

UNIVERSITY OF THE WESTERN CAPE

FACULTY OF LAW



**UNIVERSITY *of the*
WESTERN CAPE**

A CRITICAL EVALUATION OF THE ZIMBABWE ANTI-CORRUPTION COMMISSION

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(LLM)

Transnational Criminal Justice: An International and African Perspective

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DECLARATION

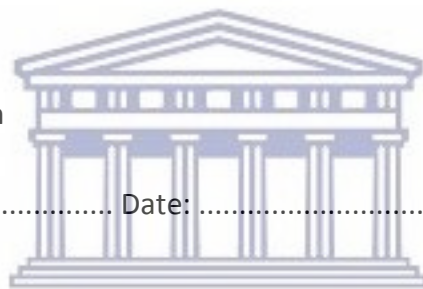
I, **Annet Tanyaradzwa Matebwe**, declare that **A Critical Evaluation of the Zimbabwe Anti-Corruption Commission** is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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ABBREVIATIONS AND ACRONYMS

ACA	Anti-Corruption Agency
AU Convention	African Union Convention on Preventing and Combating Corruption
CBA	Central Anti-Corruption Bureau (Poland)
CPC	Commission for the Prevention of Corruption (Slovenia)
CPI	Corruption Perceptions Index
CPIB	Corrupt Practices and Investigations Bureau
DPP	Director of Public Prosecutions
ICAC	Independent Commission against Corruption (Hong Kong)
MDC	Movement for Democratic Change
NPA	National Prosecuting Authority
SADC Protocol	Southern African Development Community Protocol against Corruption
UNCAC	United Nations Convention against Corruption
ZACC	Zimbabwe Anti-Corruption Commission
ZGNU	Zimbabwe Government of National Unity
ZIFA	Zimbabwe Football Association
ZRP	Zimbabwe Republic Police

KEYWORDS

Accountability

Agency

Anti-Corruption

Commission

Corruption

Investigation

Politics

Prosecution

Transparency

Zimbabwe



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CHAPTER ONE

BACKGROUND TO THE STUDY

1.1 Introduction

Corruption generally is regarded as one of the most serious obstacles to development.¹ It is endemic in many African countries and is being blamed increasingly for weak economic growth, high socio-economic inequalities and poverty. Zimbabwe, over the years, has experienced a surge in the level of corruption, increased state violence and a rapidly declining economy.

The country has taken measures to try and curb corruption. At the centre of Zimbabwe's anti-corruption efforts is the Zimbabwe Anti-Corruption Commission (ZACC). Its primary function is to combat corruption in the private and public sectors. It makes recommendations to the government and the private sector about increasing accountability, promoting integrity and preventing improprieties.² It was established in 2005 in terms of Chapter 13, Part 1 of the Constitution of Zimbabwe and the Zimbabwe Anti-Corruption Commission Act of 2004. In addition to constitutional provisions that promote the fight against corruption, Zimbabwe is a signatory to many regional and international anti-corruption instruments. These include the Southern African Development Community Protocol against Corruption (SADC Protocol), which was signed in 2001 and ratified in 2003; the African Union Convention on Preventing and Combating Corruption (AU Convention), signed in 2003 and ratified in 2006; and the United Nations Convention against Corruption (UNCAC) of 2005, ratified in 2007.

Despite the establishment of the ZACC, corruption continues to be rife in Zimbabwe. The country continues to be ravaged by multiple corruption scandals that negatively affect the nation's economy. In 2016, it was revealed that US\$15 billion worth of diamonds were syphoned out of the country through corruption.³ This is almost three times Zimbabwe's

1 Lederman *et al* (2006) at 27.

2 Section 255 of the Constitution of Zimbabwe, 2013.

3 Kuwaza (2016), available at <https://www.theindependent.co.zw/2016/03/11/mugabe-interview-confirms-chiadzwa-diamond-looting/> (visited 18 March 2018).

annual budget, making it the biggest corruption scandal ever to hit the country.⁴ Despite the extensive legal and institutional framework available to deal with corruption, no arrests have been made for grand corruption.

A critical evaluation of the ZACC and the laws that govern the institution thus is necessary for understanding why corruption continues to plague Zimbabwe. This research paper will analyse the history of the ZACC's establishment. It will evaluate the problems that inhibit the ZACC from realising its mandate. The research will end by making recommendations relating to areas that need to be improved to enable the ZACC to be an effective anti-corruption agency.

1.2 Problem Statement

Zimbabwe remains amongst the world's most corrupt countries. In the 2017 Transparency International Corruption Perceptions Index (CPI), where zero represents "highly corrupt", and 100 indicates "very clean", Zimbabwe scored 22 out of 100. This is a substantial decrease from a CPI score of 42 in 1998. Currently, Zimbabwe ranks at 157 of 180 countries, with first place signifying the least corrupt and 180th place the most corrupt.⁵ The high levels of corruption have become an accepted way of life for some Zimbabweans. As Tizor argues:

With the Zimbabwean economy in the doldrums, corruption has become an accepted and almost expected way of doing business especially in the public sector. If a civil servant still goes to work today, it is not because of the salary but the opportunities to enhance his paltry income with corrupt acts using the organisation's resources.⁶

Zimbabwe loses an estimated US\$1 billion annually to corruption,⁷ with the police and local government officials among the worst offenders. These statistics show that the ZACC has been ineffective. Even more shocking is that since its inception in 2005, the ZACC has had no successful case prosecutions, despite corruption having a grip on the country.

4 Mdzungairi (2017), available at <https://www.newsday.co.zw/2017/12/2018-national-budget-highlights/> (visited 18 March 2018).

5 Transparency International *Corruption Perceptions Index* (2017).

6 Tizor (2009) at 36.

7 Transparency International Report (2016) at 4.

The ZACC is proving to be a toothless bulldog. It is a political pawn that serves the government of the day. Its lack of independence is clear from its inability to investigate the University of Zimbabwe Vice-Chancellor, Levi Nyagura, for abuse of public office. He conferred upon Grace Mugabe a fraudulent PhD qualification in 2014.⁸ Investigations did occur after the ousting of Robert Mugabe from power in 2017. However, many complaints were lodged by the public before the regime change. Long after the regime change, it is evident that the ZACC remains an ineffective anti-corruption agency (ACA) as no corruption convictions have occurred to date. Other problems faced by the ZACC include insufficient funding, lack of prosecutorial powers and absence of anti-corruption experts amongst its staff. The epitome of its ineffectiveness is the involvement of several ZACC commissioners themselves in corruption scandals.⁹

1.3 Objectives of the Research

This paper has three principal objectives, namely:

1. to analyse the importance of an effective anti-corruption commission as a tool to combat corruption in Zimbabwe;
2. to outline and examine the essential elements of an effective anti-corruption commission;
3. to make recommendations about how the Zimbabwe Anti-Corruption Commission may achieve its mandate of being an effective anti-corruption agency.

1.4 Research Questions

The study seeks to answer and find solutions to the following questions:

1. Do the provisions of the Anti-Corruption Commission Act enable the ZACC to combat corruption effectively in Zimbabwe?
2. What, if any, are the legal and institutional reforms needed to improve the efficacy of the ZACC?

8 Chingarande (2018), available at <https://www.thestandard.co.zw/2018/02/18/revealed-grace-got-fake-phd/> (visited 18 March 2018).

9 Mdzungairi (2018), available at <https://www.newsday.co.zw/2017/12/2018-national-budget-highlights/> (visited 18 March 2018).

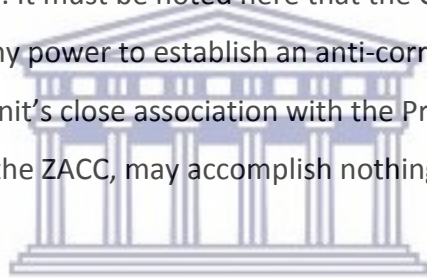
1.5 The Development of the ZACC

Chapter 13 of the new Constitution of Zimbabwe, which is the supreme law of the land, makes provisions for institutions to combat corruption and crime. It goes on to state that a Zimbabwe Anti-Corruption Commission needs to be established to combat corruption in Zimbabwe. The provision that establishes the ZACC can be found also in Zimbabwe's former Constitution. It was under section 108A of that Constitution that the ZACC was established in 2004. However, the ZACC failed to bring about the transformation that many hoped it would. Even after its establishment, the number of corruption scandals continued to rise, but no culprits were brought to justice. The President granted the ZACC the power to investigate politicians. However, this seems to have been done merely for show and to generate the illusion of independence. The ZACC of 2004 did not investigate senior ZANU-PF members despite their implication in corruption. This was because the 2004 ZACC was composed mainly of ZANU-PF members or sympathisers. The 2004 ZACC remained silent when Ministers were implicated in corruption scandals, such as the War Victims Compensation Fund scandal, the District Development Fund scandal, the VIP Housing scandal and the Willowgate scandal, as well as the wealth accumulation drive by many senior ZANU-PF officials since 1980.¹⁰ The 2004 ZACC was obviously ineffective.

After the disputed 2008 elections, the Zimbabwe Government of National Unity (ZGNU) was formed in February 2009. This led to Morgan Tsvangirai, the leader of the Movement for Democratic Change (MDC), being appointed Prime Minister of Zimbabwe alongside the President, Robert Mugabe. The formation of the ZGNU led to the renewal of the ZACC. The newly formed government promised that tackling corruption would be a priority. The revamping of the ZACC in 2011 left the public eager to see whether it would fare any better in tackling endemic corruption. The public was sceptical of the refurbished ZACC because of the poor record of its predecessor, which had been inactive due to its close affiliation with the then ruling party, ZANU-PF. The renewed ZACC failed to reduce corruption in Zimbabwe significantly. It did not secure any convictions and thus continued to be perceived as an institution designed to create an illusion of Zimbabwe's anti-corruption efforts for purposes of securing aid from international donors.

¹⁰ Moyo (2014) at 220.

Fifteen years later, the ZACC remains as ineffective and politically exposed as it was in 2004. This is so despite various promises from government officials to overhaul the institution. In 2017, Robert Mugabe was ousted from the presidency and Emerson Mnangagwa succeeded him as President of Zimbabwe. His election campaign rhetoric was anchored in the need to arrest criminals, particularly those guilty of corruption. In May 2018, he ostensibly established a Special Anti-Corruption Unit following a recommendation by Justice Minister Ziyambi Ziyambi. According to a statement released by Government, the new Special Anti-Corruption Unit will be housed in the Office of the President and Cabinet. The Unit will collaborate with the ZACC, the Zimbabwe Republic Police (ZRP) and other such institutions in the fight against corruption.¹¹ It yet has to be seen how this Special Anti-Corruption Unit will collaborate with the ZACC and whether its establishment will improve the efficacy of the ZACC. It can be argued that the Special Anti-Corruption Unit was established unconstitutionally. It must be noted here that the Constitution of Zimbabwe does not give the President any power to establish an anti-corruption institution by decree. The Special Anti-Corruption Unit's close association with the President's office means that it lacks independence and, like the ZACC, may accomplish nothing in its fight against corruption.



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1.6 Zimbabwe's Anti-Corruption Legal Framework

The drafters of the Constitution of Zimbabwe put much emphasis on provisions aimed at combating corruption in the country. They understood that a successful fight against corruption was crucial to promoting good governance. Combating corruption is thus a constitutionally protected initiative in Zimbabwe. As previously stated, the current ZACC was established as a Chapter 13 institution. The Zimbabwean Constitution describes Chapter 13 institutions as "Institutions to Combat Corruption and Crime". They include the ZACC and the National Prosecuting Authority. The Zimbabwe Anti-Corruption Commission Act was promulgated in order to fulfil the requirements contained in the Zimbabwean Constitution. The Constitution of Zimbabwe also provides for the creation of the office of the Auditor-General to audit all state entities. This forms part of the anti-corruption framework in

11 Tayana (2018), available at <https://news.pindula.co.zw/2018/05/21/full-text-mnangagwa-sets-up-special-anti-corruption-unit/> (visited 29 September 2018).

Zimbabwe. The remainder of this section discusses briefly the legal framework of the ZACC, the NPA and the Auditor-General, as stipulated in the Constitution of Zimbabwe.

1.6.1 The Zimbabwe Anti-Corruption Commission

The Constitution states that the ZACC should combat corruption through public education, prevention and prosecution of offenders after a thorough investigation. The ZACC has been invested with wide-reaching powers to combat corruption effectively. Most notable is its power to investigate, which means that it does not have to rely upon the police. What is more, the ZACC has the power to direct the Commissioner-General of Police to investigate cases of corruption. The Commissioner-General is obligated legally to follow the instructions from the ZACC, with no discretion to refuse.¹² The ZACC's power to direct the Commissioner-General of Police was a contentious issue during the constitution-drafting process, as some drafters feared that this would affect negatively the independence of the Commissioner-General. The provision was included in the final draft of the Constitution because the drafters ultimately agreed that the powers of the ZACC were critical. The effective functioning of the ZACC required endowing it with the power to direct the police.¹³ The police are thus an integral part of the fight against corruption in Zimbabwe. However, it is submitted that the powers of the police to deal with corruption cases are subordinate to those of the ZACC. The police and ZACC are meant to work together seamlessly, but an analysis of the relationship between the two institutions may prove otherwise. This matter will be discussed further in Chapter Three.

1.6.2 The National Prosecuting Authority

The ZACC does not operate an independent corruption court and it must rely on the regular court system. This makes the National Prosecuting Authority (NPA) pivotal in the prosecution of corruption cases in Zimbabwe. Hence, its inclusion under the Chapter Twelve institutions of the Constitution of Zimbabwe. Like the Commissioner-General of Police, the

12 Section 255(1)(e) & 255(2) of the Constitution of Zimbabwe, 2013.

13 Magaisa (2016), available at <https://www.bigsr.co.uk/single-post/2016/06/24/The-Big-Saturday-Read-The-last-dance-before-sunset-%E2%80%93-how-Zimbabwe%E2%80%99s-political-elites-are-looting-the-state> (visited 23 September 2018).

NPA must prosecute any cases that are referred to it by the ZACC.¹⁴ This provision again demonstrates the high degree of power that the Constitution of Zimbabwe confers upon the ZACC. This was done in order to equip the ZACC with the necessary support to ensure that it effectively combats corruption in Zimbabwe.

1.6.3 The Office of the Auditor-General

The office of the Auditor-General is a constitutional office with a mandate to carry out audits on all state entities, including the government itself. The Office is independent and, through its audits, can uncover corrupt activities within state entities. Although the Office does not have a wide array of powers, its work can influence that of the ZACC positively, as any audits revealing corrupt activities can form the basis of a corruption investigation initiated by the ZACC.

1.7 Significance of the Study

The ZACC must play a critical role in combating corruption in Zimbabwe. It is imperative that the institution performs its functions competently in trying to win the fight against corruption. Therefore, there is a pressing need to look at the current structure of the ZACC, its powers, duties, functions and the challenges it faces. Such an analysis can establish the areas within the Commission that require improvement. This would enable the ZACC to achieve its mandate of combating corruption, which is vital for the Zimbabwean economy. This is crucial, especially in the post-Mugabe era, when Zimbabwe has a chance to initiate significant changes and possibly regain its former status as the breadbasket of Africa.

This research is undertaken with the hope that it will add knowledge to the field of law and corruption in Zimbabwe. The problem of corruption in Zimbabwe is not well canvassed in literature. The ZACC has been neglected and has not been the subject of much research. This paper seeks to contribute to fashioning workable ways of improving the ZACC.

14 Section 255(1)(f) of the Constitution of Zimbabwe, 2013.

1.8 Chapter Outlines

The remaining chapters of this research paper are composed as follows:

Chapter Two

This chapter discusses the various ACA models that a country may adopt and the international best practice standards that promote and strengthen the effectiveness of ACAs. The Jakarta Statement on Principles for Anti-Corruption Agencies, used as the foundation for international best practices, will be reviewed.

Chapter Three

This chapter will analyse the ZACC Act, the role of the ZACC in Zimbabwe, its mandate and its operational structure. It will review the Commission's powers and strategies in the fight against corruption. Furthermore, it will look at the problems that the Commission faces, and which inhibit it from operating as an effective ACA.

Chapter Four

This is the final chapter and will comprise a general conclusion to the research paper. It will make and discuss recommendations to improve the effectiveness of the ZACC in combating corruption in Zimbabwe.



CHAPTER TWO

INTERNATIONAL BEST PRACTICES FOR ANTI-CORRUPTION AGENCIES

2.1 Introduction

The worldwide fight against corruption has resulted in the formation of many anti-corruption agencies across the world. The most common anti-corruption strategies often are led by independent anti-corruption agencies explicitly created for that purpose.¹ An anti-corruption agency (ACA) may be defined as:

a public body of a durable nature, with a specific mission to fight corruption and reduce the opportunity structures propitious for its occurrence in society through preventive and repressive measures.²

There is still much debate about whether ACAs are useful tools to combat corruption. This is due mainly to the vast majority of the 50 most corrupt countries boasting at least one centralised ACA tasked with the duty of preventing, investigating and prosecuting corruption cases. By contrast, the ten least corrupt countries do not have centralised ACAs.³ There is, therefore, a strong negative correlation between the presence of a single, centralised ACA and the reduction of corruption.

De Sousa argues that some of the earliest agencies were born as a response to the first wave of corruption scandals in the 1980s and early 1990s.⁴ This has been the case with two of the most successful ACAs in the world. The Hong Kong Independent Commission against Corruption (ICAC) was formed in response to the 1974 Peter Godber affair, while the Corrupt Practices and Investigations Bureau (CPIB) in Singapore was strengthened only in response to the 1970s scandals involving police officers in the narcotics trade.⁵ These crises forced policymakers to create ACAs independent of the police, since the police themselves were involved in the scandals.

1 Del Mar Landette (2002) at 17.

2 De Sousa (2010) at 1.

3 Kuria (2012), available at <http://www.fcpablog.com/blog/2012/11/13/why-do-anti-corruption-agencies-fail.html> (visited 1 October 2018).

4 De Sousa (2010) at 12.

5 Kuria (2012), available at <http://www.fcpablog.com/blog/2012/11/13/why-do-anti-corruption-agencies-fail.html> (visited 1 October 2018).

Singapore and Hong Kong are used routinely as the standard that must be achieved for an ACA to succeed. Although these have been very successful, they cannot be transplanted directly to all countries. Some countries have adopted the Hong Kong and Singapore models but with little to no success. This is because, when they established their agencies, they failed to take into consideration the differences between their environment and the environment prevalent in the two locations.⁶

Despite the seemingly low success rate of ACAs, there appears to be a never-ending call for their establishment at both the regional and international levels. This is evident from the typical provisions of UNCAC, the AU Convention and of various domestic and regional laws and bodies.⁷ According to the Organisation for Economic Co-operation and Development (OECD), the motive behind the establishment of specialised ACAs is the expectation that, unlike other state institutions, such agencies will not be tainted by political influence, can centralise information and intelligence about corruption, and can assert leadership in the anti-corruption agenda. They supposedly help overcome the inefficiency of conventional law enforcement agencies in coping with the growing sophistication of corrupt mechanisms and transactions.⁸

This chapter discusses the various types of ACAs which a country can set up. It will analyse also the various debates on the best anti-corruption agency strategy for a country to adopt. From the discussion, it will become clear which strategy the ZACC has adopted. A consideration of the international best practice standards on promoting and strengthening the effectiveness of ACAs will follow. The analysis draws on the practical experiences of other countries; it also makes use of the Jakarta Statement on Principles for Anti-Corruption Agencies, which was developed in 2012 by key national ACAs, international bodies and anti-corruption experts. Additionally, it considers relevant obligations under the United Nations

6 Kuria (2012), available at <http://www.fcpablog.com/blog/2012/11/13/why-do-anti-corruption-agencies-fail.html> (visited 5 January 2019).

7 Article 6 of UNCAC requires states parties to guarantee the existence of an anti-corruption agency or agencies as a means of implementing anti-corruption policies and practices to prevent corruption. Moreover, in Article 36, UNCAC obliges states parties to establish specialised bodies or persons to combat corruption. Similar calls are made under Article 20 of the AU Convention, Article 5(h) of the ECOWAS Protocol and Article 4(1)(g) of the SADC Protocol.

8 OECD (2014) at 3.

Convention against Corruption (UNCAC) and the various United Nations guidance materials that have been published regarding the implementation of that Convention.

2.2 Types of Anti-Corruption Agencies

ACAs may be classified differently; there is no standard model or approach. Some ACAs are created from scratch while others have been built on existing ombuds offices or special units within police or justice departments.⁹ ACAs may be classified according to their function and the arm of government to which they report.¹⁰ The ACA model which a country chooses to adopt plays an enormous role in the institution's ability to tackle corruption effectively.

Firstly, there is the universal model which encompasses a wide array of functions that include law enforcement, investigation and prevention. A typical example of the universal model is Hong Kong's ICAC.¹¹ Secondly, the investigative model is characterised by a small and centralised investigative commission which focuses on corruption crimes, as does the Singapore's CPIB.¹² Both the universal and investigative models are organisationally accountable to the executive. Thirdly, the parliamentary model, which is predominantly concerned with preventing corruption, includes commissions that report to parliamentary committees and are independent of the executive and judicial branches of state.¹³ The parliamentary model is epitomised by the New South Wales Independent Commission against Corruption that takes a preventive approach to fighting corruption. Finally, the multi-agency model includes several offices that are individually distinct, but together weave a web of agencies to fight corruption.¹⁴ South Africa may be used as an example of a country that has chosen to employ this model, with departments such as the

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- 9 Anti-Corruption Authorities (2019), available at <http://www.acauthorities.org> (visited 10 January 2019).
- 10 Anti-Corruption Authorities (2019), available at <http://www.acauthorities.org> (visited 10 January 2019).
- 11 Heilbrunn (2004) at 4.
- 12 Heilbrunn (2004) at 5.
- 13 Heilbrunn (2004) at 7.
- 14 OECD (2014) at 9.

HAWKS, the office of the Public Protector and the National Director of Public Prosecutions all playing a part in investigating and prosecuting corruption cases.¹⁵

2.3 Choosing the Right ACA Model

There is no one-size-fits-all ACA model and success is heavily dependent on choosing the best model for a country, considering various factors such as the resources available and the political climate. Corruption has been identified as a costly diversion of scarce resources and an impediment to development effectiveness.¹⁶ The labelling of corruption as the basis for underdevelopment all over the world has led to the adoption of various anti-corruption strategies. Emulation and learning from success stories is a standard operating procedure of administrative reformers worldwide.¹⁷ In the case of borrowing and transplanted ACA success stories, several of the most commonly recommended templates originate from Hong Kong and Singapore. These cases frequently are taken as object lessons in how a developing country successfully combats serious corruption. However, as noted earlier, the adoption of ACA templates from Hong Kong and Singapore fails to consider the cultural, social, historical, legal and political background of most developing countries. Failure to take these important factors into account increases the likelihood of failure for an ACA. Therefore, it is important that countries make a realistic assessment of their organisational maturity, capacity and environmental constraints before establishing an ACA, with a view to ensuring that the ACA fits functionally within the local context.¹⁸

According to Doig & Riley, ACAs that are modelled after Hong Kong's ICAC carry a high level of expectation.¹⁹ However, the ACAs in developing countries, such as Zimbabwe, usually are malfunctioning and poorly designed institutions in hostile political and economic environments. To aggravate the situation, the agencies often are given an ambiguous and far-reaching mandate, which covers investigation, prosecution, prevention and education. This mandate becomes impossible to accomplish as the ACAs often lack the capacity and

15 Majila *et al* (2017) at 89.
16 Heilbrunn (2004) at 5.
17 Dong *et al* (2008) at 93.
18 OECD (2008) at 24.
19 Doig & Riley (1998) at 53.

resources to perform any one of those functions well. They become overburdened and ultimately fail.²⁰

Countries must be selective as to the kind of power an ACA is given. Anti-corruption advocates worldwide deride “toothless” ACAs and demand agencies “with teeth”, meaning strong law enforcement powers. However, there are drawbacks to such powers. Kuris argues that despite the popularisation of ACAs with strong investigative powers – such as the ability to execute search warrants, use force and arrest suspects – there might be a need for some countries to adopt what he terms the “toothless” approach, as this would create an ACA that is more resilient, robust and cost-effective.²¹ A “toothless” ACA could be described as one that may focus on preventive measures and exposing corruption when it happens. Although such an ACA may not be able to effect arrests, the tasks of prevention, education and bringing corruption to light are essential. It may be an effective strategy for ACAs in developing countries, as these countries often do not have the resources to sustain a universal model type of ACA.

On the one hand, the popular universal model ACAs require substantial resources and attention. They tackle problems using law enforcement, with intent to trigger reform by “cleaning house” or deterring wrongdoing, and thus are not well suited necessarily to continued patterns of unethical behaviour or systemic corruption risks that are present in most developing countries. They require a well-functioning and independent legal system that can tackle high-level corruption cases.²² On the other hand, “toothless” ACAs are more manageable, versatile, viable and adaptable to a range of conditions. However, they require partners inside and outside of government to act upon their findings. Without police powers, they face difficulties attracting public support. To achieve results, a watchdog ACA must allocate resources to research and communications, build strong partnerships, and respond strategically to specific corruption problems.²³

In a nutshell, the adoption of a centralised ACA, such as ICAC and the CIPB, in developing countries normally fails to achieve its goals of combating corrupt. The reasons

20 Kuris (2015) at 127.

21 Kuris (2015) at 127.

22 Kuris (2015) at 132.

23 Kuris (2015) at 132.

for this failure include the fact that most countries establish an ACA under pressure from donors. Often the establishment of an ACA is not the result of a home-grown decision, thus its establishment lacks the political backing to ensure that it is able to carry out its mandate, even when politically exposed individuals need to be investigated.²⁴ The lack of political will also constrains the resources allocated to the ACA. This invariably leads to the ACA being unable to carry out its functions, as it does not have the resources for its day-to-day operations which would be extensive as a centralised ACA has multiple functions. Furthermore, by virtue of being centralised, the ACA becomes vulnerable to political attacks. It has no other kindred institutions that can back up its work, making its downfall easier when under attack from politicians.²⁵

Zimbabwe, like many countries in the world, has used the universal model as a blueprint for developing its anti-corruption agency. The ZACC is modelled after Hong Kong's ICAC. Although this model has been very successful in Hong Kong, the same cannot be said for Zimbabwe. Adopting the universal model in a country with high levels of grand corruption and lack of political will puts the model at risk of likely failure, as is the case in Zimbabwe. To ensure success, Zimbabwe may need to adopt an ACA that is suited properly to the economic, cultural and political climate of the country. This possibility is discussed further in Chapter Three below.

2.4 Features of Successful Anti-Corruption Agencies

The success of an ACA is dependent largely on the fulfilment of certain basic requirements. Based on his extensive survey of top ACA officials from different countries, De Sousa has identified several basic criteria that ACAs need to meet to be effective.²⁶ Some of the most important requirements are discussed in detail below. Only by meeting these standards may the ACAs have a chance of becoming effective institutions.²⁷ Unfortunately, the conclusion

24 Kuria (2012), available at <http://www.fcpablog.com/blog/2012/11/13/why-do-anti-corruption-agencies-fail.html> (visited 5 January 2019).

25 Kuria (2012), available at <http://www.fcpablog.com/blog/2012/11/13/why-do-anti-corruption-agencies-fail.html> (visited 5 January 2019).

26 De Sousa (2009)

27 Makowski (2016) at 67.

from De Sousa's analysis and other reports is that around the world there are but few agencies which fully follow these principles.²⁸

2.4.1 Legal Framework

The legal framework which governs the establishment and maintenance of the ACA, as well as the regulation of its functions, must be stable and formulated well. It is an essential component in the success or failure of an ACA. The law in terms of which an ACA is established should define: the scope of its duties and powers; its relations with other institutions and rules of procedure regarding accountability; clear rules for appointing and dismissing its chief; and the rules for approving its budget.²⁹ The legal framework is the foundation of an ACA. To ensure that an ACA functions at its optimum, it is imperative that the law governing its operations incorporate provisions that are in line with international best practices. This means that the legal provisions regulating the ACA, amongst other things, should guarantee funding for the ACA, regulate the appointment and dismissal of staff, protect and promote its independence and ensure that clear accountability mechanisms exist within the institution.³⁰ It is submitted that when drafting laws that govern an ACA, it is important that drafters use UNCAC and documents such as the Jakarta Statement on Principles for Anti-Corruption Agencies as guidelines. This will help to ensure that the ACA is based on laws that are designed by experts at combating corruption effectively.

2.4.2 Independence

The independence of an ACA is crucial to its effectiveness. International standards require that independence and autonomy be ensured for the anti-corruption authorities, with the aim of helping them to carry out their functions effectively and free from undue pressure. Independence ensures that the ACA can investigate all cases of corruption without fear or favour. An ACA that is viewed as independent achieves legitimacy in the eyes of the public. UNCAC states that an ACA may be considered independent when it has all the necessary material resources, is free from undue influence, has specialised staff, and has the capacity

28 Makowski (2016) at 67.

29 UNDP (2011) at 16.

30 UNODC (2009) at 11.

to provide the training to enable the staff members to carry out their functions.³¹ The independence of an ACA is multifaceted. The work of the ACA should not be subject to interference. An example of how a country has ensured independence may be found in Romania. The *Direcția Națională Anticorupție* secures independence through legal dispositions which allow the prosecutor to notify the Superior Council of Magistracy regarding any attempt at interference with an investigation. This occurs even where interference comes from the upper hierarchy as the re-allocation of cases is prohibited except in exceptional circumstances.³²

2.4.3 Accountability

Measures must be put in place to encourage accountability of an ACA. This increases the legitimacy of the ACA in the eyes of the public as accountability is accompanied by openness. An effective accountability mechanism leads to credibility and stronger public support.³³ The more powers the ACA has, the more accountability measures should accompany its operations. It is essential to introduce adequate checks and balances and provide for scrutiny by various oversight mechanisms to make sure that ACAs are not able to abuse their autonomy and that they operate in an unbiased manner.³⁴

Accountability is usually two-fold in relation to an ACA. Firstly, the ACA is accountable to the public. This means that the work of the ACA should be available readily to the public and should engage with the media where possible. Secondly, the ACA must be accountable to the branch of government to which it reports. This may be the legislature or the executive, depending on the ACA model selected. Accountability can be achieved through preparing and presenting reports that document the ACA's work. The reports can be made available to the public subsequently. For example, Poland's Central Anti-Corruption Bureau (CBA) has a special obligation to provide Parliament with information about the results of its activities, as well as to submit the report to the Prime Minister and the Parliamentary Special Services Committee before 31 March each year. According to the Polish law on criminal procedure and the CBA Bill, the courts and the prosecutor's office are

31 Article 6(2) of UNCAC.

32 EPAC (2008) at 8.

33 UNDP (2011) at 32.

34 Chene (2012) at 4.

responsible for the supervision of investigations, including supervision of special operations such as controlled bribery and operational control.³⁵

2.4.4 Clear Mandate

A successful ACA needs clear direction as to the type of work it will do to combat corruption. This is only possible where the ACA has a determinate legal mission or mandate, with sharply delineated roles and functions. The need for a clear mandate is a precept recognised in the Jakarta Principles, which state that:

ACAs shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and prosecution, either through one agency or multiple co-ordinated agencies.³⁶

2.4.5 Integrity and Impartiality

In public administration, integrity refers to honesty and trustworthiness in the discharge of official duties, and serves as an antithesis to corruption or the abuse of office for private gain.³⁷ ACAs should adopt codes of conduct requiring the highest standards of ethical conduct from their staff and a strong compliance regime.³⁸ The employees of an ACA must conduct themselves with the highest levels of integrity so as to preserve the legitimacy of the institution. It is also important that the ACA conduct its work impartially. No one should be above the law. This means that matters before the ACA must be dealt with objectively, according to the merits and circumstances of each case.³⁹

2.4.6 Resources

Adequate funding is essential to allowing an ACA to fulfil its mandate. An ACA needs both financial resources and human resources to ensure that it can carry out its work effectively. Countries that have ACAs must allocate enough funds to ensure that they are equipped with well-trained staff and the financial resources to carry out in-depth investigations into

35 EPAC (2011) at 9.

36 Jakarta Statement on Principles for Anti-Corruption Agencies (2012).

37 EPAC (2011) at 5.

38 Jakarta Statement on Principles for Anti-Corruption Agencies (2012).

39 EPAC (2011) at 5.

corruption. An ACA which lacks adequate resources cannot function at its optimum. It inevitably performs dismally. This lowers the level of public confidence in the institution.⁴⁰

2.4.7 Recruitment and Appointment of Staff

The recruitment of staff must be based on the principles of efficiency, transparency and fairness, and upon known and objective criteria such as merit, equity and aptitude. The process of appointment must be transparent. The appointing mechanism utilised must ensure consensus support for an appointee through Parliament, rather than the executive. An accountability mechanism must exist outside the executive, perhaps in the form of a parliamentary selection committee on which all major parties are represented. This would limit the space for corruption in the recruitment of ACA staff.⁴¹ The dismissal process also should be transparent and based on sound reasoning rather than political motivation. The removal of top ACA officials should occur through established legal procedures.⁴²

The security of employees allows them to work with rigour within the ACA and thus to pursue the fight against corruption more efficiently. The ACA can only be as efficient as its employees. Therefore, it is imperative that the staff undergo training regularly to remain effective in combating corruption by undertaking their duties diligently.⁴³

2.4.8 Co-operation

In order to fight corruption effectively, ACAs cannot work in isolation. They must pool resources with other interested parties. UNCAC recognises the importance of co-operation and advocates it between various bodies to ensure that states parties can fight corruption successfully.⁴⁴ ACAs should have a good working relationship with the media and civil society, as well as with other state agencies such as the police and the judiciary.⁴⁵ Also, they must maintain good relations with other states, as often corruption is a transnational crime in respect of which a state requires mutual legal assistance. This will enable the ACAs to acquire valuable information, access operational support and joint investigative activities,

40 OECD (2008) at 27.

41 Majila *et al* (2017) at 91.

42 Jakarta Statement on Principles for Anti-Corruption Agencies (2012).

43 USAID (2006) at 12.

44 Article 13 of UNCAC.

45 Jakarta Statement on Principles for Anti-Corruption Agencies (2012).

and gather intelligence and evidence related to corruption offences including, where appropriate, the identification and recovery of the proceeds of corruption.⁴⁶

2.4.9 Political Will

An ACA will not be effective where there is a lack of genuine political will to fight corruption.⁴⁷ Where an ACA is established simply to support the anti-corruption agenda and to appease the donor community, international monitoring bodies, foreign investors or the domestic public, its proper functioning is at risk.⁴⁸ Researchers analysing ACAs stress that their effectiveness is dependent largely on the motivations underlying the decisions to create them.⁴⁹ Lack of real political will to fight corruption and the simple desire to please the international community in this matter cannot be a solid basis for creating an effective ACA.⁵⁰ An ACA that has the support of the government likely is to be furnished with all the necessary resources to carry out its mandate without fear or favour.

2.5 The Jakarta Statement on Principles for Anti-Corruption Agencies

The Jakarta Statement on Principles for Anti-Corruption Agencies is a non-binding resolution promulgated by representatives of ACAs from around the world. It contains sixteen recommendations which aim to ensure the independence and effectiveness of ACAs. The Jakarta Statement was endorsed by the International Association of Anti-Corruption Authorities at its 2014 Panama meeting and noted (though not explicitly endorsed) also by the Conference of the States Parties to UNCAC in its most recent resolution on the prevention of corruption.⁵¹ This research paper relies heavily on the Jakarta Statement in discussing the international best practices that ACAs ought to adopt. However, it must be noted that the Jakarta Statement is not without its flaws.

Although the Jakarta principles may be used as a guide that ACAs can follow to ensure success, it is not a very detailed document. It does not lay down any measures or policies that an ACA should adopt. It is referred to often in the discussion of international

46 EPAC (2011) at 8.

47 UNDP (2011) at 27.

48 OECD (2008) at 10.

49 OECD (2007) at 4.

50 Makowski (2016) at 67.

51 Seventh COSP UNCAC Resolution 7/5 (2017).

best practices, but it remains a political rather than an analytical document. Its non-binding nature also significantly weakens the impact of its recommendations, as there is no fear of repercussions for countries which fail to embrace the principles. Be that as it may, the Jakarta principles express the world's agreement on the need for independent ACAs. Independence is at the core of a successful ACA, and the Jakarta Statement recognises its importance and advocates strongly that the independence of ACAs around the world be guaranteed. However, without any mechanisms to check that countries do adopt the principles in the Jakarta Statement, it remains just that — a statement that is great on paper but of little or no practical use.

2.6 Conclusion

The international best practices discussed in this chapter are not exhaustive. They are based on some of the practices that effective ACAs have used and on the Jakarta Statement on Principles for Anti-Corruption Agencies. Currently, there is no binding instrument that ACAs may rely upon as a blueprint for the best practices standard. UNCAC contains provisions that may be interpreted as constituting some guidance on best practices for the fight against corruption, but they do not apply specifically to ACAs.⁵² However, the implementation of all the best practices identified above will increase significantly the efficiency and effectiveness of ACAs.

The next chapter introduces and discusses the structure of the ZACC and the extent to which it adheres to the standards discussed in this chapter.

52 Article 1 of UNCAC lists the objectives of the Convention, which are to prevent and combat corruption by promoting and strengthening international co-operation, integrity, accountability and good management of public property. These objectives do not relate specifically to ACAs, but they have been adopted in the Jakarta Statement which does relate to ACAs.

CHAPTER THREE

THE ZIMBABWE ANTI-CORRUPTION COMMISSION

3.1 Introduction

The Zimbabwe Anti-Corruption Commission (ZACC) is pivotal to Zimbabwe's fight against corruption. Reviews show that most ACAs are ineffective and have failed to live up to expectations.¹ One of the most common reasons why ACAs have failed is that governments have not undertaken a thorough policy planning process regarding the need for an appropriate ACA model.² An effective ACA must adhere to international best practice standards. When determining the effectiveness of the ZACC in combating corruption, it is imperative to analyse its strengths and weaknesses.

This chapter will examine the Anti-Corruption Commission Act (ZACC Act), which is the enabling legislation of the ZACC, to establish whether it complies with the international best practice. Furthermore, it will assess the ZACC as an institution. Its different features, including the appointment of its Commissioners and members of staff, its powers and duties, its independence, its accountability and its funding will be discussed. The chapter will conclude by considering the achievements and failures of the ZACC in its fight against corruption in Zimbabwe.

3.2 The Anti-Corruption Commission Act

An analysis of the ZACC Act is crucial in understanding how the ZACC as an institution operates. The Act contains 19 sections, which encompass the mandate of the commission, its operations, staff employment and resources. Although the ZACC Act details how the ZACC operates, it is important to understand that the ZACC is a constitutional body. It derives its existence from the Constitution of Zimbabwe and thus enjoys the highest level of legal protection. The provisions of the ZACC Act are mirrored in the 2013 Constitution of Zimbabwe. However, there are slight differences, so in discussing the ZACC Act one must consider also the Constitution of Zimbabwe.

1 De Jaegere (2012) at 90.

2 Heeks (2011) at 2.

3.2.1 Appointment and Employment Conditions of ZACC Staff

The appointment, dismissal and expected conduct of ZACC staff are regulated by the ZACC Act. The ZACC consists of two sets of staff members. Firstly, there are the Commissioners who collectively make up the “Commission” and are clothed with statutory powers provided in the Constitution.³ Secondly, there are the staff members employed by the Commission to act as administrative delegates and secretariat.⁴ The statutory sections predominantly deal with the Commissioners rather than the general staff, largely because they undertake the ZACC’s more substantive work. Seven of the nineteen sections in the ZACC Act relate to staffing. This means that the drafters of the Act presumed that the ZACC staffers were an essential component of the success of the ZACC as an institution.

Close analysis of the ZACC Act provisions that deal with the appointment of the ZACC Chairperson and Deputy Chairperson reveal that the President of Zimbabwe has significant unregulated powers in choosing the individuals who run the ZACC. This was a huge oversight on the part of the drafters of the Act. The ZACC Act has given the President the power to appoint the Chairperson and Deputy Chairperson of the ZACC.⁵ The President also has the power to direct that the Deputy Chairperson not assume the post of Chairperson if the latter post is vacant.⁶ The ZACC Act gives the President complete discretion as to who heads the ZACC. It does not require him to obtain the opinions of others nor does it require him to furnish reasons for his choices.

The ZACC Act provides no checks and balances upon the President’s powers of appointment. This may lead to his appointing ZACC Chairpersons who are sympathisers of the ruling party, as happened in 2004.⁷ Even if the appointees have no political affiliation, they may feel obligated to be loyal to the President. It is evident that the ZACC Act does not contain provisions that ensure that the ZACC Commissioners appointment procedure is independent. It does not comply with the international best practice standards for ACA’s. However, the Constitution of Zimbabwe requires that the appointments of the Chairperson and Deputy Chairperson be made in consultation with the Committee on Standing Rules and

3 OSISA (2017) at 353.

4 OSISA (2017) at 353.

5 Section 4(1) of the ZACC Act.

6 Section 4(2) of the ZACC Act.

7 Moyo (2014) at 237.

Orders.⁸ The Constitution is the superior law of Zimbabwe, thus the provision requiring that consultation take place before the appointment of Commissioners must be observed. The drafters of the Constitution understood that in order to maintain the independence of the ZACC, there is a to restrict the President's powers to appoint Commissioners. This is helpful as it ensures that the President of Zimbabwe does not have unfettered powers to appoint as the heads of the ZACC. The appointment procedures in the ZACC Act are not in line with the Constitution, and ought to be redrafted to align with the spirit of the Zimbabwean Constitution, which aims to promote democracy and rule of law.

The ZACC Act provides no guidance on how the eight Commissioners are to be appointed. However, the Constitution of Zimbabwe stipulates the procedure that must be followed in the appointment of members of independent commissions, such as the ZACC. In order to identify eligible persons, for transparency's sake, the Committee on Standing Rules and Orders must advertise the positions, invite the public to make nominations, conduct public interviews of prospective candidates, prepare a list of nominees, and submit the list to the President.⁹ The elaborate appointments procedure minimises the influence that the President has in selecting the Commissioners. It also gives the ZACC an aura of independence. The public involvement is crucial as it makes the ZACC seem legitimate in the eyes of the people. This is in line with international best practice standards. That said, the President still has the final say, thus the supposed independence of the ZACC is diluted.

In January 2019, the ZACC Chairperson, Deputy Chairperson and all eight Commissioners resigned.¹⁰ They did so after President Mnangagwa stated that he would restructure the ZACC.¹¹ It is unclear what prompted the mass resignations. It could have been the presidential threat of restructuring the ZACC. When all Commissioners resign, the ZACC is left at a standstill as the Commissioners play an integral role in the ZACC's functioning. The ZACC Act does not envision a situation where all Commissioners resign, thus there is no provision in the Act to deal with the situation. The ZACC Act does envisage

8 Section 254(1) of the Constitution of Zimbabwe, 2013.

9 Section 237(1) of the Constitution of Zimbabwe, 2013.

10 Mashaya (2019), available at <https://www.dailynews.co.zw/articles/2019/02/01/zacc-chair-commissioners-resign> (visited 5 February 2019).

11 Mashaya (2019).

that Commissioners serve out a one-month notice period.¹² A notice period permits new Commissioners to be appointed prior to the current Commissioners leaving. The ZACC would remain functional if this approach were adopted. However, the President accepted the resignation of all the Commissioners, despite the lack of a notice period.¹³ This leaves the ZACC with no Commissioners until the President appoints new individuals to the vacant posts. It means that, until new Commissioners are appointed, the ZACC remains at a standstill.

In March 2019, the President appointed Justice Loice Matanda-Moyo as the ZACC Chairperson.¹⁴ The development was announced as the Committee on Standing Rules and Orders was in the middle of selecting eight new members of the commission from a large pool of 130 applicants.¹⁵ Mnangagwa's decision to appoint Justice Matanda-Moyo has been met with some criticism as she is not viewed as an independent candidate. This is because she is married to the Foreign Affairs and International Trade Minister, Sibusiso Busi Moyo.¹⁶ Although it could be argued that the Chairperson's marital status should not play a role in their appointment, the conflict of interest present in the appointment of Justice Matanda-Moyo cannot be ignored. Her appointment will not instil public confidence in the ZACC, rather it will appear biased in favour of the ruling party.

The ZACC Act offers security of tenure for the Commissioners. They may not serve more than two terms in the ZACC.¹⁷ However, during their tenure, they may not have their salaries reduced.¹⁸ This ensures that they may perform their duties without the fear of salary reductions if they investigate top-ranking officials. They can decide on the merits of a case rather than being influenced by threats to their salaries. The ZACC Act gives the President the power to suspend Commissioners.¹⁹ It can be argued that this power should

12 Section 10(2)(e) of the ZACC Act.

13 Mashaya (2019).

14 Mpfu (2019), available at <https://www.mzimabwe.co.zw/news/43219-latest-president-emmerson-mnangagwa-appoints-new-zacc-chairperson.html> (visited 23 April 2019).

15 Munyoro (2019), available at <https://allafrica.com/stories/201903210491.html> (visited 24 April 2019).

16 Kanambura (2019), available at <https://www.theindependent.co.zw/2019/03/29/uproar-over-mnangagwas-pick-for-new-zacc-chair/> (visited 23 April 2019).

17 Section 6(1) of the ZACC Act.

18 Section 7(4) of the ZACC Act.

19 Section 3 of the ZACC Act.

not have been given to the President, as it makes the Commissioners vulnerable to the President, thereby undermining the independence of the ZACC.

The ZACC Act stipulates the qualifications that an individual must possess in order to be appointed as the Chairperson or Deputy Chairperson of the ZACC. These are ten years' experience in investigating crime, seven years' post-qualification experience or eligibility to be a judge of the High Court.²⁰ The President can circumvent the stipulated qualifications if he believes the appointee has the ability and experience to head the ZACC.²¹ Although the ZACC Act does not stipulate the qualifications that a Commissioner must possess, the Constitution is broader than the Act and stipulates that the abovementioned qualifications be applicable not only to the Chairperson and Deputy Chairperson, but to all ZACC Commissioners.²² The stipulated qualifications ensure that well-qualified individuals are appointed as Commissioners. This results in a better functioning ZACC and boosts the Commission's ability to achieve its mandate. The President's power to appoint a Commissioner who does not have the requisite qualifications is not in line with international best practice. It may result in under-qualified individuals being appointed as Commissioners and, ultimately, failing to achieve the ZACC's mandate. We may consider the unfettered power that the ZACC Act gives to the President its worst feature.

3.2.2 Disqualification and Removal of ZACC Staff

The ZACC Act stipulates factors that disqualify an individual from being appointed as a Commissioner of the ZACC.²³ Once an individual is disqualified by the ZACC Act, the President cannot override the disqualification, even if he believes that the individual would be suitable for the post.²⁴

The Commissioners of the ZACC occupy a position of trust. Therefore, the ZACC Act disqualifies any individuals who have been convicted of any crimes involving dishonesty in

20 Section 5(a)-(d) of the ZACC Act.

21 Section 5(d) of the ZACC Act.

22 Section 254(2) Constitution of Zimbabwe, 2013.

23 Section 9 of the ZACC Act.

24 The wording in section 9(1) of the ZACC Act does not give leeway to the President to appoint individuals who have been disqualified from assuming the post of Commissioner. The terms "shall not" is used, which indicates an absolute requirement which cannot be waived.

and outside Zimbabwe.²⁵ Appointing Commissioners who have been convicted of crimes involving dishonesty would bring disrepute to the ZACC and erode public confidence in the institution. It would also make the ZACC vulnerable to crimes involving dishonesty, which would defeat the very purpose of the institution. The ZACC Act also disqualifies members of parliament and members of any statutory body from being appointed as Commissioners of the ZACC.²⁶ This provision ensures that the institution is independent of other institutions and of parliament. It maintains a level of independence within the ZACC.

The drafters of the ZACC Act could have broadened the list of disqualified people to include politically exposed individuals. This, too, would have helped to ensure that the ZACC remains independent. However, it may have been challenging, as politically exposed persons are not always known to the public. Conversely, individuals who are not politically exposed may be accused of being politically exposed, which could lead to great candidates being disqualified maliciously. In order to ensure that non-partisan Commissioners are appointed, the ZACC Act should have disqualified active political party members. However, the drafters of the ZACC Act may not have included this provision as it may violate an individual's right to freedom of association.

Zimbabwe fosters a culture of excluding youth from decision-making positions in the country.²⁷ Age discrimination is rife, with age being prioritised over experience and expertise. The ZACC Act shows Zimbabwe's affinity for excluding the youth from leadership positions as it disqualifies individuals below the age of forty from being appointed as Commissioners of the ZACC.²⁸ Appointing young, qualified and experienced Commissioners could lead to the development of new ideas, such as digitisation of the ZACC, which could produce a more efficient ACA for Zimbabwe.

The ZACC Act governs the removal of Commissioners from the ZACC.²⁹ Commissioners must vacate their offices if they conduct themselves in a manner which

25 Section 9(e) of the ZACC Act.

26 Section 9(2) of the ZACC Act.

27 An example of this is visible from the 2018 Presidential elections, when there was an attempt to raise the Presidential age limit from 40 to 50 years. This was done to bar Presidential candidates who were in their forties. The motion was debated heavily but ultimately failed.

28 Section 9(1)(b) of the ZACC Act.

29 Section 10 of the ZACC Act.

renders them unsuitable to continue as a member of the ZACC.³⁰ This is a broad provision in the ZACC Act and it is unclear what conduct would be considered inappropriate. The provision might be utilised wrongly to remove unpopular Commissioners who speak out against the ruling party. Conversely, the catch-all provision caters for possible scenarios that the drafters of the ZACC Act may not have envisioned, but which could render a Commissioner unfit for office.

The office of a Commissioner may be terminated also for absence from three consecutive meetings without permission.³¹ This is because the ZACC meetings constitute a large portion of the work that Commissioners do. The meetings are a platform to map out the work of the ZACC and thus form an integral part of a Commissioner's work. Failure to attend meetings would mean that a Commissioner is not doing the work that he was appointed to do. Mental and physical incapability are grounds for termination, according to the ZACC Act.³² These are grounds that are accepted across most labour practices around the world.

The ZACC Act again gives the President a lot of power in relation to the termination of the office of ZACC Commissioners. Evidence of this can be found in the President's power to select individuals onto the disciplinary committee of the ZACC,³³ which could make the disciplinary committee biased and lead to the retention or removal of Commissioners according to their relationship with the President. The Commissioners may be removed also when they do not comply with the terms which the President has fixed.³⁴ The power given to the President erodes the ZACC's independence and does not comply with the international best practice.

3.2.3 Mandate, Functions and Powers of the ZACC

The ZACC is in line with international best practice as regards its clear and well-defined mandate that helps it fight corruption. Its powers and duties are derived from Article 108A of the Constitution, from sections 11 and 13 of the Ethics and Anti-Corruption Commission

30 Section 10(2)(a) of the ZACC Act.

31 Section 10(2)(d) of the ZACC Act.

32 Section 10(2)(c) of the ZACC Act.

33 Section 10(1)(c) of the ZACC Act.

34 Section 10(2)(b) of the ZACC Act.

Act and from the Anti-Corruption and Economic Crimes Act. The ZACC Act states that the objects of the ZACC are to promote the investigation of corruption, make proposals on the elimination of corruption in both the public and private sectors, raise public awareness of the causes and effects of corruption, and propose new administrative ways to run the ZACC.³⁵ The ZACC Act thus gives the ZACC a broad mandate enabling it to fight corruption through investigations, prevention and education.

The ZACC Act goes further than just specifying the objects of the ZACC. It includes a list of wide-ranging functions which the ZACC must perform in order to combat corruption in Zimbabwe.³⁶ It could be argued that the ZACC's broad functions have had a negative impact on its ability to combat corruption. The ZACC could be considered a jack-of-all-trades and a master of none. It has executed none of its functions well, possibly because it is overburdened with too many functions. The ZACC Act lists nine functions of the ZACC, which include advising the government on the anti-corruption instruments which the country needs to ratify.³⁷ The nine functions listed in the ZACC Act are not exhaustive because the Act gives the ZACC the power to propose new or effective ways to ensure that its administration runs effectively.³⁸ When this provision is considered, the ZACC enjoys a level of independence in deciding how it will run as a corruption-fighting institution.

The ZACC Act gives the ZACC broad powers to enable it to fight corruption effectively. However, these powers have not enabled the ZACC to achieve its mandate as envisioned by the drafters of the ZACC Act. The powers which been conferred upon the ZACC sometimes requires co-operation from the police, the national prosecuting authority and the attorney general's office. An example of this is that a ZACC Commissioner is required to be accompanied by a police officer during the search and seizure of property belonging to individuals suspected of corruption crimes.³⁹ Furthermore, the ZACC's arresting power has been a heavily debated and contentious issue in the ZACC's case against Zimbabwe's former Higher and Tertiary Education Minister, Jonathan Moyo, and his Deputy, Godfrey Gandawa. The ZACC accused Moyo of conniving with Gandawa and some officials

35 Section 11 of the ZACC Act.

36 Section 12 of the ZACC Act.

37 Section 12(i) of the ZACC Act.

38 Section 11(d) of the ZACC Act.

39 Section 13(4)(b) of the ZACC Act.

within his Ministry to syphon more than US\$400 000 from the Zimbabwe Manpower Development Fund (ZIMDEF) for personal gain. This resulted in Moyo's arrest, which he challenged in the Constitutional Court of Zimbabwe, arguing that the ZACC had no powers of arrest. The Constitutional Court held that the ZACC indeed had no arresting powers, but that a police officer seconded to the ZACC had the power to arrest.⁴⁰ This case shows that the ZACC heavily relies on the assistance of other institutions to carry out its work effectively.

The ZACC Act also states that where the ZACC seeks to freeze the assets of an individual suspected of corruption, an application must be made through the attorney general's office.⁴¹ The ZACC's reliance on the police and attorney general's office in executing some of its powers does not make it subordinate to these institutions. The reliance upon other institutions derives largely from the fact that the ZACC is based on the universal model of ACA, which encompasses an array of functions that include law enforcement, investigation and prevention of corruption. However, the ZACC does not have a police force of its own nor does it have a specialised corruption court within it. Hence, in order to fulfil all the functions which it is mandated to perform, it must rely on the police and the judiciary for help.

Co-operation is encouraged for the efficient running of an ACA, and the ZACC Act stipulates co-operation between the police, the judiciary and the ZACC itself. Co-operation, in this case, ensures that the ZACC can fulfil all its allocated functions without actual investment being needed to create a separate corruption court and to establish an anti-corruption police force. Zimbabwe is a developing nation and its budget may not have been able to sustain a separate corruption court and an anti-corruption police force. Co-operation, therefore, was essential. However, without the power to arrest and prosecute, the ZACC is viewed as a toothless bulldog. It has conducted many investigations, but few reach the stage of prosecution, because the national prosecuting authority can derail the cases that the ZACC wants to pursue.

40 *Moyo v Sgt Chacha and others* (CCZ 19/17, Constitutional Application No CCZ 73/16) [2017] ZWCC 19.
41 Schedule 1, section 13(4) of the ZACC Act.

The ZACC Act does not include a provision on co-operation with non-governmental organisations and civil society. This may be considered an oversight by the drafters. However, this is not detrimental to the efficient running of the ZACC, which is empowered to decide how it will run effectively as an institution. This means that it can co-operate with civil society if it so chooses.

3.2.4 ZACC Meetings

The ZACC Act does not regulate strictly all aspects of the Commission's operations. An example of this is the fact that the Act does not stipulate how often the Commission should meet. This decision is left to the Chairperson of the ZACC.⁴² Furthermore, there is no guidance on how meetings should proceed, giving the Commissioners leeway to regulate the procedure of meetings.⁴³ It can be argued that the ability to regulate its own procedure enables the ZACC to be flexible, which is necessary to tackle any urgent corruption scandals that may emerge in the country. The Commissioners can call meetings as they see fit and thus deal quickly with urgent issues. The disadvantage of allowing Commissioners to regulate when and how often they meet is that an inadequate number of meetings may be held through the year. This could lead to the inefficient running of the Commission. Therefore, in striking a balance, the drafters of the ZACC Act ought to have stipulated a minimum number of meetings that the Commissioners are expected to have.

Although the Act does not regulate how meetings are to be conducted, it does stipulate the quorum required for meetings as the Chairperson or the Deputy Chairperson plus three other Commissioners.⁴⁴ This quorum is necessary because the Act requires that any decisions made during a meeting must be decided by the majority of the Commissioners present.⁴⁵ However, in the event of a split vote, the deciding vote lies with the Chairperson or the Deputy Chairperson.⁴⁶

42 Section 15(1) of the ZACC Act.
43 Section 15(5) of the ZACC Act.
44 Section 15(2) of the ZACC Act.
45 Section 15(3) of the ZACC Act.
46 Section 15(3) of the ZACC Act.

The Act permits the Commissioners to invite outside experts to attend meetings to offer them guidance on any issues on which they may need expert opinion.⁴⁷ The invited individual has no power to vote on issues that may be raised in the meetings at which he is in attendance.⁴⁸ The power to call in experts ensures that the ZACC can obtain specialist advice on any issues relating to its work about which the Commissioners may not have in-depth knowledge. The ZACC Act also permits a committee to be selected to undertake tasks as the Commissioners see fit.⁴⁹ This is advantageous as it allows the Commissioners to seek outside help where needs be. It would assist in ensuring that the Commission runs effectively.

3.2.5 Reports of the ZACC

The Constitution gives the ZACC the power to produce and present any reports of “improper conduct” by government officials or members of the private sector.⁵⁰ The power to name and shame is a powerful tool that the ZACC can utilise to pressure government and corrupt companies into initiating change. It can drive policy changes to ensure a positive public image. The ZACC Act does not provide the ZACC with full autonomy regarding the reports which they publish. It requires that the Commissioners produce a report annually which is presented to parliament.⁵¹ This must be done through the appropriate Minister.⁵² The Minister may request that the ZACC produce additional reports and any report must be given to the Minister before it is published.⁵³ This provision takes away some independence from the ZACC because, although the Act states that the ZACC may release its reports as it sees fit, if the Minister does not agree with the contents of a report he or she may exert political pressure to have the report changed or not published at all. The drafters of the ZACC Act did not include a provision which prescribes that the reports produced by the Commission be made available to the public. The Act only requires that reports be

47 Section 15(4) of the ZACC Act.

48 Section 15(4) of the ZACC Act.

49 Section 16(1) of the ZACC Act.

50 Section 257 of the Constitution of Zimbabwe, 2013.

51 Section 17(1) of the ZACC Act.

52 At the inception of the ZACC, the appropriate Minister was the Minister of Home Affairs. However, the ZACC since has been removed from the Home Affairs Ministry. It has not been allocated to a different Ministry, which has resulted in any Minister being able to meddle in the affairs of the ZACC.

53 Section 17(1)(a) and 17(4) of the ZACC Act.

presented to the Minister who may add comments as he sees fit.⁵⁴ This deprives the work of the ZACC of transparency and it could lose the public's confidence if it is seen not to be working actively to combat corruption. The ZACC has failed to produce and present reports regularly to parliament, but of great concern is parliament's failure to question the ZACC on its failures in this regard. This omission suggests that the fight against corruption is not a priority for parliament. Parliament has failed to check on the work which the ZACC is mandated to do. This lack of oversight contributes to the ZACC's inefficiencies.

3.2.6 Funds of the ZACC

The efficient running of an ACA requires adequate financial resources.⁵⁵ The ZACC Act does not provide details of how the ZACC should be funded. It offers guidance on how the funds of the ZACC should be handled, such as requiring that proper books of accounts be kept.⁵⁶ This is important as the proper handling of accounts means that the funds allocated to the ZACC are less likely to be stolen. However, the legislature should have been more precise in stating how the allocation of funds to the ZACC by the government should take place. Ensuring that ACAs are well funded is an international best practice which assists them to conduct their work and achieve their mandate. One of the major problems that the ZACC faces is a lack of sufficient funding.⁵⁷ This could have been avoided had the legislature ensured that the ZACC Act provides for sufficient and guaranteed funding for the efficient running of the ZACC.

3.3 Structural and Institutional Challenges

The ZACC faces a number of structural and institutional challenges. These could be mitigated by some amendments to the ZACC Act, which forms the foundation upon which the ZACC operates. This section looks beyond the ZACC Act and analyses some of the structural and institutional challenges with which the ZACC has to contend.

54 Section 17(6)(b) of the ZACC Act.

55 Jakarta Statement on Principles for Anti-Corruption Agencies (2012).

56 Section 18(3) of the ZACC Act.

57 Langa (2017), available at <https://www.newsday.co.zw/2017/04/underfunding-stifles-zacc-operations/> (visited 29 November 2018).

3.3.1 Interaction with the Public and Parliament

Corruption is a clandestine activity, which makes the public an essential tool in fighting it. Members of the public are needed to report the corruption they know of or witness. However, the ZACC Act does not have provisions that guarantee support for whistleblowers. Without guaranteed protection, citizens are unwilling to report corruption. The ZACC has made efforts to encourage the public to expose corruption through its public education and publicity campaign.⁵⁸ This has been done through advertisements on local television and radio. However, without guaranteed protection, people are unwilling to report corruption and, as a result, the ZACC has minimal interaction with the public. The government has stated that it is working on implementing whistleblower protection laws.⁵⁹ The ZACC only has one branch in Harare, the capital city; it has not opened other branches due to financial constraints.⁶⁰ This further alienates it from the public as it is not accessible physically to a large portion of Zimbabwe's population.

As discussed earlier, the ZACC has direct access to parliament, which access, if utilised, could be a powerful tool to name and shame corrupt individuals and private corporations. The ZACC could not do this as reports have to go through a Minister before they are presented to parliament.⁶¹ The Minister concerned can prevent information from reaching parliament and has the power to prevent the presentation of reports to parliament and the public. This is a major challenge for the ZACC, as its work may be quashed by the Minister who may not agree with the contents of its reports. It may be argued also that having a report pass through a Minister before presentation to parliament may make the Commissioners hesitant to confront acts of corruption by senior government officials who may be in the good books of the Minister in charge. The effectiveness of the ZACC thus is reduced.

58 Chikukwa (2018), available at <https://www.herald.co.zw/zacc-rolls-out-publicity-campaign/> (visited 20 November 2018).

59 Langa (2014), available at <https://www.newsday.co.zw/2014/07/10/govt-still-crafting-whistleblowers-act/> (visited 30 December 2018).

60 Nkala (2013), available at <https://www.thestandard.co.zw/2013/02/17/zacc-fails-to-open-new-offices/> (visited 2 January 2019).

61 Section 17(1) of the ZACC Act.

3.3.2 Lack of an Independent Budget

The lack of independent budget allocation for the ZACC is a major flaw in both the ZACC Act and the Constitution of Zimbabwe. An effective ACA requires a generous budget to fund its activities and to fulfil its mandate of combating corruption.⁶² This is recognised as an international best practice. The ZACC falls short significantly in this aspect because, ever since its inception, it has not been allocated its full budget request by the treasury. The budget allocation over the years has fallen below twenty percent of the requested amount.⁶³

In the 2019 Zimbabwe budget statement, the ZACC was allocated US\$5 million dollars.⁶⁴ This is significantly lower than the requested budget allocation, which is estimated to have been over US\$9 million.⁶⁵ Poor funding has crippled the ZACC's ability to achieve its mandate of combating corruption. The money received from the treasury is often enough to pay salaries only. It does not cover the expense of conducting thorough investigations or anti-corruption campaigns across the country. An independent budget would enable the ZACC to carry out its functions effectively. It is imperative for Zimbabwe to invest in its anti-corruption strategies, as a large portion of the country's wealth is lost to corruption. Adequate investment in the ZACC could reduce corruption and lead to retention of the country's wealth.

3.3.3 Political Support

The ZACC has been facing major setbacks because it has been accused of investigating citizens selectively. This ultimately has a negative impact on its ability to combat corruption in Zimbabwe. The ZACC focuses on investigating petty issues while neglecting the "big fish". The most corrupt individuals in Zimbabwe are not investigated because of their political links or financial muscle.

62 Jakarta Statement on Principles for Anti-Corruption Agencies (2012).

63 Katongomara (2018), available at <https://www.chronicle.co.zw/zacc-operations-under-threat/> (visited 4 November 2018).

64 Zimbabwe National Budget Statement (2019) at 168.

65 Langa (2017), available at <https://www.newsday.co.zw/2017/04/underfunding-stifles-zacc-operations/> (visited 24 April 2019).

Critics have argued that the largest drawback in the fight against corruption in Zimbabwe is the lack of political will on the part of the political elite.⁶⁶ Political support is essential to the effectiveness of an ACA. The ZACC's need for political support is exacerbated by its lack of complete independence. Being subsumed under the Office of the President can be viewed as a hindrance to independence, which may cause a lack of objectivity in investigating its parent ministry when the need arises. The ZACC's lack of objectivity is evidenced by its inability to investigate corruption orchestrated by high-ranking members of the ruling party. Such investigations are pursued only when the suspects are no longer members of the ruling party. This is illustrated by the case of Ignatius Chombo, the former finance minister of Zimbabwe, who was charged with several criminal and corruption charges after the removal of Robert Mugabe from power.⁶⁷ The corruption did not start after the removal of Mugabe, but the removal gave the ZACC the confidence to investigate Chombo without fear of being reprimanded by the President. This shows both severe bias and lack of independence.

It must be noted also that the ZACC lacks adequate legal support, independence and budget, all of which are indicators of a severe lack of political support. The lack of political support is blatant. When the ZACC tried to investigate corruption in the mining industry in 2013, the state promptly arrested some Commissioners.⁶⁸ In 2016, after the ZACC investigated certain parastatals and the Harare City Council for fraud and disregard of tender procedures, former President Mugabe's spokesperson, George Charamba, announced to the media that the ZACC was impugning government systems and circumventing ministries, and warned it not to act on insufficient information.⁶⁹ These examples illustrate that, although the government purports to support the efforts of the ZACC to fight corruption, it equally frustrates any initiatives it undertakes to achieve its mandate. Without political support, an effective ZACC remains a pipe dream.

66 OSISA (2017) at 362.

67 Bhebhe (2018), available at <https://www.myzimbabwe.co.zw/news/28227-latest-on-ex-finance-minister-ignatius-chombo-who-is-facing-several-corruption-charges.html> (visited 30 December 2018).

68 Moyo (2013), available at <https://www.theindependent.co.zw/minister-unleash-fierce-backlash/> (visited 2 January 2019).

69 Share (2016), available at <https://www.herald.co.zw/anti-graft-body-warned-on-haste/> (visited 28 November 2018).

3.3.4 Corrupt Commissioners

The epitome of the ZACC's dysfunction is the multiple corruption scandals involving ZACC Commissioners themselves. This could be a result of the compromised appointment procedure, which gives the President a lot of power to appoint the ZACC Commissioners. The Zimbabwean political elite often has been accused of grand corruption and, because of the President's power to appoint Commissioners, it is often the same politically exposed persons who are appointed as Commissioners.

The first known corruption scandal involving ZACC Commissioners occurred in 2008, when they corruptly received luxury properties in upmarket areas from the ZACC.⁷⁰ Property corruption scandals continued in 2013, when the ZACC chief executive, Ngonidzasho Gumbo, was arrested on an allegation of defrauding the Commission of US\$435 000. He was accused of making secret profits from a transaction involving a ZACC property. Gumbo was found guilty and sentenced to an effective two years in prison in March 2015.⁷¹ In 2014, it emerged that a ZACC investigator, Courage Nyamajiwa, was paid by the Zimbabwe Football Association (ZIFA) for work he was doing for the ZACC against ZIFA officials. It was reported that this suggested there was undue collusion between the two organisations in handling this issue.⁷²

The frequency of corruption within the ZACC itself is alarming. Such corruption could be exacerbated by the limited budget allocated to the ZACC, since a small budget negatively affects the remuneration that Commissioners receive. This makes Commissioners turn to corruption to supplement their incomes. The problem of corrupt Commissioners could be reduced by adequate funding for the ZACC and the appointment of honest and highly qualified individuals as Commissioners.

70 Magaisa (2016), available at <http://alexmagaisa.com/big-saturday-read-last-dance-sunset-zimbabwes-political-elite-looting-state-citizens-can/> (visited 30 December 2018).

71 Nemukuyu (2015), available at <http://www.herald.co.zw/anti-corruption-commission-boss-jailed/> (visited 30 December 2018).

72 Rushwaya (2016), available at <http://www.herald.co.zw/how-did-zifa-pay-a-zacc-investigator/> (visited 5 January 2019).

3.4 Successes of the ZACC

Although the ZACC has faced multiple challenges since its inception, it has had a few successes in the fight against corruption in Zimbabwe. The ZACC does not have many anti-corruption cases under its belt. However, its most notable case involved unearthing the FIFA match-fixing scandals of 2011. The ZACC's investigations into the matter implicated ZIFA, which led to the arrest and prosecution of its former CEO. This case was a major victory for the ZACC.

Besides investigations, the ZACC has played an advisory role. It has conducted research and investigations into the prevalence of corruption in Zimbabwe but has failed to publish reports on its findings. The lack of public reporting keeps the work of the ZACC hidden from the public, which fuels the “toothless bulldog” narrative that plagues the Commission. The ZACC also played a key role in developing the National Corporate Governance Code, which has been instrumental in Zimbabwe's private sector. The ZACC needs to do more advisory work and ensure that the public is kept informed of its work. A good relationship with the country's media houses would shine a light on some of the positive work which the ZACC does.

3.5 The Future of the ZACC

In May 2018, President Mnangagwa established a Special Anti-Corruption Unit (SACU). The legality of this Unit has been debated heavily, as there is no legal authority for its establishment. The Presidency also has failed to give details as to how the SACU will work with the ZACC. The introduction of the SACU may be viewed as an acknowledgement by the President that the ZACC has failed to achieve its mandate. The new Unit is housed in the President's office and it is hoped that it will improve the number of prosecutions in corruption-related crimes.

However, its location within the President's office means that the SACU lacks the independence needed for an ACA's success. It can be argued also that the SACU can be used as a vehicle to thwart the work of the ZACC, as the former will have the final say on the prosecutions that take place. Ultimately, the establishment of the SACU could lead to the ZACC becoming obsolete. It is unlikely that the ZACC will be shut down as it is a constitutional institution. However, it is possible that it turns into an “empty shell” of an

institution, existing in name but with no substance. Taking the entire anti-corruption system and placing it under the Office of the President is a retrogressive step toward centralising and concentrating power in the hands of one man. It is a bad sign of populism when one person overrides established institutions in the name of fighting corruption.⁷³

3.6 Conclusion

The ZACC has a solid legal framework supporting it. It has been at the centre of Zimbabwe's anti-corruption efforts since its inception in 2004. Although the ZACC has had some successes, these remain negligible when compared to its failures. The ZACC's major drawbacks appear to be political and institutional. It does not fulfil its mandate due to lack of support from the government and its complementing state organs. Corruption in the country continues to grow and the future of the ZACC is not guaranteed. Its reputation as a "toothless bulldog" has been the catalyst for discourse around its removal as Zimbabwe's key anti-corruption institution.



73 Magaisa (2018), available at <https://www.theindependent.co.zw/2018/05/24/trouble-govts-anti-corruption-organ/> (visited 5 January 2019).

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

This research paper has analysed the Zimbabwe Anti-Corruption Commission (ZACC). According to Transparency International, Zimbabwe is one of the most corrupt countries in Africa. The corruption levels in the country are discussed at length, which demonstrates the importance of an ACA in Zimbabwe. An analysis of the history of the ZACC since its inception in 2004 reveals that its development has been driven largely by politics. Corruption remains a major problem in Zimbabwe and any change of government shines fresh light on the ZACC, bringing new promises of refurbishing the ZACC to improve its ability to achieve its mandate. The research paper has traversed Zimbabwe's anti-corruption legal framework, which is in line with international instruments such as UNCAC and the AU Convention.

In an attempt to understand the importance of ACAs in combating corruption, this research paper discussed how they first developed and the different models of anti-corruption bodies available. ACAs can be endowed with investigative, preventive, educative and prosecutorial powers. However, despite the existence of an ample legal framework calling for the creation of anti-corruption bodies at international, regional and national levels, there is no edict on the model to be adopted. Individual states have to select a suitable model for their national context. Furthermore, the legal framework pertaining to ACAs is silent on their administration and management.

The international best practices for ACAs were discussed extensively in this research paper. They are based on some of the practices that effective ACAs have used and on the Jakarta Statement on Principles for Anti-Corruption Agencies. The research paper deduced that currently there is no binding instrument that ACAs may rely upon as a blueprint for the best practices standard. Although the list of international best practices for ACAs is not exhaustive, ensuring that an ACA is independent, accountable, founded upon a strong legal framework, has a clear mandate and is well resourced will increase significantly its efficiency and effectiveness.

Chapter Three of this research paper examined the Anti-Corruption Commission Act (ZACC Act), which is the enabling statute of the ZACC, to establish whether it complies with the international best practice standards. In so doing, the research revealed that the ZACC Act, to a large extent, complies with ACA international best practice standards. However, the implementation of the provisions of the ZACC Act is poor and in matters involving the appointment and removal of ZACC Commissioners, the President of Zimbabwe has been given too much power over the ZACC. This affects the ZACC's independence and, ultimately, its ability to carry out its mandate effectively.

The research paper also assessed the ZACC as an institution. Its different features, including the appointment of its Commissioners and members of staff, its powers and duties, its independence, its accountability and its funding, were discussed. The areas in want of improvement were highlighted. In particular, the ZACC's need for sufficient funding and constant reporting were amongst the features that demanded the most improvement. In addition to discussing the structural and institutional challenges faced by the ZACC, the research paper highlighted some of the successes of the ZACC. The strengths of the ZACC include research and investigations into the prevalence of corruption in Zimbabwe. It is clear that much needs to be done to improve the efficacy of the ZACC.

4.2 Recommendations

4.2.1 Remodelling the ZACC

Remodelling the ZACC is perhaps the best way to ensure a more effective ACA. This is because, over the years, the universal model adopted by the ZACC has proved unsuccessful due to various external and internal factors. A complete overhaul may be the ZACC's only chance of success. This would require a significant amount of work from the legislature as it would need to redraft the ZACC Act. The use of consultants with expert knowledge of ACAs would ensure that the new piece of legislation is not only compliant with international best practice standards but also is compatible with Zimbabwe's unique circumstances. In addition to drafting a new ZACC Act, there would be a need for a constitutional amendment that ensures that section 254 of the Constitution of Zimbabwe is in line with the remodelled ZACC.

The universal model forms the blueprint of the ZACC. This model has made the ZACC a jack-of-all-trades and a master of none. The model requires a significant amount of resources, time and expertise. The broad mandate associated with the universal model is not suitable in a country with high levels of grand corruption, lack of political will and economic turmoil, as these put the model at a high risk of failure, which is the case with Zimbabwe. Limiting the powers of the ZACC would make it appear weaker to the public. This is largely because a broader mandate is associated with more power. However, the ZACC's perceived weakness that comes with a limited mandate is not any worse than its current reputation of being a "toothless bulldog".

The ZACC could be remodelled into a preventive ACA, engaging in activities such as nationwide anti-corruption campaigns, collecting witness testimonies, subpoenaing documents, holding public hearings and issuing reports. The remodelled ZACC could produce reports that are not necessarily interpreted through the lens of criminal justice. The reports could focus on ethical lapses and systemic weaknesses, rather than the presence or absence of grounds for criminal charges. It is recommended also that the Minister of Home Affairs be stripped of his power to review the ZACC reports before their publication. This change could result in more reports being published with their original contents and which are free of political bias. Consistent publishing of reports could improve the image of the ZACC in the eyes of the Zimbabwean public, as reports containing damning evidence of corruption would show the public that the ZACC is not merely a shell of an ACA.

The more streamlined ZACC would require fewer resources and enable it to curtail the growing corruption culture in Zimbabwe. An example of a preventive ACA against which the ZACC could be remodelled is Slovenia's Commission for the Prevention of Corruption (CPC). The CPC relies solely on its powers of subpoena and issuing reports that previously have exposed entrenched corruption among the political and economic elites of Slovenia, a country perceived as relatively free of corruption.¹ The CPC's findings sparked a nationwide protest movement that toppled the government, forced major government and opposition leaders to resign, and prompted major reforms.² Remodelling the ZACC into a preventive ACA would mean that it would no longer have investigative powers or powers to

1 Kuris (2015) at 4.

2 Kuris (2015) at 4.

recommend prosecutions. However, this cannot be seen as a major disadvantage for the ZACC because, to date, it has not been able to use its powers of arrest and prosecution effectively. These dormant powers have affected the reputation of the ZACC adversely.

Over time the ZACC could rebuild its reputation as an effective tool for combating corruption in Zimbabwe, albeit with a more limited mandate. The ZACC could focus on collecting witness testimony, subpoenaing documents, holding public hearings, issuing reports and conducting anti-corruption educational campaigns.

4.2.2 Independent Source of Funding

The ZACC would benefit greatly from having an independent source of funding. This would make it less dependent on Zimbabwe's treasury, which has failed to provide sufficient funding to date. An independent source of funding would make the ZACC less dependent on the treasury and thereby improve its independence. Depending on hand-outs from the treasury is untenable. An alternative source of funding could be secured by amending national laws to make it mandatory for all proceeds of crime, including corruption and illicit enrichment, to be forfeited to the ZACC. This not only would supplement the funds which the ZACC receives from the Zimbabwean treasury but also would motivate the ZACC to expose corruption.

4.2.3 Engage and Encourage Public Participation

The ZACC cannot achieve its mandate of combating corruption without actively engaging the citizens of Zimbabwe. The more people who know and understand its work, the more support the ZACC will obtain. It is extremely important for the ZACC to foster good relationships with civil society organisations and journalists. They can offer support to the ZACC. This support could include lobbying government to stop meddling in the Commission's business and offering strategic litigation support by taking the Minister of Finance to court to ensure that he avails enough funds for the ZACC to carry out its work effectively. These are just a few examples of how partnerships with the public and other organisations could assist the ZACC.

4.2.4 Digitalisation of the ZACC

The ZACC, at the very least, must have a fully functioning website and active social media platforms like Facebook and Twitter. This not only gives the ordinary citizens access to the ACA but also makes it possible for the ZACC to use the platforms to educate the public on the detriments of corruption. This is a cheap, fast and efficient way of getting the anti-corruption message across to many Zimbabweans. Furthermore, an application that facilitates anonymous reporting of corrupt activities would increase the number of whistleblowers.

The digitisation of the ZACC is essential in combating the clandestine nature of corruption, as reports of corruption and action being taken about the reported incidents can be part of a public platform. The ZACC would become more visible to the general population and this would make it easier for it to receive complaints of corruption. Also, the social media platforms, through smart campaigns, could be utilised to educate the country's population on the ills of corruption. This may have the effect of reducing petty corruption in Zimbabwe. It also encourages accountability and transparency, which are essential elements that the current ZACC lacks.

4.2.5 Independent Oversight Body

The ZACC has failed to run efficiently under the watchful eye of Parliament. This is because the parliament of Zimbabwe cannot be seen as truly independent, as it serves largely to protect the interests of the ruling party. Parliament has failed to keep the ZACC accountable: an example of this can be found in its failure to demand that the ZACC produce reports that detail its work.

An independent oversight body would ensure that the ZACC runs more efficiently. It also would limit the amount of political influence experienced by the ZACC. Such an oversight body would need to be capacitated through conscientisation, training and lobbying, so that it becomes more engaged and assertive on the issue of corruption. However, the creation of an independent body would be very difficult since the government of Zimbabwe is identified with capturing the so-called independent bodies in the country. It is to be hoped that the relationship with civil society organisations and journalists would

assist in alleviating this problem, as they can hold government to account when the designated oversight body is not acting independently.



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