AN APPRAISAL OF THE EFFECTIVENESS OF THE LEGAL AND INSTITUTIONAL MACHINERY COMBATING CORRUPTION IN ZAMBIA

BY

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A dissertation submitted to the University of Zambia Law Faculty in partial fulfillment of the requirements for the award of the Bachelor of Laws (LLB) Degree.
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ABSTRACT

Corruption is one of the leading causes for the continued retardation of economic growth and development in most developing countries. It has various forms through which it can be perpetrated and as such it is a dynamic problem. This study therefore explores whether this vice is being adequately addressed by the Zambian legal and political institutions.

Often times, legislation is not adequate to address the need to punish perpetrators of this vice. Therefore, the Zambian legislative mechanisms in place to address this problem have to be appraised. Further, legislation cannot be enforced in a vacuum; this is to say that there is need for a proper enforcement system through which the intention of the legislature in enacting laws can be carried out. The institutions charged with this responsibility therefore have to be reviewed every so often in order that an assessment of whether these institutions are complementing the law in place can be made.

Other significant aspects related to the prevention and punishment of corruption related crimes include the judicial system. Whether such system is adequately supported or complemented by the state in its prosecution of such offences is also necessary factor in determining whether the fight against corruption can be won.

Legal practitioners also have a role to play; innovation and utilization of all areas of law to address corruption must be resorted to in order to ensure that all possible avenues are utilized to ensure corruption is done away with.

It is therefore observed that corruption is usually punished where the requisite political will exists to eradicate it. In light of this, all stakeholders play a pivotal role in ensuring that corruption becomes a thing of the past. This includes lethargic political actors, active civil society and a bold judiciary to mention a few. The need for reform in the way the Zambian system operates as a whole to combat corruption cannot be overemphasized. This paper therefore discusses these issues in depth and offers possible solutions to the various impediments present in the fight against corruption in Zambia today.
ACKNOWLEDGEMENTS

To my mother, Rosemary Moonga Ngatsha, for being my source of never ending inspiration and quiet strength. I could not possibly have come this far without you; your ability to be completely selfless still does and always will amaze me. I love you Chipo.

To my sisters, Boniwe Khumalo Ngatsha-Kalengo, Nomsa Khumalo Ngatsha and Sindiso Khumalo Ngatsha Sichone, I love you. Every day you remind me of my capabilities, you cheer me on and laugh with me. You guys have been my shepherds through this complicated maze called life. To better days and plenty more blessings for you and yours. Masiwa Ketani, you have been a great friend of me. Simply put, I love and thank you.

Suwilanji Namusamba, Harriet Aaliyana Mdala and Mutinta Jacqueline Ng’andu, I thank you for being wonderful friends, for letting me raid your room as and when I chose and for all the dancing, laughter and tears and above all for making the preparation of this work bearable. Thank you for growing with me. I trust that we will be sharing more toasts, singing more songs and learning new things together for a long time to come.

Chishiba Kabalu, thank you for simply being there for me through this journey. Pamela Ngulube and Marina Kamanzi, your generosity astounds me. Thank you for making my life easier, for being good friends and for encouraging me every step of the way.

Chisuwo Hammwela, Layeni Rodney Phiri, Tundo Chibeleka and Christopher Mundia I love you guys. University would not have been half as much fun as it is without you. You didn’t only teach me how to be “one of the boys”, you taught me I could be better than I ever imagined. Keep the jokes coming. Cuthbert Kondwelani Tembo, thank you for your listening ear and for allowing me to pick your brain as and when I needed to. Your ideas were brilliant and inspiring. Great minds do indeed think alike.

To Ms. Chongo Chitupila, for all the hours you put in helping us all through this process, many thanks.

Above all, I thank God, because through it all he has shown me that his plan for me is not simple or ordinary but that it is brilliantly exceptional.
DEDICATION

To my father, Misheck Khumalo Ngatsha. Without you, I would never have learnt how to dream. I miss you dearly. May your soul rest in peace.
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CHAPTER ONE.
INTRODUCTION TO THE STUDY.

1.0 Introduction

The fervent movement against corruption globally today can be said to be a direct response to the very basic yet problematic nature of effects this practice has on both the national and international scene. The increased attention being paid to issues concerning corruption currently is due to the recognition that corruption is a universal ill which consequently requires effective and comprehensive solutions at both national and international level. It is to be found in both developed and developing economies in public as well as private sectors. The social cost of corruption has thus been found to be too high to ignore; an example of the cost of corruption can be clearly seen in cases such as that involving Mohamed Suharto of Indonesia who allegedly embezzled up to $ 35 billion in a country with a Gross Domestic Product (GDP) of less than $ 700 per capita.

In the political sphere, corruption has emerged as the handiest tool to achieving political ambition and amassing a great deal of wealth now more than ever. On account of corruption, governments have fallen, careers of world renowned public figures have been ruined and reputations of well-respected organizations and business firms have been badly tarnished. In addition, the media frenzy surrounding corruption involving high government officials and public personalities coupled with the public’s enthrallment with scandal and embarrassment of public figures has brought corrupt behaviour, a shortcoming in the common man, to the attention of the international community; the modern mass media, that is to say radio, newspapers, magazines, books television and cinema have been recognised as having a role

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5. U. Myint, 'Corruption: Causes, Consequences and Cures' p 34.
to play in national development and in the sphere of politics. Consequently, mass media practitioners have engaged in positive soul-searching against corruption.

The most significant consideration however is the role which corruption plays in the retardation of economic growth and development. While the universality of corruption has been recognised, its effects are especially felt in the less developed or developing countries of the world. Corruption has infiltrated all areas of social, economic and cultural life in such countries. It has been a hindrance to key services such as healthcare, business opportunities, employment, education to mention a few. Consequently, the scourge of corruption has been receiving priority attention in various development agenda’s.

1.1 Defining Corruption Today

There have been a number of different attempts at defining corruption; however there is no precise definition which applies to all forms, types and degrees of corruption that has been accepted universally. The Oxford Advanced Learners Dictionary of Current English defines the term corruption as;

"persons in authority or power acting dishonestly or illegally in return for money or personal gain."

While there is no universally accepted definition of corruption, one of the most popular definitions of the term is one given by Leslie Palmier. According to this definition, corruption is seen as the use of public office for private advantage. Similarly, Henriot

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7 Y. Sen, ‘Corruption and the Media’.
11 U. Myint, ‘Corruption: Causes, Consequences and Cures’ p 34.
defines corruption as the misuse of resources or authority by a public official for personal advantage.\(^15\)

The principal piece of legislation addressing corruption in Zambia, that is, the Anti Corruption Commission Act\(^16\) does not define what corruption is; however, section 3 of the Act defines the term "corrupt" as;

"the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit."

Also of note is the definition and comprehensive description that corruption in given by the author Myint\(^17\). According to him, corruption is;

"the use of public office for private gain, or in other words, use of official position, rank or status by an office bearer for his own personal benefit."

Examples of corrupt practices therefore include bribery, extortion, fraud, embezzlement, nepotism, cronyism, appropriation of public assets and property for private use and influence peddling. In this list of corrupt practices, activities such as fraud and embezzlement can be undertaken by an official alone and without involvement of another party. While others such as bribery, extortion and influence peddling involve two parties, that is, the giver and taker in a corrupt deal.\(^18\)

1.2 **Statement of The Problem**

Zambia is endowed with rich mineral resources; electricity, wildlife, and agriculture products.\(^19\) Despite its great potential and rich resource base, Zambia has not made significant strides to diversify the economy and this explains only in part, the economic malaise the country is in.\(^20\) However, economic diversification is only one of the causes of poor economic performance; it has been recognised that corruption which more often than not facilitates the plunder of national resources and in some cases causes direct loss to certain


\(^{16}\) Chapter 91 of the Laws of Zambia.

\(^{17}\) U. Myint, ‘Corruption: Causes, Consequences and Cures’ p 35.

\(^{18}\) U. Myint, ‘Corruption: Causes, Consequences and Cures’ p 35.


individuals is also a serious impediment to the attainment of economic growth. As a direct response to this, there is a legislative framework in place which clearly responds to the need to eradicate corruption. In addition to this, there are various institutions and mechanisms which have been established in order that this objective maybe achieved. Examples of such institutions include the Anti-Corruption Commission, the Drug Enforcement Commission, the Office of the Auditor General and the Office of the Investigator General to mention a few.

In light of the foregoing, there seems to be a cycle of continuing underdevelopment in Zambia which has various causes. Corruption is one of these causes and as such needs to be done away with to ensure that Governmental institutions run effectively and the level of transparency is consequently increased. As aforementioned, corruption affects various aspects of everyday life such as access to healthcare facilities, business opportunities, employment and education.

Consequently, in order that the fight against corruption be successful, there is need to have an effective legal and institutional framework in place for without it, corrupt practices can go unpunished for a long time to come. The legal and institutional framework in place to curb corruption has been found wanting in certain aspects; the legislative provisions in some instances are not sufficient to address issues concerning corruption, the institutions charged with the responsibility of eradicating corruption are also in some instances not clothed with the adequate powers to effectively deal with cases of corruption.

1.3 Significance Of The Study

Zambia being a developing country is facing various impediments to attainment of development and economic growth which it so desperately needs. Among these obstacles,

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21 The Transparency International Global Corruption Report 2004: Special Focus on Political Corruption states that the Zambian Government responded to this by establishing the Task force on Corruption in 2002 which had the mandate to investigate plunder of national resources; it is worth noting that the task force has since been disbanded.


corruption is one of, if not the most complex\textsuperscript{24} and as such equally intense efforts must be put into ensuring that all forms of corruption are done away with. It is therefore imperative that this study be undertaken to assess whether there is need to change the current legal and institutional framework so that it responds directly to the need to eradicate corruption.

1.4 **Objective of the Study**

The purpose of this study is to appraise the legal and institutional framework designed to eradicate corruption in Zambia. The specific objectives of the study will be to:

a. Consider corruption in general, providing definitions of significant terms and concepts.

b. Highlight some of the causes and effects of corruption giving examples where necessary.

c. Critically analyse the provisions in Zambian statutes such as the Penal Code\textsuperscript{25}, the Prohibition and Prevention of Money Laundering Act\textsuperscript{26} and the Anti Corruption Commission Act\textsuperscript{27} to mention a few, highlighting the provisions which are of significance and bringing to the fore the matters concerning corruption which the statutes are silent on. This will involve delving into the provisions of similar Acts in jurisdictions such as Australia, Nigeria and the United Kingdom.

d. Highlight the provisions of the newly formulated Zambia National Anti-Corruption Policy.

e. Look at the various institutional mechanisms designed to encourage transparency and prevent corruption in an attempt to establish their effectiveness. These include the Anti-Corruption Commission (ACC), the Office of the Director of Public Prosecutions, the Auditor General's Office and the Office of the Investigator General.

f. Consider the possibility of civil law remedies being made available alongside criminal sanctions being imposed in cases of maladministration. In connection to this, discuss the case law available in this area from jurisdictions such as the United Kingdom and Canada. Furthermore, assess the manner in which the Zambian courts have approached crimes involving corruption using examples.

g. Reach a conclusion wherein recommendations shall be made.

\textsuperscript{24} U. Myint, 'Corruption: Causes, Consequences and Cures' p 35.
\textsuperscript{25} Cap 87 of the Laws of Zambia.
\textsuperscript{26} Act No. 14 of 2001.
\textsuperscript{27} Chapter 91 of the Laws of Zambia.
1.5 **Research Questions**

1. Is Zambian legislation adequate to address the complex nature of corruption? And if so, to what extent? For instance, does it contain provisions for all the globally recognised categories of corrupt practices to ensure effective prosecution?

2. Has civil law been employed in Zambia to combat corruption? And if not is it possible to develop civil law remedies to address the problems caused by corruption? Furthermore, how has civil law been used in jurisdictions such as England and Canada in cases involving abuse of authority in the public service?

3. What are the challenges (actual or perceived) associated with the proper enforcement of the legal provisions in place?

4. Do the institutions charged with the responsibility of *inter alia* investigating and prosecuting corruption run effectively and consequently compliment the legislative framework in place?

1.6 **Research Methodology**

This paper will use both primary and secondary information. The former will involve conducting interviews with people who have experience in the area of corruption so as to ascertain the nature of the challenges the Zambian system designed to combat corruption is faces in effectively carrying out the objective of eradication of corruption and how these challenges can be overcome. On the other hand, the latter source of information will include the analysis of the available and relevant case law, paper presentations, articles, obligatory essays, books and any reports by mandated bodies which have been published.

1.7 **Outline of Chapters**

**Chapter One**

This chapter sets the scene for the research; it outlines the various definitions of corruption so as to provide an understanding of the nature of the offence.
Chapter Two

Chapter two highlights the pertinent legislative provisions in the various Acts of Parliament relating to corruption; that is, the Anti Corruption Commission Act\textsuperscript{28}, the Penal Code Act\textsuperscript{29}, the Parliamentary and Ministerial Code of Conduct Act\textsuperscript{30}, the Commission for Investigations Act\textsuperscript{31} and the Public Interest Disclosure (Protection of Whistleblowers) Act\textsuperscript{32}. In addition, the chapter draws attention to the provisions of similar legislation in jurisdictions such as Russia, the United States of America in an attempt to reveal provisions which are present in such legislation which are not addressed by Zambian legislation. Furthermore, the Chapter looks at the National Anti-Corruption Policy and its areas of application.

Chapter Three

The study in this chapter evaluates the institutional framework designed to combat corruption; in pursuance of this objective, this Chapter examines institutions such as the Anti Corruption Commission, the Office of the Director of Public Prosecutions, the Auditor General's Office and the Office of the Investigator General. The purpose of the chapter is to therefore reveal the whether such institutions are operating in a manner which adequately compliments the legislative framework aforementioned.

Chapter Four

The focus of this chapter is the role which the courts have played and continue to play in the fight against corruption. The essence of the chapter is to reveal whether the approach taken by the Zambian courts has been effective in ensuring that corrupt practices do not go unpunished. This chapter consequently consists of a Zambian case study on corruption. In addition to this, the chapter dwells on the possibility of employing civil law in the fight against corruption in Zambia. It explores the use of the tort of misfeasance in public office in an action to obtain redress for loss suffered due to the illegal acts of public officers. In order

\textsuperscript{28} Chapter 91 of the Laws of Zambia.
\textsuperscript{29} Chapter 87 of the Laws of Zambia.
\textsuperscript{30} Chapter 16 of the Laws of Zambia.
\textsuperscript{31} Chapter 39 of the Laws of Zambia.
\textsuperscript{32} No. 4 of 2010.
that this is achieved, the chapter highlights the use of civil law remedies in corruption cases by jurisdictions such as England and Canada.

Chapter Five

This chapter provides a conclusion and recommendations.
CHAPTER TWO

AN APPRAISAL OF THE LEGISLATIVE FRAMEWORK DESIGNED TO
COMBAT CORRUPTION IN ZAMIBIA.

2.0 Introduction

The crux of this chapter lies in the legislative framework in place in Zambia containing
pertinent provisions with regard to the fight against corruption. The question to be addressed
in this part is whether the legislative framework is sufficient in fighting the alarming levels of
corruption.

2.1 The Anti-Corruption Commission Act

This Act is the principle piece of legislation dealing with corruption in Zambia; it repealed
the Corrupt Practices Act of 1980 and arguably, the provisions of this Act override any
provisions relating to corruption in the Penal Code, the Criminal Procedure Code or any
other legislation where there is a conflict. It is worth noting that the Act does not use the
word bribery but consistently refers to the term corruption.

Section 3 of the Act defines the word as meaning the soliciting, accepting, obtaining, giving,
promising or offering of a gratification by way of a bribe or other personal temptation or
inducement, or the misuse or abuse of a public office for a private advantage or benefit.
Therefore the practice of corruption is constituted where; any person who by himself or in
conjunction with any other persons gives, promises or offers any gratification to a public
officer for the benefit of that public officer or of any other public officer 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 maybe concerned.

This provision is interpreted as catering for both natural and juristic persons. It catches in its
grasp all accessories to the crime. However, practice is that the individuals participating in

33 Chapter 91 of the Laws of Zambia.
35 Transparency International Zambia, ‘Combating Corruption in Zambia: A Review of the Laws and the
36 This is as per Section 29 of the Act.
the crime as opposed to the company they may use to do so are indicted\textsuperscript{38}. The term ‘Public Officer’ refers to any person who is a member of, or holds office in, or is employed the service of a public body whether such membership, office or employment is permanent, whole or part time, paid or unpaid. A ‘Public Body’ on the other hand means the Government of Zambia, any Ministry or department of the Government, a local authority, parastatal board, council, authority, commission or other body appointed by the Government or established by or under any written law\textsuperscript{39}.

Furthermore, construction of the provision illustrates that a public officer will not escape liability for the simple reason that he or she was only a conduit to deliver the illegal inducement or reward to another public officer. Liability therefore attaches to a public officer even for the act of facilitating the inducement or reward on behalf of another public officer\textsuperscript{40}.

The term ‘gratification’ is defined in Section 3\textsuperscript{41} of the Act as including any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favor of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than a casual gift.

The aforementioned section also defines the term ‘casual gift’ as any conventional hospitality on a modest scale or unsolicited gift of modest value offered to a person in recognition or appreciation of that person’s services, or as a gesture of goodwill towards that person and includes any inexpensive seasonal gift offered to staff or associates by public and private bodies or private individuals on festive or other special occasions, which is not in any way connected with the performance of a person’s official duty so as to constitutes an offence\textsuperscript{42}.

Part IV of the Act is extremely significant to the purpose of the Act as it contains the various offences related to corruption which one can be held liable under and prescribes the penalty

\textsuperscript{38} H.E. Moyer, ‘Anti-Corruption Regulation in 40 Jurisdictions Worldwide’ p 218.

\textsuperscript{39} Section 3 of the Anti-Corruption Commission Act, Chapter 91 of the Laws of Zambia.

\textsuperscript{40} H.E. Moyer, ‘Anti-Corruption Regulation in 40 Jurisdictions Worldwide’ p 219.

\textsuperscript{41} The Anti-Corruption Commission Act, Chapter 91 of the Laws of Zambia.

\textsuperscript{42} While the legislation referred to clearly defines what amounts to a casual gift, it does not provide specific monetary thresholds which are acceptable and can fall within the definition of a casual gift. However, it is worth noting that the test for determining whether such a gift amounts only to a casual gift appears to be whether the said gift or gratification amounts to an inducement to do or not do something.
for such offences. The offences contained in this part of the Act (except that of corrupt practices explained above) are outlined below;

Section 30 (1) and (2) proscribes the corrupt use of official powers while section 31 (1) and (2) prohibits corrupt transactions by or with private bodies. Section 32 (1) and (2) is also couched in a similar fashion; under this provision, corrupt transactions by or with agents is proscribed. Section 33 (1) and (2) makes corruption of members of public bodies with regard to meeting illegal. The offence under this section is especially concerned with voting or abstaining from voting at meetings, especially those which have a significant bearing on the awarding of contracts or tenders. Other pertinent offences under the this part of the Act include the offences outlined in sections 34, 35 and 36 which respectively proscribe corruption in relation to the awarding of contracts, the awarding of tenders and bidding at auction sales.

The offence contained in section 37 is noteworthy not only because of its content but also because of the scrutiny it has recently been subjected to by the legal and political community and the civil society in general. Section 37 deals with the possession of unexplained property. The thrust of the provision is that any public officer is amenable to investigation where the Director General ("the DG") of the Anti-Corruption Commission (the "ACC") has reasonable grounds to believe that such public officer;

Has abused or misused his office, position or authority to obtain property, wealth, advantage or profit directly or indirectly for himself or any other person; maintains a standard of living above that which is commensurate with his present or past official emoluments; is in control or in possession of pecuniary resources or property disproportionate to his present or past official emoluments; or is 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.

This provision has been subject to unending debate and scrutiny, consequently, it is currently being considered for repeal. This is due to the fact that this section shifts the burden of proof to the accused such that he/she has to prove or disprove particular facts to the court. Failure to discharge this burden leads to conviction for the offence. It has therefore been argued by

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43 Section 37(2).
many, for instance the current Director of Public Prosecutions (the "DPP") and Attorney General (the "AG") that this shifting of the burden of proof from the prosecution to the defence is unconstitutional. The Constitution is supreme over all legislation and the fact that it provides for the applicability of the presumption of innocence and the right of an accused person to remain silent appears to justify the removal of the clause. Parliament in light of these arguments is considering the removal of the clause from the Act.

It is worth noting that this action has received a lot of negative responses from various stakeholders who are of the opinion that there is nothing wrong with asking persons employed in the public service to explain how they acquired their wealth. In addition, other arguments have been raised which are to the effect that since the Constitution itself provides an exception to the general rule that the burden of proof lies with the prosecution, there is nothing unconstitutional about section 37 of the Anti-Corruption Commission Act requiring the accused person to prove particular facts.

The exception provided by the Constitution is found in Article 18 (12). Examples of other laws which shift the burden of proof to the accused are not being challenged include section 319 (a) of the Penal Code which deals with the offence of possession of property which suspected to have been stolen and the Immigration and Deportation Act in section 51 which places the burden on the immigrant to prove that he or she is in the country lawfully by way of producing documentation to that effect. In light of the above provisions, others have argued that the proposed removal of section 37 of the Anti-Corruption Commission Act is politically motivated.

Another interesting point to note is that the Act has extra-territorial jurisdiction. Section 61 stipulates that in relation to a public officer, a Zambian citizen or resident, the Act has effect

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45 The provisions relating to the secure protection of the law are to be found in Article 18 (2) (a) and (7) of the Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia.
48 The Penal Code, Chapter 87 of the Laws of Zambia.
49 Act No. 18 of 2010.
within, as well as outside Zambia and notwithstanding where any offence is committed by such a person, he may be dealt with in respect of such offence as if it had been committed within Zambia.

2.2 The Penal Code

Before the enactment of the Anti-Corruption Act and its predecessor, the Corrupt Practices Act, the provisions in the penal code relating to corruption where the only ones which could be used to prosecute persons accused of practicing corruption. Despite the enactment of the Anti-Corruption Commission Act, the provisions relating to corruption in the penal code have not been done away with.

The penal code has wide applicability, but for current purposes, the crime of abuse of office is of greater interest. Section 99 of the code stipulates that any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights or interests of the Government or any other person, is guilty of a misdemeanor. If the act is done or directed to be done for purposes of gain, he is guilty of a felony. Generally, any person convicted of a crime under this part of the Act is guilty of a misdemeanor. This entails therefore that the punishment imputable to such an offender excludes death or imprisonment with hard labor for more than 3 years.

The abuse of office provision in this part of the Act can be applicable to an offence committed under section 37 of the Ant-Corruption Commission Act discussed above. However it is worth noting that the clause in the latter Act carries a stiffer penalty as opposed to the one contained in the former. This can be said to be one of the reasons for the vigorous opposition that the proposed removal of section 37 of the Ant-Corruption Act has received from various civic organizations and individuals.

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51 Chapter 87 of the Laws of Zambia.
2.3 The Parliamentary and Ministerial Code of Conduct Act

This Act was enacted to establish a code of conduct for Ministers, Deputy Ministers and Members of the National Assembly for purposes of Articles 52 and 57 of the Constitution. This Act has no definition of the term bribery or corruption; nevertheless, it does have a provision which deals with corruption under Part II. Furthermore, the Act in section 19 stipulates that nothing in the Act shall have the effect of limiting or derogating from the Anti-Corruption Commission Act or any other written law.

The most pertinent provision for the purposes of the current study is section 4 which prohibits any Member knowingly acquiring any significant pecuniary advantage, or assisting the acquisition of pecuniary advantage by another person, by inter alia improperly using or benefitting from information which is obtained in the course of official duties which is not generally available to the public; exerting any improper influence in the appointment, promotion, or disciplining or removal of a public officer; directly or indirectly converting Government property for personal or any other unauthorized use; or soliciting or accepting transfers of economic benefit (except benefits of nominal value, including customary hospitality and token gifts; gifts from close family members; or transfers pursuant to an enforceable property right of the Member or pursuant to a contract for which full value is given).

Any allegation of breach of Part II (wherein section 4 is contained) is referred to an ad hoc tribunal by the Chief Justice. The tribunal then investigates the allegations and publishes a report. In this report, the tribunal may make such recommendations as to administrative actions, criminal prosecutions or other further actions to be taken as it thinks fit. An example were such a tribunal has been constituted would be the case concerning the former Minister of Transport and Telecommunications Dora Siliya where the tribunal had the task of determining whether the said Minister had breached the provisions of the Act.

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53 Chapter 16 of the Laws of Zambia.
54 The Term ‘Member’ as used in the Act includes not only Members of Parliament but also persons holding Ministerial Office.
55 See the Case of; Dora Siliya (Femme Sole) v The AG 2009/HP/0601.
2.4 **The Public Interest Disclosure (Protection of Whistleblowers) Act**\(^{56}\)

Zambian law recognizes the significant role which informants play in the provision of information necessary for the investigation and prosecution of crimes. Notwithstanding the significance of this aspect of investigation, those who reveal certain facts to investigative bodies or commissions do so at a risk, that is, they endanger their lives or careers\(^{57}\). Consequently, this Act is intended to provide for *inter alia* the disclosure of conduct adverse to the public interest in the public and private sector and to safeguard the rights, including employment rights, of persons who make public interest disclosures and provide a framework within which persons who make a public interest disclosure can be protected\(^{58}\).

The relationship that this Act has with other Acts is noteworthy. Section 9 of the Act provides that this Act prevails to the extent of any inconsistency over the provisions of any investigation Act. An Investigation Act is defined in section 3 as *inter alia* the Judicial Code of Conduct Act\(^{59}\) and the Anti-Corruption Commission Act\(^{60}\). The Act further defines a disclosure under the same section as any communication or release of information regarding any disclosable conduct of any person, a public officer or employer made by an employee or any person who has reason to believe that the information shows either that a criminal offence has been committed, that a miscarriage of justice has occurred, that the health or safety of any person or the environment has been endangered or that any of the aforementioned matters is being deliberately concealed.

Section 26 of the Act is also noteworthy as it affords protection to persons making disclosures of information to the Anti-Corruption Commission which tends to show that a government agency or another public officer has engaged, is engaged or intends to engage in corrupt conduct.

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\(^{56}\) Act No. 4 of 2010.


\(^{58}\) See; the preamble of the Public Interest Disclosure (Protection of Whistleblowers) Act No. 4 of 2010.

\(^{59}\) Act No. 13 of 1999.

\(^{60}\) Chapter 91 of the Laws of Zambia.
2.5 The Efficacy of the Legislation

The pieces of legislation discussed above include some of the most pertinent in addressing corruption in Zambia. However what still remains to be determined following a consideration of the provisions aforementioned is whether this legislation is adequate and comprehensive enough to deal with the issues arising from corrupt practices. This is done below;

Currently, no national laws or regulations exist in Zambia that prohibit the bribery of foreign public officials. While these provisions can be found in the Southern African Development Community Protocol Against Corruption\(^{61}\) and the United Nations International Convention Against Corruption\(^{62}\) which Zambia has ratified, they are non justiciable before the Zambian courts because they have not been domesticated by the Zambian Parliament\(^{63}\). The lack of legislation to govern bribery of foreign public officials is worrying considering the fact that Zambia is a host of a large number of officers or employees of foreign governments, their departments or instrumentalities and also of public international bodies such as the World Bank\(^{64}\). The consequence is therefore that in cases where bribery of a foreign public official is concerned, certain provisions will not be applicable to them. For instance, under the ACC Act and the Penal Code, the definition of a public officer does not include such persons, consequently, they cannot properly be brought before a court of law to answer to allegations of corruption.

It is also worth noting that the current legislative framework does not provide for travel and entertainment restrictions or gift and entertainment guidelines. While the law as aforementioned defines what a casual gift is, it does not outline with precision the nature and amount of such gifts as in other jurisdictions. For instance, the Russian Civil Code\(^{65}\) prohibits gifts to officials of more than 5 minimum wages, that is, 500 Rubles. It would be desirable to

\(^{61}\) See; Article 6 of the Southern African Development Community Protocol Against Corruption (2001) which requires state parties to prohibit and punish acts of corruption relating to an official of a foreign state.

\(^{62}\) See; Article 16 of the United Nations Convention Against Corruption (2004) which requires state parties to put in place measures, legislative and otherwise, to proscribe the corruption of Foreign Public Officials and Officials of Public International Organisations.


\(^{64}\) Jurisdictions such as the United States of America define foreign public officials as any officer or employee of or any person acting in any official capacity for or on behalf of a foreign government or any department, agency or instrumentality thereof or of a public international organization. This is according to the Foreign Corrupt Practices Act of 1977.

have more specific limitations on what can be deemed as hospitality and consequently, what can be termed as hospitality amounting to a bribe.

2.6 Conclusion

From the foregoing, Zambian legislation concerning the prohibition of corruption while being comprehensive does not grasp all the categories of corruption which exist. This is undesirable because corruption is a multi dimensional crime which needs comprehensive laws to effectively deal with it. All types of corruption, that is, extortion, fraud, embezzlement, influence peddling, cronyism and the more common appropriation of public assets and property for private use therefore to be addressed. It is however worth noting that in reality, corruption by its nature cannot be combated using legislation alone; institutions charged with the responsibility of fighting the scourge of corruption should also be effective and efficient enough to discharge this role. This area of the subject is however addressed in the subsequent chapter.
CHAPTER THREE.
AN APPRAISAL OF THE INSTITUTIONAL FRAMEWORK DESIGNED TO COMBAT CORRUPTION IN ZAMBIA.

3.0 Introduction
Having discussed the legal framework prevailing to combat corruption, it is necessary to examine the institutional framework that exists to implement the laws established. In pursuance of this objective, the Chapter will examine the operations of law enforcement institutions such as the Anti Corruption Commission, the Drug Enforcement Commission and the Office of the Director of Public Prosecutions. The Chapter will additionally review the workings of oversight institutions such as the Auditor Generals Office, the Public Accounts Committee and the Commission for Investigations. The purpose of the chapter is to therefore reveal whether such institutions are operating in a manner which adequately reflects and complements the legislative framework discussed in the preceding chapter.

3.1 The Anti-Corruption Commission (ACC)
The Anti-Corruption Commission (ACC) is the main institution established to spearhead the fight against corruption. The ACC derives its legal basis for existence from Part II of the Anti-Corruption Commission Act. The Act provides that the functions of the Commission are to inter alia: prevent and take necessary and effective measures for the prevention of corruption in public and private bodies; receive and investigate complaints of alleged or suspected corrupt practices, and subject to the directions of the Director of Public Prosecutions, to prosecute those suspected of involvement in corruption; investigate any conduct of any public officer which in the opinion of the ACC maybe connected to with or conducive to corrupt practices; disseminate information on the socio-economic effects of corrupt practices, and enlist and foster public support against corrupt practices; and do such things as are incidental or conducive to the attainment of the functions.

The day to day operations of the ACC are carried out under the supervision of the Director General (GD) who just like the Commissioners, is appointed by the President subject to

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67 Chapter 91 of the Laws of Zambia.
ratification by the National Assembly. In addition to being the operational head responsible for management and administration of the activities of the ACC, the DG is also responsible for implementing the matters referred to him by the Commission. It is worth noting that while the DG attends all meetings of the Commission and may address such meetings, he has no vote on any matters. The DG enjoys security of tenure.

3.2 The Drug Enforcement Commission (DEC)

The Drug Enforcement Commission (DEC) was created by the Narcotic Drugs and Psychotropic Substances Act. The DEC is a department under the Ministry of Home Affairs. Primarily, the DEC is tasked to control the importation, exportation, production, possession, sale, distribution, and use of narcotic drugs and psychotropic substances. Nevertheless, the DEC has under its auspices the Anti-Money Laundering Authority and the Anti-Money Laundering Investigative Unit. The latter is an inter-agency unit which is tasked with the responsibility of combating money laundering in Zambia in accordance with the Prohibition and Prevention of Money Laundering Act.

Money laundering is defined in section 2 of this Act as;

"Engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime; receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property derived or realised directly or indirectly from illegal activity; or the retention or acquisition of property knowing that the property is derived or realised, directly or indirectly, from illegal activity."

Consequently, this entails that where property of any kind is acquired through corruption, the offence of money laundering can be imputed.

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68 Part III of the Act makes provision for the directorate of the Commission.
69 Chapter 96 of the Laws of Zambia.
3.3 The Director of Public Prosecutions (DPP)

The office of the Director of Public Prosecutions (DPP) is established under article 56 of the Constitution. Article 56 (3) stipulates the powers of the DPP and these include the mandate to:

"Institute and undertake criminal proceedings against any person before any court, other than a court-martial, in respect of any offence alleged to have been committed by that person; take over and continue any such criminal proceedings as may have been instituted or undertaken by any other person or authority; and to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or any other person or authority."

It is also worth noting that Article 56 (6) further provides that the term "proceedings" as used in sub-article (3) includes any appeal from any judgment in any criminal proceedings before any court. An example of the implications of the exercise of these powers by the DPP was clearly illustrated by the refusal by the DPP to appeal the acquittal of former head of state and government F.T.J Chiluba by the High Court in a case in which the accused was charged with various corruption-related offences. This decision while exercised within the law was questioned by various stakeholders some of whom claimed that the DPP’s decision was politically motivated and/or influenced.

The aforementioned powers vested in the DPP may be exercised by him in person or by such public officer or class of public officers as maybe specified by him, acting in accordance with his general or special instructions. Under the Constitution, it is permissible for the DPP to retain the services of private legal practitioners. The Constitution further provides that these powers should be exercised by the DPP’s office exclusively and that such exercise should not be subject to the direction or control of any other person or authority.

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74 Chapter 1 of the Laws of Zambia.
76 Article 56 (4).
77 Article 56 (4).
78 Article 56 (7).
3.4 **The Office of the Auditor General**

The Auditor General's office is established pursuant to Article 121 of the Constitution. The Auditor General is appointed by the President subject to ratification by the National Assembly. In essence, this institution monitors the expenditure of public resources with respect to the purposes for which Parliament appropriated them. It is worth noting that the mandate of this institution may also extend to any non-governmental agency receiving public funds. The Constitution stipulates that the functions of the auditor General include: ensuring that the provisions of Part X of the Constitution dealing with finance are complied with and ensuring that monies expended are not misapplied or misappropriated.

More specifically, the Public Audit Act which in part outlines some of the functions of the Auditor General provides in Section 3 that:

> "Notwithstanding the provisions of Section 16 of the Finance (Control and Management) Act, it is the duty of the Auditor-General to audit, at such times as he deems fit, the accounts of every statutory corporation or public company; every Department in which funds and working accounts are established under Section 8 of the Finance (Control and Management) Act; and every private institution which receives Government grant, subsidy or subvention in any financial year."

Consequently, in performing his duties, the Auditor General has to satisfy himself that the moneys expended by the aforementioned institutions/departments have been applied to the purpose for which they were appropriated. In pursuance of this objective, and by virtue of the same provision, the Auditor General determines the scope and extent of any examination or inspection of the accounts of any of the abovementioned institutions.

In carrying out his functions, the Auditor General is not subject to the control of any other person or authority. Notwithstanding this provision, the president may direct the Auditor General to conduct a specific audit investigation into the accounts of any statutory corporation, public company, department or private institution in the event that the President considers it desirable in the public interest; this is in accordance with Section 10 of the Act. Furthermore, Section 12 of the Act provides that the Auditor General and his staff are immune from any actions and proceedings in respect of the findings of any audit examination.

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79 Chapter 1 of the Laws of Zambia.  
80 Article 121 (2) (a) and (b).  
81 Chapter 378 of the Laws of Zambia.  
82 Section 4.  
83 Section 4(3).
or inspection carried out by the office in the exercise of his functions. The auditor General also enjoys security of tenure of office.\textsuperscript{84}

3.5 \textbf{The Public Accounts Committee (PAC)}

A perusal of the functions of the Public Accounts Committee (PAC) reveals that PAC complements the operations of the Auditor General’s Office. PAC is a sessional committee of the National Assembly which operates under the auspices of the Standing Orders of the National Assembly.\textsuperscript{85} The primary functions of PAC are to examine the financial management of accounting officers of the public service, state-owned enterprises and statutory institutions whose accounts are audited by the office of the Auditor General.\textsuperscript{86}

3.6 \textbf{The Commission for Investigations (The Office of the Investigator General)}

The office of the Investigator General (IG) is established under article 90 of the Constitution.\textsuperscript{87} The IG is appointed by the President subject to consultation with the Judicial Service Commission.\textsuperscript{88} The IG is the chairperson for the Commission for Investigations.\textsuperscript{89} In essence, this commission is charged with the responsibility of receiving and investigating complaints from the public against acts of injustice perpetrated by executive agencies of the state, parastatal companies and local authorities. In short, the commission has jurisdiction to inquire into the conduct of any person to whom the Commission for Investigations Act\textsuperscript{90} applies in the exercise of his/her office or authority.

The commission is empowered to: gather information relevant for conducting investigations; recommend corrective action to agencies; criticise improper agency action; and obtain redress for a deserving complainants.\textsuperscript{91} It is worth noting that the Commission is not empowered to reverse or compel administrative decisions.\textsuperscript{92} A perusal of the provisions of

\textsuperscript{84} Article 122(2) of the Constitution.
\textsuperscript{87} Chapter 1 of the Laws of Zambia.
\textsuperscript{88} Article 90 (1).
\textsuperscript{89} Section 2 of the Commission for Investigations Act, Chapter 39 of the Laws of Zambia.
\textsuperscript{90} Chapter 39 of the Laws of Zambia.
\textsuperscript{91} Parts III and IV of the Act.
\textsuperscript{92} This is evident upon reading Section 20 and 21 of the Act together.
the Commission for Investigations Act reveals that the jurisdiction of the commission is limited to a very large extent.

3.7 Other Oversight Institutions

3.7.1 The Police Public Complaints Authority

This authority is established under Section 57 B of the Zambia Police Act\(^3\). The powers of the authority as stipulated in Section 57 H primarily include the power to investigate all complaints referred to it by: any aggrieved person directly affected by police action; an association acting in the interests of its members; and a person acting on behalf of an aggrieved person, body or organisation.

3.7.2 The Judicial Complaints Authority

This authority is a Government institution established by the Judicial (Code of Conduct) Act\(^4\). The Code of Conduct is promulgated by Parliament pursuant to article 91 (2) of the Constitution\(^5\) which states as follows;

> “The Judges, members, magistrates and justices, as the case may be, of the courts mentioned in clause (1) shall be independent, impartial and subject only to this Constitution and the law and shall conduct themselves in accordance with a code of conduct promulgated by Parliament.”

This institution therefore enforces this code of conduct and as such is mandated to investigate allegations of misconduct against judicial officers.

3.7.3 The Public Procurement Authority (PPA)

Formerly known as the Zambia National Tender Board (ZNTB), this institution is charged with the responsibility of regulating and overseeing the procurement of goods and services for the public service, state-owned enterprises and statutory institutions. Part II of the Public Procurement Act\(^6\) outlines the functions and powers of the authority which *inter alia* include; to regulate the procurement of goods and services by procuring entities and ensure transparency and accountability in public procurement.

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\(^3\) By virtue of an amendment to Chapter 107 of the Laws of Zambia by Act No. 14 of 1999 and Act No. 15 of 2008.


\(^5\) Chapter 1 of the Laws of Zambia.

\(^6\) Act No. 12 of 2008.
The authority is self-regulatory; its operations however require that members declare their private interests in the event that such members participate in any meeting related to such interest. The disclosure is required to be recorded in the minutes of such meeting. In addition, the authority has the power to surcharge any government employee who causes financial loss due to his recklessness, misconduct or willful failure to follow procedure as stipulated in the Act with the amount of the loss being recoverable from that persons emoluments.

3.8 **Institutional Problems and Weaknesses.**

From the foregoing discussion, it is evident that the institutional machinery designed to combat corruption in Zambia is broad. Invariably, on paper, the institutions aforementioned are well equipped with the necessary powers to effectively carry out their duties. Notwithstanding this observation, some potentially negative aspects of the operations of these institutions and the legislative framework under which they operate are clearly identifiable.

3.8.1 **Excessive Executive Power and Control.**

The Zambian democracy while allowing for the existence of the legislature, judiciary and executive as the three arms of government does not ensure that all these organs operate on an equal footing with the same level of power, at least not in practice\(^97\). The Zambian system ensures instead that the Executive organ of government remains more powerful than the other two organs. The ramifications of this structure are vast and varied; the effects are felt in all sectors, including within the anti-corruption crusade\(^98\).

It has been argued that the vast and unrestrained power of the President to appoint and disappoint public officers is the basis of the dominance of the Executive over the other two organs of government\(^99\). The President is elected by universal adult suffrage and upon election is entitled to serve for a five year term\(^100\). The President is both the head of state

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\(^{100}\) Article 34(1) and 35(1) of the Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia.
and government\textsuperscript{101}; consequently the President is vested with enormous powers which are often not curtailed by proper checks and balances. It is therefore common place that executive powers are abused with impunity\textsuperscript{102}.

The President in his capacity as head of government and by virtue of the authority he possesses to appoint and disappoint constitutional office bearers wields a great deal of influence in the fight against corruption\textsuperscript{103}. The President for instance not only appoints the Director of Public Prosecutions (DPP)\textsuperscript{104} but also the Commissioners and the Director General of the Anti-Corruption Commission\textsuperscript{105}. In essence, this mode of appointment makes the independence of such individuals from the appointing authority’s influence questionable. The fact that most of these appointments have to be ratified by the National Assembly does nothing to ease the apprehension because more often than not the ruling party has great representation in the National Assembly and as a result decisions on such appointments are unsurprisingly always inclined to the choices made by the head of state\textsuperscript{106}.

A good illustration of how this affects the fight against corruption can be evidenced by the power that the DPP has to either grant or deny authorisation to the Anti Corruption Commission to carry out any investigations under the Anti Corruption Commission Act\textsuperscript{107}. In reality, the implications of this are that the Anti Corruption Commission operates within the ambit of the discretion of the DPP who in turn is heavily influenced by his appointing authority, the President. Hypothetically speaking, if the President wills that certain investigations should not be carried out by the Commission, it is possible that he may be in a position to coerce or influence the DPP by virtue of the fact that he is the appointing authority in order that the latter denies the Commission the opportunity to investigate such

\textsuperscript{101} Article 33(1) of the Constitution of Zambia, Chapter 1 of the Laws of Zambia.

\textsuperscript{102} A case in point would be the corruption scandal involving the former Republican President F.T.J Chiluba; See Transparency International Zambia, ‘Chiluba’s Acquittal Surprises TIZ and Many’ p 8.

\textsuperscript{103} For instance, as discussed above, the President appoints the DG of the ACC, the IG and the DPP etcetera.

\textsuperscript{104} Article 56 of the Constitution, Chapter 1 of the Laws of Zambia.

\textsuperscript{105} Section 7 (2) and 16 (1) of the Anti-Corruption Commission Act, Chapter 91 of the Laws of Zambia.


\textsuperscript{107} Section 46(1) of the Anti Corruption Commission Act, Chapter 91 of the Laws of Zambia.
matter\textsuperscript{108}. As discussed above, the nature of corruption related offences require that no such loopholes should exist; the persons fighting this crime should be as independent as possible from any political pressure or influence.

Oversight bodies in other jurisdictions combating corruption have been found to have done a good job; For example, the Independent Commission Against Corruption in Hong Kong, China, and similar institutions in Botswana, Chile, Malaysia and Singapore\textsuperscript{109}. The prevailing view is that for such bodies to be effective, they have to be created in a political atmosphere where leaders are honest, civil servants are insulated from political interference\textsuperscript{110}, and better incentives are provided to discourage corruption\textsuperscript{111}. Otherwise, the oversight bodies will be rendered useless or worse, misused for political gain\textsuperscript{112}.

The Executive’s influence extends not only to the appointment of constitutional office bearers such as the DPP; it is worth noting that even the judiciary which is the custodian of justice has not escaped its influence\textsuperscript{113}. The fact that the judiciary is not completely delinked from the Ministry of Justice raises a presumption of lack of independence from the Executive primarily because the Ministry of Justice is headed by the Minister of Justice who ultimately is appointed by the President and is part of cabinet. Ensuring that the Minister of Justice has no control over the affairs of the Judiciary is seen as being desirable in enhancing the independence of the Judiciary\textsuperscript{114}.

3.8.2 Weak Systems of Enforcement

The institutions aforementioned all seem to have a common thread; while the legislation they operate under gives them enough power to review and investigate seemingly corrupt behavior and decisions, it also claws-back most of that power vis-à-vis enforcement. The

\textsuperscript{108} A similar situation arose when the DPP refused to appeal the High Court’s decision to acquit Former President F. T. J. Chiluba of various corruption related offences despite the overwhelming public desire that the matter be taken to the Supreme Court. See; F. Mmembe, ‘DPP’s Compromise Will Have Political Costs’. The Post Newspaper, 4\textsuperscript{th} January 2010. http://www.postzambia.com/post-print_article.php?articleId=3976. Accessed on 22\textsuperscript{nd} March, 2011.
\textsuperscript{109} U. Myint, ‘Corruption: Causes, Consequences and Cures’ p 56.
\textsuperscript{110} Emphasis added.
\textsuperscript{111} U. Myint, ‘Corruption: Causes, Consequences and Cures’ p 56.
most pertinent example of this is the Investigator Generals office\textsuperscript{115} which operates under the aegis of the Commission for Investigations Act\textsuperscript{116}. Following an illustration of its operations above, it becomes abundantly clear that this institution is in effect ‘toothless’ and as such its objectives are rarely if ever met.

The Commission has broad powers of investigation in any matter of individual injustice or administrative abuse of power or authority. It may involve corruption, nepotism, tribalism, intimidation and all other forms of discrimination taken by or on behalf of any department or Ministry of government, any statutory corporation set up entirely or partly out of public funds voted by Parliament, including institutions of higher learning\textsuperscript{117}. The powers as earlier discussed extend to any member of the public service, security forces, organizations within the Republic and any person for any action taken in the exercise of the administrative functions of that department, Ministry, corporation, authority or organization.

An evaluation of the Commission raises questions as to whether the Commission was created in order to satisfy external political pressure or whether it was genuinely created for the purpose of regulating administrative actions. First and foremost, the Commission is largely unknown by members of the public because it has conveniently and effectively stayed out of the public eye\textsuperscript{118}. Indirectly this can be seen as a denial of access to justice to members of the public.

Secondly, the Commission is seriously incapacitated because it cannot move on its own motion; the need to have Presidential consent before taking action by itself and in itself leaves the Commission ‘crippled’\textsuperscript{119}. What this illustrates is merely the fact that the Commission can only pursue matters approved by the Executive. The fact that the Commission has to conduct its investigations in camera\textsuperscript{120} is also another constraint as it defeats the whole purpose of accountability and transparency. Questions can be raised as to

\textsuperscript{115} The operation of this Institution has been highlighted above.
\textsuperscript{116} The Commission for Investigations Act, Chapter 39 of the Laws of Zambia.
\textsuperscript{117} Section 3.
\textsuperscript{119} Section 8 (a).
whether the need to ‘protect’ would be witnesses and complainants from public scrutiny is greater than the need to publicly bring to the fore cases of corruption or maladministration.

Furthermore, the fact that a complainant cannot obtain remedy from the Commission if he/she can have his complaint addressed by an administrative body, tribunal or the court is rather unrealistic. The Commission itself was created in order that certain matters were dealt with which could not be entertained by the court or any other institution in an expedient and cost effective fashion. The requirement that complainants should resort to administrative channels defeats the whole reason behind the creation of the Commission.

Finally, the most obvious weakness of the Commission is that it has no power to order remedies once the substance of the Complaint has been established. The Commission can only submit a report to the President wherein it can make conclusions and recommendations. The President is under no obligation to act on the recommendations upon receiving the report; he is clothed with discretion to act as he deems fit.

From the foregoing, the weaknesses of the Commission are clearly evident. Other jurisdictions such as Namibia have a highly developed Ombudsman’s office with stronger remedial powers. The office is allowed to refer matters to the Prosecutor General or the Auditor General. Further, it can bring court proceedings to halt or alter offending action or prohibit its enforcement by challenging the validity of laws which are used to justify such conduct. The Namibian Constitution further gives the office discretionary powers to provide legal assistance and advice to persons engaging in litigation in order that their constitutionally upheld rights should be ensured. This unusual feature recognizes that

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121 See Section 10 (1).
124 This is as per section 21 of the Commission for Investigations Act, Chapter 39 of the Laws of Zambia.
many Namibians do not have access to justice because of lack of resources, the lack of a legal aid programme and the shortage of trained lawyers\textsuperscript{127}.

3.9 \textbf{Conclusion}

From the foregoing, it is evident that the institutional framework designed to combat corruption in Zambia while good on paper invariably lacks proper powers of enforcement thus defeating the whole purpose of investigation and/or inquiry. Furthermore, the National Anti-Corruption Policy rightly recognizes that this institutional framework lacks well coordinated approaches to the fight against corruption, that transparency and accountability in the exercise of public authority has not been enhanced, that bureaucratic and complex procedures in public service delivery have not been adequately streamlined, that human, financial and material resources in these institutions are not adequate, that public service employees are not well motivated and finally that anti-corruption interventions are not mainstreamed. The foregoing illustrates that more needs to be done to ensure that these institutions are effective and efficient in fighting all forms of corruption, especially considering the negative effect corruption has on economic growth and equitable distribution of resources.

CHAPTER FOUR

THE ROLE THE ZAMBIAN JUDICIARY HAS PLAYED IN THE FIGHT AGAINST CORRUPTION AND THE POSSIBILITY OF OBTAINING PRIVATE REMEDIES FOR CORRUPT PRACTICES BY PUBLIC OFFICIALS IN ZAMBIA.

4.0 Introduction

Invariably, when systems designed to fight corruption are appraised and found wanting, the most common factor attributed to the failures in such systems relate to legislative loopholes. However a closer look may reveal other factors such as the lack of political will to fight corruption, tolerance and acceptance of a culture of zero accountability and also failure by the judiciary to remain independent from political considerations and persuasions. In this regard, this chapter is aimed at assessing how the Zambian judiciary has responded to the need to eradicate the Zambian society of vices associated with the abuse of power. This chapter therefore focuses on some notable moments in the Zambian anti-corruption crusade from the vantage point of the Zambian courts. In order to achieve this, it is necessary that the social, political and economic changes Zambia has experienced are highlighted. Further, this chapter attempts to assess whether other remedies are available to persons who suffer loss as a consequence of the corrupt acts perpetrated by public officers. The assessment will use jurisdictions such as the United Kingdom and Canada to illustrate how such private law remedies can be sought.

4.1 The Role of the Judiciary in the Fight against Corruption

Effective prosecution of corruption cases cannot be achieved without an effective and competent judicial system that functions efficiently, independently and impartially. The judiciary therefore plays a very significant role in ensuring that corruption-related cases are dealt with and that people do not engage in corrupt practices with impunity. Most initiatives supporting judicial capacity to tackle corruption seek to strengthen judicial independence and accountability through transparent appointment, promotion and

128 Interview: M. Nchito, Partner, MNB Legal Practitioners, 15th February, 2011.
130 Interview: M. Nchito, Partner, MNB Legal Practitioners, 15th February, 2011.
disciplinary procedures and the introduction of higher ethical and professional standards. In addition, as corruption cases are more likely to be effectively handled by a well-functioning judiciary with adequate resources and capacity; judicial reform programs should therefore address the inefficiencies in relation to resources and capacity, training of judges and inefficiencies vis-a-vis the handling of cases and managing of caseloads.

The Zambian experience reveals a lot of problems within the judiciary and these problems have been noted to hamper the crusade against corruption. The most notable challenges include those of capacity, resources, integrity and accountability as most developing countries. Although considered relatively independent by reliable sources such as Freedom House, the Zambian judiciary has not been spared by corruption. Lower levels of the judiciary and the supporting staff are perceived to be extremely prone to corruption and known to demand and/or accept bribes from ordinary citizens; According to the 2004 World Bank and IFC assessment of investment climate, only 64% of companies believe that the judicial system will enforce contractual and property rights in business disputes.

It is against this backdrop that the Zambian courts have been attempting to ensure that corruption is curtailed. The extent to which this objective has actually been fulfilled in Zambia’s history has been largely dependent on numerous factors, the most significant being the political regimes in place and the political will such regimes have to fight corruption. An evaluation of how Zambia’s various political regimes have influenced the effectiveness of the fight against corruption by the judiciary is done below.

Corruption has long been recognized as a serious impediment to the reduction of poverty and the promotion of economic development. This recognition becomes clearly evident when one traces the developments in Zambian legislation in the area of corruption. The first statute

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132 M. Chene, ‘Supporting Zambian Judicial Capacity to Handle Corruption Cases’.
133 M. Chene, ‘Supporting Zambian Judicial Capacity to Handle Corruption Cases’.
134 M. Chene, ‘Supporting Zambian Judicial Capacity to Handle Corruption Cases’.
comprehensively dealing with corruption was the Corrupt Practices Act of 1980\textsuperscript{138}. It is under the auspices of this Act that the Anti-Corruption Commission (ACC) was established. This Act was repealed and replaced by the Ant-Corruption Commission Act of 1996\textsuperscript{139} which is also currently headed for repeal\textsuperscript{140}. One observes that the level or pace at which corruption has been fought against over this period has however not been or perceived to be the same. Changes in the political dynamics have often revealed changes in the approach towards corruption related crimes. This is discussed below:


It was acknowledged shortly after independence that corruption was a vice that the new government would have to guard against\textsuperscript{141}. However it was felt that the criminal law would be adequate to deal with matters of corruption mainly due to the low prevalence of such crimes\textsuperscript{142}. However it was only in the second republic (1972-1991) that specific measures to address corruption outside the penal code began to be put in place. Among the measures that the government led by Dr. Kenneth Kaunda put in place was the incorporation of the leadership code into the then Republican Constitution\textsuperscript{143}. This was coupled with a revision to the UNIP party constitution so as to make it possible for disciplinary measures to be taken against those who abused their official powers in order to obtain personal gain. Party officials were proscribed from using their official positions for personal or private gain\textsuperscript{144}.

By the late 1970’s, it had become apparent that the police and the penal code were not sufficient to deal with the scourge of corruption\textsuperscript{145}. It was also a worldwide realization that

\begin{itemize}
  \item \textsuperscript{138} Act No. 14 of 1980.
  \item \textsuperscript{139} Chapter 91 of the Laws of Zambia.
  \item \textsuperscript{140} A National Anti-Corruption Bill intended to repeal and replace the 1996 Act is currently being debated by Parliament.
  \item \textsuperscript{145} C.R. Matenga, ‘Corruption: Is It Endemic in Zambia?’ p 6.
\end{itemize}
the police and the criminal justice system of which the police were part was highly susceptible to corruption thus the incapacity and unwillingness of persons in the system to play a more effective and proactive role in combating corruption\textsuperscript{146}. Certain measures were employed to fight corruption at this stage. Examples include the creation of the Special Investigations Team on Economy and Trade (SITET)\textsuperscript{147}.

The Government sought to introduce legislation to address corruption specifically\textsuperscript{148}. In 1980, the Corrupt Practices Act (CPA) was enacted to fulfill this objective. Prior to this enactment, provisions in legislation relating to corruption was scattered along a broad spectrum of law and did not cover all forms of corruption\textsuperscript{149}. For instance, there were no provisions relating to proscribing corruption in tender procedures, auction sales and voting at meetings\textsuperscript{150}. The formulation of corruption charges under the old regime before the CPA was a challenging process and as such it was not uncommon for the courts to feel compelled to acquit an accused person on account of their being improperly charged\textsuperscript{151}. Compounding the situation was the lack of transparency and accountability on the part of the government which was a direct consequence of the one-party rule in the country at that time\textsuperscript{152}.

4.1.2 The Return to Multi-Party Politics

Following countrywide strikes, demonstrations and mass civil disobedience, Zambia returned to multi-party politics in 1991\textsuperscript{153}. This was after Dr. F.T.J Chiluba stood to be elected as Zambian President and was victorious in a landslide election. What followed was


\textsuperscript{147} As its name suggests, the institution was designed to investigate economic crime in the country. SITET therefore was concerned with issues of money laundering, illegal foreign currency dealings, smuggling, hoarding of commodities etc. Economic liberalization followed by the MMD government since 1991 invalidated most of the SITET functions. It was, therefore, abolished in 1992.


an immediate change of ideology; the new government being the antithesis of the Kaunda regime sought to liberalize the economy at all costs\textsuperscript{154}. Mass privatization of formerly state owned enterprises and businesses became commonplace\textsuperscript{155}. This move was aimed at ensuring that a free trade economy was encouraged especially considering the fact that world thought was now more capitalist than communist.

Various policies were put in place to ensure that Zambia fit into the international scheme of things. One such policy was the Structural Adjustment Programmes (SAPS) which were sanctioned by the International Monetary Fund (IMF)\textsuperscript{156}. This drastic shift did not, as expected, do wonders for the economy. The changes encouraged foreign investment and attracted foreign aid and loans from institutions such as the IMF on the one hand but they also ensured that Zambia remained in heavy debt, inflation rose to an alarming rate and thousands of people suffered job losses\textsuperscript{157}. Corruption was on the rise and invariably went unpunished. In 1996, following the major amendments to the Constitution, the Anti-Corruption Commission Act\textsuperscript{158} was enacted to repeal and replace the CPA of 1980.

Authors have observed that Chiluba’s reign was characterized by maladministration practiced with impunity. A large amount of the monies realized from the various privatizations of that time is said to have disappeared without a trace\textsuperscript{159}. A British Broadcasting Corporation (BBC) News Report in 2007 noted that a large part of Zambia’s problems ought to be blamed on the former President because;

\begin{quote}
“he often seemed more interested in securing his own position, than in improving the lot of his people”\textsuperscript{160}.
\end{quote}

\textsuperscript{156} M. Burdette, ‘Democracy v Economic Liberalisation: the Zambian Dilemma’ p 6.
\textsuperscript{158} Chapter 91 of the Laws of Zambia.
\textsuperscript{159} P.K.M. Sinkamba, ‘Zambia’s Political Journey to Democracy-What Next?’.
\textsuperscript{160} P.K.M. Sinkamba, ‘Zambia’s Political Journey to Democracy-What Next?’.
It has also been observed that during the reign of Dr. Chiluba, the MMD government retained ambivalence towards corruption. Various high profile politicians were investigated and/or charged for corruption related offences but very few were ever convicted. Examples include\(^{161}\),

Ephraim Chibwe, who as first Works and Supply Minister in the MMD government was investigated by the Anti-Corruption Commission for dubious importation of furniture to refurbish State House in 1992. He was dismissed but without prosecution\(^{162}\). Guy Scott as first Agriculture Minister in the MMD government was investigated by the Anti-Corruption Commission for financial irregularities in the importation of yellow maize during the 1991/92 drought\(^{163}\). The Anti-Corruption Commission report exculpated Scott. He was, however, dismissed for “other” reasons\(^{164}\). Christon Tembo as first Tourism Minister in the MMD government was also investigated for corrupt practices in the granting of Safari licenses in Game Management Areas. The Anti-Corruption Commission report exculpated him. He later went on to serve as Vice-President of the Republic\(^{165}\).

Another politician implicated in corrupt practices was Humphrey Mulemba who as first Mines Minister in the MMD government was investigated for abuse of office. He was exculpated by the Anti-Corruption Commission. He was, however, dismissed for other reasons\(^{166}\). Michael Sata as first Local Government and Housing Minister in the MMD government was investigated for Corruption and abuse of office involving a banking deal. The Anti-Corruption Commission recommended that Sata be prosecuted for those offences. However, the then Attorney-General Ali Hamir advised against prosecuting him\(^{167}\).

Ronald Penza as first MMD Commerce, Trade and Industry Minister was investigated for his involvement in the improper importation of goods by the National Import and Export Corporation (NIEC) for resale by the trading companies then falling under it. The Anti-Corruption Commission report was presented to the President in March, 1993. Penza was

also accused of unscrupulously obtaining ZK34.8m from a ZK3.6bn Japanese non-project grant aid for his company - RDS Business Machines, without paying any money up front, as demanded by the donor government. In spite of all these high level corruption allegations against Ronald Penza, he was never prosecuted nor dismissed. He later went on to serve as Finance Minister.\(^{168}\)

The cases cited above are only some of those widely publicized and documented in the press. There are plenty other corruption cases involving the top MMD government leadership. In spite of overwhelming evidence of corruption in a number of these cases, President Chiluba is said to have consistently parried charges against his leadership, challenging the public and the donor community to produce evidence of corruption among senior government officials.\(^{169}\)

2001 saw to the Dr. Chiluba led government relinquishing power to the Mwanawasa administration following the Presidential elections of that year. During Mwanawasa’s era, the anti-corruption crusade was intensified. Mwanawasa is credited with having put the fight against corruption high on Zambia’s political agenda; especially due to the creation of initiatives such as the constitution of the Task Force on Economic Plunder, the design of a corruption prevention strategy and the reinforcement of institutions such as the Auditor General and the Anti-Corruption Commission.\(^{170}\) The World Bank Governance Indicators for example indicate progress made between 2003 and 2007 on indicators of political stability, government effectiveness, regulatory quality and control of corruption.\(^{171}\) Consequently and unlike in the Chiluba led administration, the courts entertained a lot of high profile cases on corruption and convicted a good number of politicians and government officials.\(^{172}\)

The link between the political regime in place and the intensity of the efforts of the law enforcement agencies and the courts to ensure that persons charged with corruption offences are made to answer is arguably evident. This is exemplified by the various high


\(^{170}\) M. Chene, ‘Overview of Corruption in Zambia’.


\(^{172}\) M. Chene, ‘Overview of Corruption in Zambia’.
profile persons who were made to answer to the law during the implementation of Mwanawasa’s “zero tolerance of corruption” policy.173 Examples include the former Republican president Dr. Chiluba174, the former Zambia Air Force chief Lieutenant General Christopher Singogo175, former Lands Minister Gladys Nyirongo176, former Zambia National Broadcasting Corporation (ZNBC) Director General Eddie Mupeso177 and former Spokesperson for President Mwanawasa Arthur Yoyo178 to mention a few.

From the foregoing, it can be concluded that the single most important factor determining whether the Zambian courts discharge their role as custodian of justice in corruption cases is the presence of political will in the various political regimes in place. If the judiciary is independent, efficient and has the capacity to determine legal questions, the government of the day has to complement such a judiciary and thus allow for thorough investigation of such crimes. Because while the judiciary has the power and obligation to dispense justice, it relies on the state to ensure that cases are rightly brought before it.

4.2 Civil Remedies in Cases of Maladministration: Can They Be Obtained in Zambia?

From the foregoing discussion, the negative impact that corruption has on economic development cannot not be overemphasized. It is then obvious that the corrupt practices of public officials may adversely affect specific individuals or classes of them economically.179 This realization has slowly led to the development of the tort of misfeasance in public office


176 The former Minister was fired by Mwanawasa in light of the corruption charges against her. She was convicted and sentenced to four years imprisonment with hard labor for corruption. See http://www.maravi.blogspot.com/2009/02/lu sakatimes-gladys-nyirongo-sent-to.html. Accessed on 10th January, 2011.

177 The former Director General was charged with abuse of office in relation to an award of a computer supply contract for ZNBC. See http://www.fordham.edu/economics/vinod/cie/%5Czambia.htm Accessed on 10th January, 2011.


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177 The former Director General was charged with abuse of office in relation to an award of a computer supply contract for ZNBC. See http://www.fordham.edu/economics/vinod/cie/%5Czambia.htm Accessed on 10th January, 2011.
in various other jurisdictions such as Canada and the United Kingdom (UK). Since there is no record of the tort being employed in Zambia, the chapter in this segment aims at shedding some light on the possibility of obtaining redress using private as opposed to public law in cases of maladministration in Zambia. This is done below.

4.2.1 Misfeasance in Public Office: Brief Background

This tort can be traced to as early as the 17th Century in the UK with cases such as Turner v Sterling\(^{180}\) and Ashby v White\(^{181}\) wherein the view ultimately prevailed that an action could lie by an elector who was willfully denied a right to vote by a returning officer. In the 19th Century, some cases such as that of Davies v Bromley Corporation\(^{182}\) denied the existence of the tort. However in 1981, the Privy Council described the tort as "well established"\(^ {183}\). In Canada, it has been observed that the tort of misfeasance in public office has been on the Canadian jurisprudential radar screen since at least the late 1950's. However, because of changes in the law in the past decade that have expanded the scope of the tort, and corresponding limitations placed on the liability of public authorities for negligence, there has been a virtual explosion of cases on the topic in recent years\(^ {184}\). One of the earliest and clearer Canadian cases on the matter is the case of Roncarelli v Duplessis\(^ {185}\) in the late 1950's. However more recent cases such as the case of Odhavji Estate v Woodhouse\(^ {186}\) have been decided by the Canadian Supreme Court on the matter.

A more recent House of Lords decision has however confirmed the existence of the tort and has provided clarity as to the requirements of the tort. The case is that of Three Rivers District Council & Others v The Bank of England\(^ {187}\) which was cited with approval by the Canadian Supreme Court in the Odhavji Estate Case. The Three Rivers Case is pivotal as it delimits the tort to a specific category of cases. It establishes inter alia that the tort is not an alternative method of obtaining relief for losses suffered due to breach of statutory duty as

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\(^{180}\) (1671) 2 Vent. 24.  
\(^{181}\) (1703) as reported in Smith's Leading Cases (13th Edition) p 253.  
\(^{182}\) (1908) 1 K.B 170.  
\(^{183}\) See Dunlop v Woolhara Municipal Council (1982) A.C 158 at 172F.  
\(^{185}\) (1959) S.C.R. 121.  
judicial review is sufficient in such instances\textsuperscript{188}. The availability of this tort is explained as being one of the reasons that an action in negligence could not be sustained where there is an act of maladministration\textsuperscript{189}. The House of Lords further establishes in this case that the tort is an exception to the general rule of law that;

"if conduct is presumptively unlawful, a good motive will not exonerate the defendant and that if conduct is lawful apart from motive, a bad motive will not make him liable"\textsuperscript{190}.

The rationale for the tort is that in a legal system based on the rule of law, executive or administrative power may be exercised only for the public good and not for ulterior or improper purposes\textsuperscript{191}. It is also worth noting that this tort has been recognized as bearing some resemblance to the common law crime of misconduct in public office in England as was illustrated by the case of \textit{R v Bowden}\textsuperscript{192}.

4.2.2 The Elements of the Tort: the Three Rivers Case

The \textit{Three Rivers Case} was an action in misfeasance in public office and community law. The investors in the Bank of Credit and Commerce International (BCCI) sued the Bank of England for failing to shut down BCCI before the Bank failed through fraud by its officers. The Bank of England owed the claimants no private law duty of care in carrying out its public law function, so the investors tried misfeasance. The House of Lords held that liability for misfeasance in public office could arise if the defendant exercised public power for improper motives or if the defendant acted beyond its powers and in the knowledge that such actions would probably result in injury to the plaintiff. Reckless indifference as to its powers and as to harm to the claimant was sufficient for the tort. On a motion to strike out the claim, the claimants were successful in the House of Lords\textsuperscript{193}.

\textsuperscript{188} See also Davies v Radcliffe (1990) 1 W.L.R 821 (PC).
\textsuperscript{189} See also Calveley v Chief Constable of the Merseyside Police (1989) A.C 1228 at 1238F.
\textsuperscript{190} This general rule of law was laid down in the case of Bradford Corporation v Pickles (1895) A.C 587 and Allen v Flood (1898) A.C 1.
\textsuperscript{191} This is as per Nourse L.J in the case of Jones v Swansea City Council (1990) 1 W.L.R 54, 85F.
\textsuperscript{192} (1996) 1 W.L.R 98.
\textsuperscript{193} It is worth noting that although the House of Lords would not strike out the claim, it was doomed by the complete implausibility that the investors would ever be able to show that the officers of the Bank of England had not merely acted carelessly but dishonestly in failing to stop BCCI from defrauding its customers. Lord Millet's dissenting opinion was on point relating to this factor. The case went on for 13 years and it never had any prospect for success.
Misfeasance in public office is therefore employed in cases where a plaintiff is unhappy with the economic impact that a decision or action of a public authority has had on him/her. It is a means through which such plaintiff can obtain compensation for his/her economic losses.\textsuperscript{194} Lord Steyn in the \textit{Three Rivers Case} summed up the elements of the tort as follows:

The defendant must be a public officer; the defendant’s conduct must involve the exercise of power as a public officer, or the exercise of public functions; the defendant must be shown to have one of two states of mind, either targeted malice\textsuperscript{195} or acting with subjective knowledge that he has no power to do the act complained of and subjective knowledge that the act will probably injure the plaintiff/acting with subjective reckless indifference with respect to the illegality of the act and subjective reckless indifference to the outcome\textsuperscript{196}.

It is worth noting that the public officer must owe a duty to the plaintiff, which may be established by showing that the plaintiff has the right not to be damaged or injured by a deliberate abuse of power. Other tortious liability requirements such as causation\textsuperscript{197} and the rules on remoteness of damage\textsuperscript{198} have to be satisfied.

In the Zambian case, this tort has never been used by persons economically affected by the corrupt activities of public officers. The development of the tort in the previously discussed jurisdictions demonstrates that it is indeed possible to obtain civil law remedies in cases where abuse of power by a public officer causes direct economic loss to an individual. While the tort is hard to prove, there have been cases where the plaintiff has succeeded, for instance, in the \textit{Roncarielli Case}. To illustrate how this tort can be used by litigants in Zambia, a hypothetical scenario is outlined below;

\textsuperscript{195} This refers to conduct specifically intended to injure someone and includes “bad faith” in the sense of exercising public powers for an improper or ulterior motive.
\textsuperscript{197} The plaintiff must show that the defendant’s abuse of power caused him harm as a matter of fact.
\textsuperscript{198} The plaintiff must show that he has suffered damages that are not “too remote” from the defendant’s tortious act. The plaintiff must show not only that the defendant knew his act was beyond his powers, but also acted in the knowledge that his act would probably injure the plaintiff or a person of the class of which the plaintiff was a member.
The shareholders in Finance Bank Zambia Limited following the recent takeover of the said Bank by the Bank of Zambia (BOZ)\textsuperscript{199} could sustain an action against the relevant decision makers of BOZ if they can establish targeted malice against the former Chairman of the Bank Dr. Rajan Mathani by the state and in essence the decision makers in BOZ\textsuperscript{200}. This however is dependent on the shareholders proving that they have in fact suffered economic loss as a result of the takeover and that any compensation they may be awarded does not suffice. The development of this tort in Zambia will therefore depend on how litigious Zambian citizens will become in the near future and how innovative Zambian legal practitioners decide to be.

4.3 \textbf{Conclusion}

Corruption has been a proverbial thorn in Zambia’s side since independence and the judiciary in discharging its functions in the fight against corruption has often been hindered by political considerations and influences. The foregoing has illustrated that the role of the judiciary in this crusade is highly dependent on the political masters. A change in leadership has often brought about changes in the approach taken towards corruption, sometimes for the worse, other times for the better. However, the scourge is still if not even more rampant. In light of these observations, it is even more relevant to now to employ any and every means necessary to rid Zambia of corruption. Consequently, private law should be employed to ensure that perpetrators of corruption in public office are held personally accountable for their actions and relief is granted to those who suffer negative economic consequences as a result. For this reason, Zambian lawyers should put to the test the tort of misfeasance in public office and the courts should be innovative enough to apply this area of the law to appropriate cases.


\textsuperscript{200} This is possible because the employees of the BOZ while being employed under private contracts of employment are performing a public function as was the case in the Three Rivers Case.
CHAPTER FIVE.
CONCLUSION AND RECOMMENDATIONS.

5.0 Conclusion

This study has examined the legal and institutional framework which to a very large extent reveals that there is no shortage of legal and institutional machinery to combat corruption in Zambia. The major impediment is and has always been the lack of political will to fight corruption and consequently the failure to implement the law by the institutions charged with this responsibility as it ought to be implemented\textsuperscript{201}. It is one’s considered view that the fight against corruption cannot be won without the help of civil society in ensuring that public focus is brought to bear on the problem and thus compel lethargic political actors to take concrete steps to curb the spread of corruption. It is undeniable that corruption is a serious problem affecting the country in various ways; every citizen is affected by corruption either directly or indirectly by corruption. It affects broad aspects of Zambian life, from economic development to public service delivery\textsuperscript{202}.

The severity of the effects of corruption are reflected in the Transparency International Corruption Perception Index (CPI) rating of Zambia which plummeted from 52 in 1998 to 75 in 2001. This study also shows that from the time that corruption was officially acknowledged\textsuperscript{203}, various legislative and administrative changes have occurred but corruption has also become more rampant. Notwithstanding the sufficiency of the existing legal framework as demonstrated in Chapter two of the study, there are still some areas where the law can be strengthened to enhance the anti corruption crusade. One such area of the law which is available but has not been tested by Zambia’s legal system is misfeasance in public office.

\textsuperscript{201} Interview: M. Nchito, Partner, MNB Legal Practitioners, 15\textsuperscript{th} February, 2011. At MNB Legal Practitioners, Lusaka.
\textsuperscript{203} As illustrated in the preceding chapter, this was in 1980 when the Corrupt Practices Act was enacted.
5.1 **Recommendations**

Upon completion of this study, the following recommendations are made:

a. In order to make administration more transparent and open to public scrutiny, there is evidently need for freedom of information legislation. This would enable the members of the public to compel public servants to furnish them with information relating to various aspects of government administration within certain acceptable parameters excluding of course classified information and matters relating national security.

b. There is an evident need to strengthen the operations of the Anti Corruption Commission (ACC). The requirement that the ACC obtains the consent of the Director of Public Prosecution (DPP) in prosecuting corruption cases constrains the ability of the ACC to prosecute matters expeditiously. In addition, this requirement then makes prosecution of corruption offences heavily dependent on the integrity of the person holding the office of DPP. The effect of this is that it creates an opportunity for prosecution of such offences to be politically controlled or influenced especially considering that the DPP is a Presidential appointee. While it is acknowledged that both the DPP and the Director General of the ACC enjoy security of tenure, this protection is only as good as the personal integrity of the office bearer. Where the office bearer is lacking in professionalism these provisions become ineffective. Linked to the autonomy factor is the issue of resource allocation; as long as the executive holds the purse strings for ACC funding, its independence remains questionable. One therefore opines that Parliament should assume its rightful role as custodian of public finances and take control of the budgeting process.

c. A formal link should be established between the ACC and the Auditor General's office. This link would obligate the latter to submit his report to the ACC where there is any suspicion of malfeasance. Provision should also be made for the Auditor General to simultaneously furnish a report to the President and to Parliament as opposed to the current practice whereby this report first goes to the President.

d. In light of the various weaknesses of the Commission for Investigations earlier discussed, a similar reporting link between the ACC and the Investigator General’s Office should be established. In the absence of an enforcement mechanism for the recommendations of the Investigator General (IG), this would be a valuable tool for the Ombudsman’s office.
Alternatively, provision should also be made for the IG to report to Parliament for enforcement of his decisions instead of the President.

e. It is also considered as desirable if the parliamentary oversight function should be strengthened by opening up proceedings of the watchdog committees to the public. This would allow members of the public to provide valuable input and increase transparency.

f. The current Asset Declaration Scheme which only applies to the President, Ministers and Deputy Ministers should be applicable to other public office bearers such as Permanent Secretaries and members of the judiciary. The scheme in its current form is further hampered by the lack of verification mechanisms and the difficulties associated with accessing asset-related information by the public. This then only reiterates the need for freedom of information legislation.

g. Parliament should formulate comprehensive legislation regulating campaign finance, especially in light of the various allegations concerning the funding of political parties by influential businessmen and businesswomen.

h. As observed by persons with experience in public prosecution, the Zambian judiciary should formulate comprehensive, fair and predictable sentencing procedures. This will ensure that justice prevails. Such procedures are especially essential in cases of corruption because the nature of corruption related offences varies and more often than not, the worst of the perpetrators get the same jail time as those involved in the petty type of corruption. This only aggravates the already bad perception and low confidence that the Zambian public has in the justice system. And finally;

i. The ACC should be present in all the provincial capitals in order that all persons have access to their services.

204 Interview: M. Nchito, Partner, MNB Legal Practitioners, 15th February, 2011. At MNB Legal Practitioners, Lusaka.
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