, 1978

UNPUBLISHED DISSERTATIONS

Frances Mwangala Zaloumis, "The Role of the Anti-Corruption Commission in National Development," School of Law, University of Zambia, July 23, 1986.

WEBSITES VISITED

<http://www.uncjin.org/Documents/Corrupt.htm> Accessed on 5 July 2007

Conference organized by the Council of Europe, the Multidisciplinary Group on Corruption, at Valletta, Malta, from 14 to 15 June 1994.

ANTI-CORRUPTION CONVENTIONS

The African Union Convention Against corruption

The SADC Protocol Against Corruption

The United Nations Convention Against Corruption

ACTS OF PARLIAMENT

Corrupt Practices Act No. 14 of 1980

Anti-Corruption Commission Act No. 42 of 1996

Electoral Act No. 12 of 2006

Parliamentary and Ministerial Code of Conduct Cap 16 of the laws of Zambia

Penal Code Cap 87 of the Laws of Zambia

Penal Code Cap 146 of the Laws of Zambia